

CONDITIONS OF SALE

General

- 1 Every order, acceptance of order and contract of sale is subject to these Conditions of Sale. No conditions or terms stipulated in the Buyer's order letters or other communications of the Buyer's shall annul or vary any of these Conditions of Sale except in so far as expressly consented to by the Company in writing as provided in Clause 16 hereof.

Acceptance of Orders

- 2 The Company reserves the right to fix minimum order values from time to time.
- 3 Acknowledgement of Buyer's order shall not constitute an acceptance thereof by the Company and no contract of sale shall exist until a written despatch note has been despatched by the Company. Such written despatch note may relate to the whole or part only of the goods comprised in the order and part acceptance of the order shall not operate or be construed as a rejection by the Company of the order or the remainder of the order.

Specification and Availability

- 4 The Company reserves the right to amend any specification of the goods without notice.
- 5 The Company does not make or give any representation of warranty as to the availability for purchase of any item referred to in any catalogue, advertisement, price list or other document or communication of the Company.

Prices

- 6 Prices charged are those applicable at the date of despatch as detailed in the Company's latest published price list or any amendment thereto

Payment

- 7 Where no other terms of payment are expressly provided in writing, payment must be received by the Company within 30 days from invoice date.
- 8 Cash discounts are not allowed:-
(a) Unless so stated on face of invoice
(b) On overdue accounts, VAT

Interest on Overdue Accounts

- 9 Interest is payable to the Company on any overdue account at National Westminster Bank base rate plus 5% from the due date for payment until the date of payment.

Risk

- 10.1 The risk of loss of the goods or of non-delivery, mis-delivery or late delivery thereof to the Buyer or of damage thereto shall pass to the Buyer on delivery of the goods to the Buyer or to a carrier (whether named by the Buyer or not) for the purpose of transmission to the Buyer or his nominee and the Company accepts no responsibility for goods lost or damaged in transit or for delay in transit.
- 10.2 Subject to 10.1 hereof where goods are delivered by the Company to a carrier for the purpose of transmission to the Buyer or his nominee, the Company will claim against the carrier on the Buyer's behalf provided that the Buyer notifies both the company and the carrier in writing of the claim and the circumstances giving rise to the claim:-
(a) In the case of damage to the goods in transit or loss or non-delivery of part of the goods, within 3 days of the receipt of any of the goods.
(b) In the case of non-delivery or possible loss of all the goods within 3 days of the despatch date on the advice note.

Title

- 11.1 The Goods shall remain the absolute property of the Company until payment in full of all amounts invoiced by the Company to the Buyer whichever is the earlier. Until such time the Buyer shall hold the goods as bailee on behalf of the Company and shall store the goods in such a manner as to be clearly identifiable as the property of the Company.
- 11.2 If the goods are sold before payment in full of all amounts invoiced by the Company to the Buyer and outstanding from time to time, the Buyer shall hold the proceeds of sale on trust for the Company in a separate account so as to be clearly identifiable as being in the beneficial ownership of the Company, and any claim of the Buyer against the sub-buyer shall be held by the Buyer in fiduciary capacity on behalf of the Company.

- 11.3 If the price is not paid by the time and in the manner specified herein or in the event that the Buyer enters into liquidation or has a winding-up order made against it or in the event that a receiver is appointed of the whole or part of the assets or undertaking of the Buyer, the Company shall be entitled immediately after giving notice of its intention to re-possess to enter upon any land or premises of the Buyer with such transport as may be necessary and to re-possess any goods to which the Company has title hereunder.
- 11.4 The Company shall be entitled to recover from the Buyer all costs expenses loss of profit and losses from diminution in the value of the goods incurred in or as a result of exercising its rights under sub-clause 11.3 above.
- 11.5 Nothing in this clause shall confer upon the Buyer the right to return the goods sold hereunder to refuse or delay payment therefor. The Company may maintain an action for payment for the goods notwithstanding that property in the goods may not have passed to the Buyer.

Delivery and Examination of Goods

- 12.1 Any period or date for delivery quoted by the Company is given and intended as an estimate only. The Company shall under no circumstances be liable for any loss or expense occasioned by delay in delivery nor shall the Buyer be entitled to refuse to accept the goods on the grounds of late delivery.
- 12.2 The Buyer shall examine the goods or cause the goods to be examined immediately on their delivery to the Buyer.
- 12.3 The Company shall not be liable for any storage, alleged to have occurred or any defect alleged to have existed at the time of despatch of the goods unless:-
- i) a claim is made within 3 days of the receipt of the goods by the Buyer
 - ii) an opportunity is given to the Company, its servants or agents of seeing the goods re-checked or of examining them, and
 - iii) it is proved that the storage or defect, in fact existed on despatch.

