

1. INCORPORATION OF THESE TERMS

- (A) Unless Seller and Buyer (each as defined below) agree otherwise in writing, these terms and conditions (“**Terms**”) shall apply to every contract for the sale or supply of goods by Energizer Group Ltd (the “**Seller**”) to the exclusion of all other terms, conditions or contract obligations.
- (B) Any offer, quotation or acceptance of order issued by the Seller is given on the basis that the contract of sale is subject only to these terms and conditions. All orders placed by the Seller’s customer (the “**Buyer**”) on the Seller shall be deemed to be on these terms and conditions and no terms proposed or referred to by the Buyer (whether in any order, acceptance form or otherwise) shall form part of any contract of sale between the Buyer and the Seller.

2. THE CONTRACT

- (A) Each contract (the “**Contract**”) for the sale of Seller’s goods (the “**Goods**”) to the Buyer shall be concluded by the Seller’s acceptance of the Buyer’s order, whether orally or in writing or by delivery of the Goods and the Contract shall be created only on such acceptance on these Terms and not otherwise in any manner.
- (B) The Buyer expressly acknowledges that (save as expressly agreed in writing by the Seller in any contract between the Buyer and Seller to which these Terms are attached) there are no terms or representations other than as expressly contained in these Terms which have induced the Buyer to enter into the Contract and there is no collateral contract pursuant to which the Buyer has entered into the Contract.
- (C) No modification of these Terms shall be effective and bind the Seller in any manner whatsoever unless (i) expressly agreed in writing by the Seller in any contract between the Buyer and Seller to which these Terms are attached or (ii) expressly agreed in writing by a duly authorised signatory of the Seller and the Buyer.
- (D) Any reference in these Terms to any consent or agreement of the Seller shall be effective only when given by a duly authorised signatory of the Seller and the Buyer shall not be entitled to rely on any such consent or agreement unless the Buyer has satisfied itself that it is given by and on behalf of the Seller by a person duly authorised to give such consent or agreement.

3. CANCELLATION

- (A) The Buyer shall not be entitled to cancel any order placed on the Seller (whether before or after the time of Contract) without the prior written consent of the Seller.
- (B) If such prior written consent is given by the Seller, the Buyer shall effect cancellation only by notice in writing to the Seller, which notice shall specify and identify the order placed by the Buyer, including the date of order, full details of the Buyer and the delivery address, the number, quantity and description of the Goods ordered.
- (C) If cancellation is effected by the Buyer after date of Contract (being the date of acceptance by the Seller of any Buyer order, on these Terms, whether orally or in writing or by delivery of the Goods) such written consent of the Seller shall be conditional on the Goods (if despatched) being returned (at the Buyer’s sole cost) to the Seller (at its

premises in the UK, as specified in the consent) in exactly the same state (including state of packing and packaging) as they were on delivery. The Buyer shall indemnify the Seller against all reasonable costs and expense (including, without limitation, administration, packaging and carriage costs but excluding any loss of profit or opportunity) incurred by the Seller in effecting such cancellation and in connection with any breach of such Seller condition of consent.

4. ORDERS

- (A) All orders placed by the Buyer shall be subject to acceptance by the Seller and no Contract is made unless and until acceptance by the Seller, whether orally or in writing or by delivery of the Goods.
- (B) Quantities and package sizes in respect of each of the Goods are as specified by the Seller from time to time. Orders shall be placed by the Buyer only in multiples of minimum pack size /quantities specified by the Seller. Where any order (or consignment for delivery specified in the order) placed by the Buyer does not comply with the foregoing, such order or consignment will be adjusted upwards to the next applicable size.

5. THE GOODS

- (A) All descriptions, specifications and illustrations contained in the Seller's catalogues, prices lists or advertisements or otherwise communicated to the Buyer are intended to present a general idea of the Goods described therein and shall not form any part of the Contract.
- (B) The Seller shall be entitled in its sole discretion to discontinue the supply of any Goods or to amend or modify any Goods without notice to the Buyer, provided that in the event that the Seller is by reason of any such circumstance unable to supply the Goods as ordered by the Buyer, the Seller shall notify the Buyer and either the Buyer or Seller shall be entitled to terminate the Contract, without any liability.
- (C) The Contract shall not be or deemed to be in any manner a sale of Goods by description, sample or otherwise. Save as expressly provided in these Terms, the Buyer shall take the Goods at its own risk as to their quality, condition or sufficiency for any purpose.
- (D) If a sample of the Goods has been presented to and/or inspected by the Buyer, it is expressly agreed and acknowledged that such sample was so presented and inspected solely to enable the Buyer to assess the quality of the bulk and not so as to constitute a sale by sample. The Buyer shall take the Goods at its own risk as to their correspondence with any such sample.

