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JOKEY UK LIMITED

TERMS OF SALE

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Jokey UK Limited

Terms of Sale

1. Interpretation

1.1 In these Terms the following words and expressions have the following meanings:

Buyer	the person who accepts Jokey's written quotation for the sale of the Products or whose written order for the Products is accepted by Jokey.
Contract	the contract for the sale and purchase of the Products.
Incoterms	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.
Jokey	Jokey UK Limited a company incorporated in England under number 13312691 whose registered office is at Palmerston House, 814 Brighton Road, Purley, Surrey, United Kingdom, CR8 2BR.
Products	the products (including any instalment of the products or any parts for them) which Jokey is to supply in accordance with these Terms.
Terms	the standard terms of sale set out in this document.

1.2 A reference in these Terms to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 Unless the context otherwise requires, a reference to a clause will mean a clause in these Terms.

1.4 A reference to **writing** or **written** includes fax and email, but excludes text messages or other forms of electronic communication.

1.5 Any words following the terms **including, include, in particular, for example** or any similar expression will be construed as illustrative and will not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Basis of the sale

2.1 Jokey shall sell, and the Buyer shall purchase, the Products in accordance with Jokey's written quotation (if accepted by the Buyer), or the Buyer's written order (if accepted by Jokey), subject in either case to these Terms, which shall govern the Contract.

2.2 Subject to clause **Fehler! Verweisquelle konnte nicht gefunden werden.** below, these Terms shall apply to the exclusion of any other terms subject to which any

such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

- 2.3 No variation to these Terms shall be binding unless agreed in writing between the authorised representatives of Jokey and the Buyer.
- 2.4 Jokey's employees or agents are not authorised to make any representations concerning the Products unless confirmed by Jokey in writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.
- 2.5 Any advice or recommendation given by Jokey or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Products which is not confirmed in writing by Jokey is followed or acted on entirely at the Buyer's own risk, and accordingly Jokey shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.6 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 Jokey shall be subject to correction without any liability on the part of Jokey.

3. Orders and specifications

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by Jokey unless and until confirmed by Jokey. An order shall be confirmed by Jokey on the earlier of Jokey issuing written confirmation, or delivering the Products in accordance with clause 6 below.
- 3.2 The quantity, quality and description of the Products and any specification for them shall be as set out in Jokey's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by Jokey).
- 3.3 If the Products are to be manufactured or any process is to be applied to the Products by Jokey in accordance with a drawing, design or specification submitted by the Buyer, the Buyer:
 - 3.3.1 grants to Jokey a non-exclusive, worldwide, sub-licensable right to use any patent, copyright, design, trademark or other industrial or intellectual property rights in the same for the purpose of the manufacture of the Products under this agreement, and for their supply to the Buyer;
 - 3.3.2 indemnifies Jokey against all loss, damages, costs and expenses awarded against or incurred by Jokey in connection with, or paid or agreed to be paid by Jokey in settlement of, any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from Jokey's use of the Buyer's drawing, design or specification.
- 3.4 The Buyer shall be responsible to Jokey for:
 - 3.4.1 ensuring the accuracy of each order for the Products given by the Buyer (including any applicable specification); and
 - 3.4.2 promptly giving Jokey all necessary information and documentation relating to the Products which is reasonably requested by Jokey to enable Jokey to fulfil each order in accordance with its terms.

- 3.5 No order which has been accepted by Jokey may be cancelled by the Buyer except with the agreement in writing of Jokey and on terms that the Buyer shall indemnify Jokey in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Jokey as a result of cancellation.

4. Price of the Products

- 4.1 The price of the Products shall be Jokey's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in Jokey's published price list current at the date of acceptance of the order. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by Jokey without giving notice to the Buyer.
- 4.2 Jokey reserves the right, by giving written notice to the Buyer at any time before delivery, to increase the price of the Products to reflect any increase in the cost to Jokey which is due to any factor beyond the control of Jokey (including any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, energy, materials (including plastics and additives) or other costs of manufacture), any change in delivery dates, quantities or specifications for the Products which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give Jokey adequate information or instructions.
- 4.3 Except as otherwise stated in Jokey's written quotation or in any price list of Jokey, and unless otherwise agreed in writing between the Buyer and Jokey, all prices are given by Jokey on an CPT (Carriage Paid To) Incoterms basis, and the Buyer shall be liable to pay Jokey's additional charges for transport, packaging and insurance.
- 4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to Jokey.