The Party proved to be in error shall pay the expenses incurred in the re-check or examination.

- 12.4 The liability of the Company in respect of any such storage or any failure to despatch the goods shall be strictly limited to replacing the goods not despatched or at its option to crediting the Buyer with their value and the Company shall not be under any further liability whatsoever in respect thereof.
- 12.5 Unless otherwise expressly agreed by the Company in writing delivery of the goods may be made by the Company by instalments.

Guarantee and Exclusion of Liability

- 13.1 Subject to clause 12 above and the following provisions and subject to satisfaction of the conditions, ii) and iii) set forth in clause 12.3 above, the Company guarantees the goods against defects proved to have existed at the time of despatch.
- 13.2 At the Company's request any goods alleged to be defective within the terms of sub-clause 13.1 above shall be returned to the Company carriage paid as soon as possible by such means of transport as the Company shall direct.
- 13.3 Any goods which are shown to be defective and in respect of which a claim has been made under this guarantee will be credited in full and if required by the Buyer will be replaced and re-invoiced at the same price. The Company will further reimburse the Buyer under sub-clause 13.2 above, but the Company shall not otherwise be under any liability to the Buyer be reason of this guarantee.
- 13.4 The Company does not exclude its liability in respect of:-
(a) death or bodily injury resulting from the negligence of the Company; its servants or agents (but not independent contractors) acting in the course of their employment by the Company or
(b) any breach on the part of the Company of any undertaking as to title implied by Section 12 of the Sales of Goods Act 1979.
- 13.5 Save as aforesaid the Company shall not be liable in contract or in tort for any loss or damage whatsoever caused to the Buyer by any defect in the goods whether such loss or damage is caused by the negligence of the Company or howsoever otherwise.
- 13.6 Subject to sub-clause 13.4 above, the guarantee referred to in sub-clauses 13.1 to 13.3 above is in substitution for and shall replace all conditions and warranties on the part of the Company implied by statute common law or otherwise all of which are hereby expressly excluded. The Company does not give any undertaking or made any representation as to the quality of the goods their description or as to their fitness for any or any particular purpose.

- 13.7 Subject to sub-clause 13.4 above notwithstanding anything herein contained, the Company shall not in any circumstances be under any liability to the Buyer in respect of any consequential or special loss or damage (including without limitation loss of profit or wasted expenditure) sustained by the Buyer however caused.

Return of Goods

- 14 The goods will not be accepted for return in the absence of previous authority conferred by the Company's Official Return Authorisation Form. All transportation charges shall be borne by the Buyer unless otherwise agreed in writing.
- 15.1 The Company does not operate a "sale or return" system and the goods (other than defective goods) will not be accepted by the Company for credit. The Company shall be entitled to send back to the Buyer any unauthorised returns and the Buyer shall in such event forthwith pay to the Company all transportation and other costs incurred by the Company (including a minimum 15% handling charge).
- 15.2 Any returns not authorised in terms of Clause 14 above are made entirely at Buyer's risk, the Company shall be under no liability whatsoever in respect of any loss of or damage to such returns however caused whilst in the possession of the Company or any carrier (whether in transit to or from the Company or in store or otherwise).

Variation

- 16.1 No variation of or derogation from or addition to these Conditions of Sale shall be binding on the Company unless the same is in writing and signed by or on behalf of a Director of the Company.
- 16.2 No expression or implied waiver by the Company of any provision of these Conditions or of any breach of default by the Buyer shall constitute a continuing waiver or a waiver of any other provision or provisions and no such waiver shall prevent the Company from acting upon any subsequent breach or default by the Buyer.

Interpretation

- 17 In the Condition of Sales:-
"the Buyer" means the person buying ordering goods from the Company
"the Company" Keel Toys Limited
"the goods" means (unless otherwise stated) the goods comprised in the despatch not or any of them and any goods supplied in replacement thereof or substitution therefor.
"person" includes any firm or Company

Applicable Law

- 18 These Conditions of Sale shall be construed and applied in accordance with English Law.