6. THE PRICE

- (A) All prices for the Goods quoted by or on behalf of the Seller, are exclusive of VAT and inclusive of delivery by the Seller (packing and carriage at the Seller's risk to the address of the Buyer in the United Kingdom, specified by the Buyer on order) unless otherwise specified or agreed in writing save that (i) packing and carriage of £50 plus VAT will be charged on orders of £250 (exclusive of VAT) or less and (ii) for the avoidance of doubt prices quoted do not include packing and carriage on deliveries of a non-routine nature (e.g. where the Buyer requests special or urgent delivery of any Goods).

- (B) Where prices for the Goods are stated in any manner by the Seller, the Seller reserves the right to amend such prices at any time in its sole discretion.
- (C) Where an order has been placed by the Buyer for the supply of Goods, the Seller reserves the right to amend such prices at any time in its sole discretion, whether before or after the time of Contract, at any time prior to delivery of the Goods, by notice to the Buyer and all invoices shall be at the price ruling at the time and date of delivery provided that either the Buyer or Seller shall be entitled to terminate the Contract, without any liability, promptly on service / receipt of any such notice.

7. PAYMENT

- (A) All sums due from the Buyer in respect of each delivery, shall be invoiced on despatch.
- (B) All invoices shall be paid in full, without set off or deduction in any manner, (save only where expressly agreed in writing by the Seller) within 30 days from the end of the month in which the invoice is issued.
- (C) Where the Goods are to be supplied in instalments the failure of the Buyer to pay any instalment on the due date for payment, shall be a repudiatory breach by the Buyer of the entire Contract and shall entitle the Seller to accept such repudiation of the entire Contract by the Buyer and to recover damages for such breach of contract.
- (D) During any period in which sums due by the Buyer to the Seller on any Contract remain unpaid after the due date for payment, the Seller shall be entitled to suspend delivery of Goods to the Buyer under any Contract between the Seller and the Buyer.
- (E) All sums due from the Buyer to the Seller under any Contract shall bear interest from the due date for payment until payment is made in full, at the rate of four percent above the base lending rate per annum from time to time of Bank of America, calculated and accruing daily, both before and after judgement.
- (F) The Seller reserves the right to impose a credit limit on the Buyer (and to amend such credit limit from time to time) and the Seller shall be entitled to suspend deliveries of Goods to the Buyer if and for the period of time in which any credit limit may be exceeded.

8. DELIVERY

- (A) Delivery dates (if any) stated by the Seller are estimates only and the time of delivery shall not be of the essence of the Contract in any manner and cannot be made so, by any act or notice of the Buyer.
- (B) The Seller be not be liable in any manner whatsoever to the Buyer for any non-delivery or late delivery of the Goods or any of them, for whatever reason or for any loss (whether direct or indirect) including without limitation, any consequential loss or lost opportunity arising (whether directly or indirectly) from any non-delivery or late delivery of all or any part of the Goods by the Seller.
- (C) In the event of non-delivery of the Goods, the Buyer shall inform the Seller by notice in writing within fourteen days of receipt of invoice.