5. Terms of payment

- 5.1 Jokey may invoice the Buyer for the price of the Products on or at any time after delivery of the Products, unless the Products are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Products, in which event Jokey shall be entitled to invoice the Buyer for the price at any time after Jokey has notified the Buyer that the Products are ready for collection or (as the case may be) Jokey has tendered delivery of the Products.
- 5.2 The Buyer shall pay the price of the Products within 30 days of the date of Jokey's invoice, and Jokey shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the title to the Products has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only on request.
- 5.3 If the Buyer fails to make any payment on the due date then, without limiting any other right or remedy available to Jokey, Jokey may:
- 5.3.1 cancel the Contract or suspend any further deliveries to the Buyer;
 - 5.3.2 appropriate any payment made by the Buyer to such of the Products (or the goods supplied under any other contract between the Buyer and Jokey) as Jokey may think fit (notwithstanding any purported appropriation by the Buyer); and
 - 5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 4% per annum above the Bank of England

base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6. Delivery of the Products

- 6.1 Unless agreed otherwise in writing, Jokey shall deliver the Products to the Buyer on the basis CPT (Carriage Paid To) Incoterms.
- 6.2 Any dates quoted for delivery of the Products are approximate only and Jokey shall not be liable for any delay in delivery of the Products however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by Jokey in writing. The Products may be delivered by Jokey in advance of the quoted delivery date on giving reasonable notice to the Buyer.
- 6.3 Where delivery of the Products is to be made by Jokey in bulk, Jokey reserves the right to deliver up to 10% more or 10 % less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered.
- 6.4 Where the Products are to be delivered in instalments, each delivery shall constitute a separate contract and failure by Jokey to deliver any one or more of the instalments in accordance with these Terms or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.5 If Jokey fails to deliver the Products (or any instalment) for any reason other than any cause beyond Jokey's reasonable control or the Buyer's fault, and Jokey is accordingly liable to the Buyer, Jokey's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Products.
- 6.6 If the Buyer fails to take delivery of the Products or fails to give Jokey adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of Jokey's fault) then, without limiting any other right or remedy available to Jokey, Jokey may:
 - 6.6.1 store the Products until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - 6.6.2 sell the Products at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

7. Transfer of risk and title

- 7.1 Risk of damage to or loss of the Products shall pass to the Buyer in accordance with the relevant Incoterm or otherwise at the time of delivery of the Products.
- 7.2 Notwithstanding the delivery of and the passing of risk in the Products, or any other provision of this agreement, title to the Products shall not pass to the Buyer until Jokey has received payment in full of the price of the Products.
- 7.3 Until such time as title to the Products passes to the Buyer, the Buyer shall hold the Products as Jokey's fiduciary agent and bailee, and shall keep the Products separate from those of the Buyer and third parties and properly stored, protected and insured and identified as Jokey's property. The Buyer shall have the right to use the Products or resell them (as principal and not as the agent of Jokey, and on the basis that the title to the Products shall pass to Jokey immediately prior to resale) in the ordinary course of its business, but this right shall cease

automatically on the occurrence of any of the events referred to in clause 9.1 below.

- 7.4 Until such time as the title to the Products passes to the Buyer (and provided the Products are still in existence and have not been resold), Jokey may at any time require the Buyer to deliver up the Products to Jokey and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Products are stored and repossess the Products.
- 7.5 The Buyer shall not be entitled to pledge, create a lien over or in any way charge by way of security for any indebtedness any of the Products which remain the property of Jokey, but if the Buyer does so all monies owing by the Buyer to Jokey shall (without limiting any other right or remedy of Jokey) forthwith become due and payable.

