

**APP Wholesale Limited (Registered Company No. 06552800) (“the Supplier”)
Terms and Conditions of Sale**

The customer's attention is drawn in particular to the provisions of clause 9.

1 INTERPRETATION

- 1.1 **Definitions.** In these Conditions, the following definitions apply:
Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
Conditions: these terms and conditions as amended from time to time in accordance with clause 11.6 which the Customer accepts as a condition of being approved for a Credit Limit.
Contract: each contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.
Credit Limit: the maximum amount of credit for the Customer as approved by the Supplier following its credit account application process.
Customer: a business who purchases the Goods from the Supplier.
Force Majeure Event: an event, circumstance or cause beyond a party's reasonable control.
Goods: the goods (or any part of them) as set out in each Order.
Order: each order for the Goods submitted by the Customer whether via a purchase order form, telephone call or by email.
Premises: the premises of the Supplier as notified to the Customer.
- 1.2 **Interpretation.** In these Conditions, the following rules apply:
1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.
1.2.3 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
1.2.4 A reference to **writing** or **written** includes e-mails.

2 BASIS OF CONTRACT

- 2.1 These Conditions apply to each Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
2.2 Each Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.
2.3 Each Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order through its sales order confirmation, at which point the Contract shall come into existence.
2.4 Each Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
2.5 Any samples or promotional material produced by the Supplier and any descriptions contained in the Supplier's product guide (whether digital or print) are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
2.6 A quotation for the Goods given by the Supplier shall not constitute an offer.

3 GOODS

- 3.1 The Goods are set out in the Supplier's product guide (whether digital or print).
3.2 The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

4 COLLECTION AND DELIVERY

- 4.1 The Customer shall collect the Goods from the Supplier's Premises within 5 Business Days of the Supplier notifying the Customer that the Goods are ready. Where the Supplier has agreed to deliver the Goods the Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers and the type and quantity of the Goods (including the code number of the Goods, where applicable).
4.2 If the Supplier is delivering the Goods, it shall either deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.
4.3 Delivery of the Goods shall be completed either on collection of the Goods from the Supplier's Premises or on the Goods arrival at the Delivery Location.
4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other information relevant to the supply of the Goods.
4.5 If 10 Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods. If the Goods were purchased through a special order the Customer shall pay the Supplier 25% of the purchase price to cover the costs of restocking the Goods, which is a genuine pre-estimate of the costs to the Supplier.
4.6 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5 QUALITY

- 5.1 The Supplier warrants that on delivery the Goods shall:
5.1.1 conform in all material respects with their description; and
5.1.2 be free from material defects in design, material and workmanship.
5.2 Subject to clause 5.45.3, if:
5.2.1 the Customer gives notice in writing to the Supplier within 48 hours of discovery that some or all the Goods do not comply with the warranty set out in clause 5.1 (i.e. they are damaged); and
5.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and
5.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
5.3 In the event of any errors in delivery (such as a shortage of items) the Supplier shall rectify these promptly provided the Customer notifies the Supplier within 24 hours of delivery.
5.4 The Supplier shall not be liable if the Goods do not comply with the warranty set out in clause 5.1 in any of the following events:
5.4.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
5.4.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
5.4.3 the Customer alters or repairs such Goods without the written consent of the Supplier;
5.4.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working or storage conditions; or
5.4.5 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
5.5 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
5.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
5.7 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6 TITLE AND RISK

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
6.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cleared funds) for:
6.2.1 all Goods ordered by the Customer (within the Credit Limit); and
6.2.2 any other goods or services that the Supplier has supplied to the Customer.
6.3 Until title to the Goods has passed to the Customer, the Customer shall:
6.3.1 hold the Goods on a fiduciary basis as the Supplier's bailee;
6.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
6.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
6.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
6.3.5 notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.2; and
6.3.6 give the Supplier such information relating to the Goods as the Supplier may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.
6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7 PRICE AND PAYMENT

- 7.1 The price of the Goods shall be the price confirmed in the Supplier's sales order confirmation.
7.2 The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
7.2.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
7.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered. The Supplier reserves the

- right to charge a percentage of the Order value in such cases or to impose a restocking charge; or
- 7.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 7.3 The price of the Goods is exclusive of the costs of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer in addition unless the value of the Order qualifies for free delivery.
- 7.4 The price of the Goods is exclusive of value added tax (VAT) which the Customer shall be liable to pay to the Supplier at the prevailing rate subject to receipt of a VAT invoice.
- 7.5 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 7.6 The Customer shall pay every invoice in full and in cleared funds within 30 days of the end of the month of the invoice unless otherwise agreed by the Supplier. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.
- 7.7 The Customer may place multiple Orders up to the value of the Credit Limit (subject at all times to the Supplier's discretion).
- 7.8 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**due date**), then the Customer shall:
- 7.8.1 pay interest on the overdue amount at the rate of 4% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; and
- 7.8.2 the Supplier shall be entitled to suspend or withdraw the Customer's Credit account until such time as the Customer has paid all its outstanding invoices.
- 7.9 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 8 TERMINATION AND CUSTOMER'S INSOLVENCY**
- 8.1 If the Customer becomes subject to any of the events listed in clause 8.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may reduce or withdraw the Credit Limit, cancel or suspend all further deliveries under each Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer under any Contract shall become immediately due.
- 8.2 For the purposes of clause 8.1, the relevant events are:
- 8.2.1 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court), having a receiver appointed to any of its assets or ceasing to carry on business
- 8.2.2 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2.1;
- 8.2.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
- 8.2.4 the Customer's financial position deteriorates so far as to reasonably justify the opinion that the Customer meet its obligations under these Conditions
- 8.3 Without limiting its other remedies or rights, the Supplier may reduce or withdraw the Credit Limit and terminate all Contracts in force with immediate effect if the Customer fails to pay any sums due under any Contract or breaches the conditions applied to the Credit Limit.
- 8.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 9 LIMITATION OF LIABILITY**
- 9.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 9.1.1 death or personal injury caused by negligence;
- 9.1.2 fraud or fraudulent misrepresentation;
- 9.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- 9.1.4 defective products under the Consumer Protection Act 1987.
- 9.2 Subject to clause 9.1:
- 9.2.1 the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for (i) any loss of profit (whether direct or indirect), or any indirect or each the Contract; and
- 9.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with each Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods of that Order.
- 10 FORCE MAJEURE**
- Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. The time for performance under each Contract shall be extended accordingly. This shall not apply to the Customer's payment obligations unless otherwise agreed by the Supplier.
- 11 GENERAL**
- 11.1 Assignment and subcontracting.**
- 11.1.1 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 11.1.2 The Customer may not assign or subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.
- 11.2 Notices.**
- 11.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or its principal place of business and shall be sent by pre-paid first class post, recorded delivery, fax or e-mail.
- 11.2.2 A notice or other communication shall be deemed to have been received: when left at the address referred to in clause 11.2.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; or, if sent by fax or e-mail, one Business Day after transmission.
- 11.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 11.3 Severance.**
- 11.3.1 If any court or competent authority finds that any provision of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 11.3.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 11.4 Waiver.**
- A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 11.5 Third party rights.**
- A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 11.6 Variation.**
- No variation of a Contract shall be effective unless it is in writing and signed by both parties.
- 11.7 Governing law and jurisdiction.**
- Each Contract, and any dispute or claim arising out of or in connection with it shall be governed by English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.