- (D) If the delivery of Goods ordered by the Buyer is delayed or prevented by circumstances outside the reasonable control of the Seller (including without limitation, acts or omissions of third parties) (i) any period specified for delivery (if any) shall be extended by such time as the cause preventing or hindering delivery subsists Provided that the either the Seller or the Buyer may by notice in writing terminate the Contract where the period for delivery has been, or is reasonably anticipated to be, extended for a period in excess of three months and (ii) subject only to any termination under sub paragraph (i) above, the Seller shall be entitled to deliver part only of the Goods and the Buyer shall accept the same under the Contract.
- (E) Subject to clause 8(D) above, if delivery of any items of Goods ordered has not been made within three months of any delivery date specified by the Seller on Contract, the Buyer shall be entitled to cancel its order in respect of such items by notice in writing to the Seller.
- (F) The Seller shall be entitled to effect delivery of the Goods in one or more consignments and invoice each such consignment separately.
- (G) Without prejudice to clause 8(F) above, the Buyer shall not be entitled to reject any delivery of Goods by reason of it being incorrect in quantity by an amount not exceeding ten per cent and the Seller shall not be liable in any manner for any variance in quantities delivered plus or minus 10% of the ordered Goods. The Seller shall invoice and the Buyer shall pay for all Goods delivered.
- (H) If the Buyer fails to accept delivery of the Goods, the Goods shall be deemed to have been delivered and the risk in the Goods shall pass to the Buyer. The Seller shall arrange for storage and insurance of the Goods until delivery is effected and reserves the right to charge the Buyer for all costs incurred in connection therewith.

9. PASSING OF RISK AND PROPERTY

- (A) Risk in the Goods shall pass to the Buyer on delivery.
- (B) The Goods shall remain the Seller's property until the Seller has received payment in full for such Goods under these Terms. Until title in the Goods shall pass the Buyer shall; (i) hold the Goods for and on behalf of the Seller; (ii) store the Goods in such a manner that they can be identified as the Seller's property; and (iii) keep the Goods separate from the Buyer's own property and the property of any third party.
- (C) Payments received by the Seller from the Buyer shall be applied to invoices in the order in which they were issued and to Goods in the order in which they are listed on invoices.
- (D) Notwithstanding such retention of title (i) the Goods shall be at the Buyer's risk from the time of delivery and the Buyer shall insure them against loss or damage accordingly and in the event of such loss or damage shall hold the proceeds of such insurance on behalf of the Seller, as trustee for the Seller; (ii) the Buyer may dispose of the Goods in the normal course of trading as agent for the Seller (but with no authority to create privity of contract between the Seller and any Buyer customer(s)) provided that the Buyer shall assign to the Seller all its rights against its customer(s) in respect of any such disposal and shall promptly on request by the Seller, execute any documents required to perfect any such assignment.

- (D) The Buyer's right to possession and/or sale of the Goods under this clause 9 shall cease on the occurrence of a Default or Insolvency under clause 12 below. On any such cessation the Buyer shall at its own expense immediately make the Goods available to the Seller and permit the Seller to take possession of all Goods in the possession of the Buyer which remain the Seller's property.
- (E) The Buyer grants to the Seller, its agents, representatives and employees an irrevocable license to enter any premises where the Goods are stored in order (i) to inspect compliance by the Buyer with its obligations under this clause 9; and or (ii) take possession of the Goods which remain the Seller's property.

10. INSPECTION AND QUALITY OF GOODS

- (A) The Buyer shall inspect the Goods immediately on delivery and shall within three working days of delivery give notice to the Seller of any alleged (i) defect in the Goods; or (ii) damage in transit to the Goods; or (iii) discrepancy between the Goods as delivered and the Goods stated on the delivery note (subject to clause 8(G)). If the Buyer shall fail to give such notice the Buyer shall be deemed to have accepted the Goods.
- (B) Provided the Buyer establishes to the Seller's reasonable satisfaction that the Goods are as alleged on such notice under clause 10(A) above, the Seller shall in its sole discretion either (i) replace the relevant Goods; or (ii) arrange for collection of the Goods and refund or credit to the Buyer the price of the relevant Goods promptly on return of the relevant Goods.

11. SELLER LIABILITY

- (A) These Terms set out the Seller's entire liability in respect of the Goods and the supply of Goods to the Buyer.
- (B) The Seller's liability under these Terms shall be in lieu of and to the exclusion of all other liability, whether under any other warranties, conditions, terms or liabilities, express or implied, by law or otherwise and whether in contract, tort (including negligence) or any under any other legal action or obligation, including any such liability in respect of the quality, condition, description or fitness for any particular purpose of the Goods to the maximum extent permitted by applicable law.
- (C) Without prejudice to the generality of the foregoing, save as expressly provided in these Terms the Seller shall not be liable to the Buyer (or to the maximum extent permitted by applicable law to any third party), whether in contract, tort or otherwise, by reason of any defect in the Goods, any failure of the Goods as delivered to correspond to specification, description or sample or for any injury, damage or loss arising whether directly or indirectly from any such defect or failure.
- (D) The Buyer shall comply with all instructions as may be issued by the Seller from time to time concerning storage, safety precautions or other measures required to be taken in order to ensure that the Goods do not cause damage or injury to any property or person the Buyer shall bring such instructions to the attention of any subsequent buyer of the Goods.