8. Warranties, inspection and liability

- 8.1 Subject to the following provisions, Jokey warrants that the Products will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from delivery.
- 8.2 The above warranty is given by Jokey subject to the following conditions:
- 8.2.1 Jokey shall be under no liability in respect of any defect in the Products arising from any drawing, design or specification supplied by the Buyer;
- 8.2.2 Jokey shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow Jokey's instructions (whether oral or in writing), misuse or alteration or repair of the Products without Jokey's approval;
- 8.2.3 Jokey shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Products has not been paid by the due date for payment.
- 8.3 The above warranty does not extend to parts, materials or equipment not manufactured by Jokey, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Jokey.
- 8.4 Subject as expressly provided in these Terms, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.5 The Buyer shall, within three days of the arrival of each delivery of the Products at the Buyer's premises inspect the Products and, at its own cost, notify Jokey immediately in writing of any defect by reason of which the Buyer alleges that the Products delivered are not in accordance with the specification and which should be apparent on reasonable inspection. In respect of any defect which would not be apparent on reasonable inspection, the Buyer shall notify Jokey immediately in writing upon becoming aware of such latent defect.
- 8.6 If the Buyer fails to give such immediate notice in accordance with clause 8.7 below, the Products shall be conclusively presumed to be in all respects in accordance with the specification, and accordingly the Buyer shall be deemed to have accepted the delivery of the Products in question and Jokey shall have no liability to the Buyer with respect to that order or delivery of Products.
- 8.7 If the Buyer rejects any delivery of the Products which are not in accordance with the specification, Jokey shall within 30 days, at its option, either repair, supply replacements or refund for Products which are not in accordance with the

specification (in which event Jokey shall not be deemed to be in breach of these Terms or have any liability to the Buyer). If Jokey fails to satisfactorily repair or replace the Products, the Buyer may request a reasonable price reduction or cancellation of the order.

- 8.8 In the case of any defective Products, Jokey shall only be required to collect original Products which have not been used by the Buyer.
- 8.9 Except in the case of liability for death or personal injury caused by Jokey's negligence, liability for defective products under the Consumer Protection Act 1987 or liability under section 12 of the Sale of Products Act 1979, Jokey shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of Jokey, its employees or agents or otherwise) which arise out of or in connection with the supply of the Products (including any delay in supplying or any failure to supply the Products in accordance with the Contract or at all) or their use or resale by the Buyer, and the entire liability of Jokey under or in connection with the Contract shall not exceed the price of the Products, except as expressly provided in these Terms.
- 8.10 Jokey shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of Jokey's obligations in relation to the Products, if the delay or failure was due to any cause beyond Jokey's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond Jokey's reasonable control:
- 8.10.1 Act of God, explosion, flood, tempest, fire or accident;
 - 8.10.2 war or threat of war, acts of terrorism, sabotage, insurrection, civil disturbance or requisition;
 - 8.10.3 floods, earthquakes, hurricanes, plagues, pandemics or epidemics;
 - 8.10.4 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - 8.10.5 import or export regulations or embargoes;
 - 8.10.6 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of Jokey or of a third party);
 - 8.10.7 difficulties in obtaining raw materials, plastics, labour, energy, additives, parts or machinery; or
 - 8.10.8 power failure or breakdown in machinery.

9. Insolvency of Buyer

- 9.1 This clause 9 applies if:
- 9.1.1 an encumbrancer takes possession or a receiver is appointed over any of the property or assets of the Buyer;
 - 9.1.2 the Buyer makes any composition or voluntary arrangement with its creditors or enters into administration, or a moratorium comes into force in respect of the other party (within the meaning of the Insolvency Act 1986);
 - 9.1.3 the Buyer goes into liquidation (except for the purposes of an amalgamation, reconstruction or other reorganisation and so that the

company resulting from the reorganisation effectively agrees to be bound by or to assume the obligations imposed on the other party under this agreement);

- 9.1.4 the Buyer ceases, or threatens to cease, to carry on business;
- 9.1.5 the Buyer undergoes a significant deterioration in its financial situation;
- 9.1.6 Jokey's credit insurer downgrades the creditworthiness rating of the Buyer; or
- 9.1.7 the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

9.2 If this clause **9Fehler! Verweisquelle konnte nicht gefunden werden.** applies then, without limiting any other right or remedy available to Jokey, Jokey may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Products have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10. General

- 10.1 Jokey may perform any of the obligations undertaken by it and to exercise any of the rights granted to it under these Terms through any other company which at the relevant time is its holding company or subsidiary (as defined by section 1159 of the Companies Act 2006) or the subsidiary of any such holding company, and any act or omission of any such company shall for the purposes of this agreement be deemed to be the act or omission of Jokey.
- 10.2 A notice required or permitted to be given by either party to the other under these Terms shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 10.3 No waiver by Jokey of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 10.4 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- 10.5 This agreement shall be governed by and construed in all respects in accordance with the laws of England, and the Buyer agrees to submit to the exclusive jurisdiction of the courts of England and Wales.