

Sale of Goods – Terms and Conditions of sale

1 Definitions and interpretation

1.1 Definitions

Buyer means the purchaser of the Goods, whose details are set out in the invoice.

Goods means the products and, if any, services specified in the invoice.

Seller means the seller of the Goods, Epic Inflatables Ptd Ltd..

2 General

These written conditions (which may only be waived in writing signed by the Seller and Buyer) comprise the entire agreement between the parties. These conditions furthermore prevail, to the extent of any inconsistency, over any verbal pre-contractual discussions or negotiations regarding the sale of goods as between the parties.

3 Terms of sale

The Goods and all other products sold by Seller are sold pursuant to these terms and conditions, in accordance with the *Sale of Goods Act 1989* (SA).

4 Seller's quotations

Unless previously withdrawn, the Seller's quotation is open for acceptance within the period stated therein, or when no period is stated, within 14 days. Acceptance must be provided in writing by the Buyer, and is subject to final review by the Seller, who reserves the right to refuse acceptance within 14 days.

5 Product Information and Warranties

- (a) The Buyer agrees that purchase of the goods is on an 'as is' basis, at their own risk, on *caveat emptor* terms.
- (b) It remain at all times the responsibility of the Buyer to make their own enquiries as to suitability of any Goods for their independent future specific intended use.
- (c) The Seller makes no representations, guarantees or warranties, express or implied, as to the suitability of use of the Goods, fitness for purpose or compliance of design or manufacture with any applicable local legislation, Australian Standards or manufacturers guidelines.
- (d) Any specifications, drawings, particulars of weights or dimensions submitted to the Seller are approximate only and any deviation from any of these things does not vitiate any contract with the Seller or form grounds for any claim against the Seller.
- (e) The descriptions, illustrations and performances contained in catalogues, price lists or other advertising matter do not form part of the contract of sale of the Goods or of the description applied to the Goods.
- (f) The Buyer herein agrees to indemnify and hold harmless the Seller against any or all claims arising out of suitability of use,

condition of the goods, and or fitness for purpose of the Goods for any future intended use purpose.

6 Buyer Collection

- (a) The Buyer is responsible for collection of the Goods from the Seller, at their own expense, unless otherwise agreed in writing between the parties.

7 Loss or damage in transit

- (a) Where delivery by the Seller is otherwise arranged the Seller is not responsible to the Buyer for any loss or damage to Goods in transit.

8 Guarantees and Indemnity

- (a) To the extent permitted by law all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded. The Seller is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the Goods.
- (b) The buyer herein agrees to indemnify and hold harmless the Seller against any or all claims arising from the abovementioned condition or suitability of the Goods purchased.

9 Consumer guarantees

The Seller's liability for a breach of a condition or warranty implied by Part 3-2 Division 1 of the Australian Consumer Law is limited to:

- (a) in the case of Goods, any one or more of the following remedial options, at the discretion of the Seller:
 - (i) the replacement of the Goods or the supply of equivalent goods;
 - (ii) the repair of the Goods;
 - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods;
 - (iv) the payment of the cost of having the Goods repaired
 - (v) return of the good and rescission of the contract.

10 Price and Payment

- (a) Unless otherwise stated all prices quoted by vendor are exclusive of Goods and Services Tax (**GST**).
- (b) The Buyer must make full payment of the purchase price on or before the due date stated on the invoice unless otherwise agreed in writing between the parties. Failure to render full payment by the stipulated due date will render the contract for sale of Goods void ab initio.
- (c)

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11 Rights in relation to Goods

- (a) The Seller reserves the following rights in relation to the Goods until all accounts owed by the Buyer to the Seller are fully paid:
- (i) ownership of the Goods;
 - (ii) to enter the Buyer's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and
 - (iii) subject to, and in accordance with, the Personal Property Securities Act 2009 (Cth), to keep or resell any Goods repossessed pursuant to clause 11(a)(ii).
- (b) The Seller and the Buyer agree that:
- (i) the property of the Seller in the Goods remains with the Seller until the Seller has been paid in full for the Goods under all individual contracts for the supply of the Goods between the Seller and the Buyer;
 - (ii) the Buyer is a bailee of the Goods until such time as property in them passes to the Buyer and that this bailment continues in relation to each of the Goods until the price of the Goods has been paid in full; and
 - (iii) pending payment in full for the Goods, the Buyer:
 - (A) must not supply any of the Goods to any person outside of its ordinary or usual course of business;
 - (B) must insure the Goods for their full insurable or replacement value (whichever is the higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Buyer carries on business; and
 - (C) must not remove, deface or obliterate any identifying plate, mark or number on any of the Goods.
- (c) If the Buyer supplies any of the Goods to any person before all moneys payable by the Buyer have been paid to the Seller, the Buyer agrees that:
- (i) it holds the proceeds of resupply of the Goods on trust, and as agent, for the Seller immediately when they are receivable or are received;
 - (ii) it must either pay the amount of the proceeds of re-supply to the Seller immediately when they are received or pay those proceeds into an account with a bank or a financial institution or deposit-taking institution as trustee for the Seller;
 - (iii) any accessory or item which accedes to any of the Goods by an act of the Buyer or of any person at

the direction or request of the Buyer becomes and remains the property of the Seller until the Seller is paid in accordance with clause 11(b)(i) when the property in the Goods (including the accessory) passes to the Buyer; and

(iv) if the Buyer fails to pay for the Goods within the period of credit (if any) extended by the Seller to the Buyer, subject to, and in accordance with, the Personal Property Securities Act (Cth) 2009, the Seller may recover possession of the Goods at any site owned, possessed or controlled by the Buyer and the Buyer agrees that the Seller has an irrevocable licence to do so.

12 Goods sold

All Goods to be supplied by the Seller to the Buyer are as described on the purchase order agreed by the Seller and the Buyer and the description on such purchase order as so agreed prevails over all other descriptions of the Goods including any specification or enquiry of the Buyer. As outlined herein the said description is solely an identification of the Goods, and does not comprise any implied specification, description or features regarding the suitability of use of the item nor fitness for purpose in relation to any future intended use of the Buyer.

13 Cancellation

No order may be cancelled by the Buyer except with the written consent of the Seller. If there is a cancellation of the order by the Buyer, the Seller has the right to claim indemnity against all losses suffered by the Seller as a result of such cancellation.

14 Governing jurisdiction

This agreement shall be governed by and construed in accordance with the law of South Australian. The parties submit to the non-exclusive jurisdiction of the courts and tribunals of South Australia.