12. INSOLVENCY/DEFAULT

- (A) If the Buyer (i) commits any breach of any Contract between the Buyer and the Seller (including without limitation failure to pay any sum due on or before the due date for payment) (a “**Default**”) or (ii) becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, makes or offers any arrangement or composition with its creditors, is the subject of any resolution or petition for winding up (other than for the purpose of a solvent amalgamation or reconstruction) or is the subject of any order or notice of the appointment of a receiver, administrator, manager or analogous person, or such a person is appointed over all or part of the Buyer’s business or assets or suffers any similar or analogous process in any jurisdiction applicable to the Buyer, (an “**Insolvency**”) the Seller may without further notice:
- 1) suspend or terminate the Contract or any part thereof;
 - 2) stop any Goods in transit (relating to any Contract whatsoever);
 - 3) recover any Goods from the Buyer’s premises for which payment has not been made in full under clause 9.
- (B) The Seller shall have the right to cancel all or any Contracts or withhold delivery of Goods if the Seller reasonably anticipates that the Buyer may be subject to an Insolvency, during the period for performance of any Contract.

13. INTELLECTUAL PROPERTY RIGHTS

- (A) The supply of Goods by the Seller shall not confer any rights upon the Buyer to use any of the Seller’s intellectual property rights (“**IP Rights**”) in any manner whatsoever and the Buyer shall not amend or modify any trademarks or logos of the Seller appearing on or in connection with the Goods.
- (B) Any specifications, plans, drawings, process information, patterns, designs, formulae or other processes (the “**Specifications**”) in connection with the Goods which may be supplied or disclosed to the Buyer, shall remain the sole property of the Seller (or its licensors) and the supply of Goods by the Seller shall not confer any rights upon the Buyer to use the same in any manner whatsoever. The Buyer shall keep all Specifications confidential and shall not disclose the same to any third party and shall return all Specifications to the Seller promptly at any time at the request of the Seller.

14. FORCE MAJEURE

In the event that any circumstance outside the reasonable control of the Seller and or its suppliers, prevents the Seller from performing its obligations under the Contract, (i) the Seller shall not be liable for any such failure to perform its obligations, for the period in which such force majeure circumstances may continue and (ii) the Seller shall be entitled by service of notice in writing to the Buyer to terminate the Contract, without further liability

15. GENERAL

- (A) It is a condition of the sale of Goods under the Contract that the Buyer is not dealing as a consumer and is purchasing the Goods in the course of its business and the Buyer expressly warrants and represents the same on placing each order with the Seller.

- (B) No waiver or delay by the Seller in exercising its rights under any Contract shall prejudice such exercise or any other or future exercise.
- (C) These Terms shall apply save as and to the extent that in so far as they may be declared unenforceable, invalid, illegal or otherwise in conflict with English Law and any term or part thereof so declared shall be severed from these Terms without affecting the enforceability or validity of any other term or terms or any other term of the Contract between the Buyer and the Seller.
- (E) The Contract shall be governed by and interpreted in accordance with English Law and Buyer submits to the jurisdiction of the High Court of Justice in England, provided that the Seller may enforce the Contract in any court of competent jurisdiction.
- (F) The Buyer shall not assign any benefit under the Contract without the Seller's prior written consent, which may if given be on such terms as the Seller thinks fit.
- (G) Any notice may be sent by any means resulting in the receipt of a written communication in permanent form, and, if so sent to the address of a party shown on the delivery note or such other address as a party may have given for this purpose shall be deemed received on the day when in the ordinary course of the means of dispatch it would first be received by the addressee in normal business hours.
- (H) Where the Seller permits the Buyer to use the Seller's electronic data interchange (EDI) system for the conduct of business under these Terms, the Buyer shall use EDI fully in accordance with the Seller's EDI policies and protocols from time to time.