

## 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:** the terms and conditions set out in this document as amended from time to time in accordance with clause 11.6.

**Contract:** the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods from the Supplier.

**Force Majeure Event:** has the meaning given in clause 10.

**Goods:** the goods (or any part of them) set out in the Order.

**Order:** the Customer's order for the Goods, as set out in the Customer's purchase order form (in whatever form this may be), the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

**Specification:** any specification for the Goods, including any related plans, images and other drawings, that is agreed in writing by the Customer and the Supplier.

**Supplier:** Colorlord Limited (registered in England and Wales with company number 06454965) and any holding company or subsidiary company (as defined in section 1159 of the Companies Act 2006) of Colorlord Limited from time to time including, but not limited to, Brian Clegg (Educational Products) Limited (registered in England and Wales with company number 06263123) and Ronald Britton Limited (registered in England and Wales with company number 06263123).

1.2 **Construction.** In these Conditions, the following rules apply:

1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.

1.2.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted and includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.4 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.

1.2.5 A reference to **writing** or **written** includes faxes and emails.

## **2. Basis of contract**

- 2.1 These Conditions apply to the 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 The 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 and any applicable Specification submitted by the Customer are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance, by email or otherwise, of the Order, at which point the Contract shall come into existence.
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier including, for the avoidance of doubt, the information included in the Supplier's catalogues, which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions, colours or illustrations contained in the Supplier's catalogues, brochures or other publications (including its websites: [www.colorlord.com](http://www.colorlord.com), [www.brianclegg.co.uk](http://www.brianclegg.co.uk) and [www.ronaldbritton.co.uk](http://www.ronaldbritton.co.uk)) 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. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

## **3. Goods**

- 3.1 The Goods are described in the Supplier's catalogue or other applicable literature as modified by any applicable Specification.
- 3.2 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the specification of the Goods and, where applicable, the Specification if required by any applicable statutory or regulatory requirements from time to time in force.

## 4. Delivery

4.1 The Supplier shall ensure that:

4.1.1 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, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

4.1.2 if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

4.2 The Supplier (or, where appropriate, the instructed carrier) shall deliver the Goods to the location set out in the Order or such other location as the parties may agree at any time prior to the Supplier sending the Customer written acknowledgement of the Order (**Delivery Location**).

4.3 Unless otherwise agreed, delivery of the Goods shall be on the basis of EXW (Ex Works - Incoterms 2010), in each case to the place specified in the Seller's Acknowledgement of Order.

4.4 Any dates quoted for delivery are approximate only and the Supplier is under no obligation to provide an estimated delivery time. If a quoted date for delivery is not provided, delivery will be made within a reasonable time.

4.5 The time of delivery is not of the essence.

4.6 The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event suffered by it or an instructed carrier (save where it is reasonably practicable to instruct another carrier) or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.7 If the Supplier fails to deliver the Goods, its liability shall be limited to the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event suffered by it or an instructed carrier (save where it is reasonably practicable to instruct another carrier) or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.8 If the Customer fails to take delivery of the Goods within seven Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:

4.8.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the fourth Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and

- 4.8.2 the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.9 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 delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods.
- 4.10 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered. The quantity of the Goods shall be as determined by the Supplier upon despatch from the Supplier's or a nominated carrier's premises unless reasonable contrary proof is provided by the Customer.
- 4.11 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, and for a period of 3 months from the date of delivery or, where the nature of the Goods means that they naturally have a shelf life of less than 3 months, such period as may be specified in the Supplier's data sheet which will be delivered with the Goods (**warranty period**), the Goods shall:
  - 5.1.1 conform in all material respects with their description and any applicable Specification;
  - 5.1.2 be free from material defects in design, material and workmanship; and
  - 5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
  - 5.1.4 be fit for any purpose held out by the Supplier.
- 5.2 Subject to clause 5.3, if:
  - 5.2.1 the Customer gives notice in writing to the Supplier during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
  - 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 Customer's cost (such reasonable return costs to be refunded to the Customer if the Goods are found to not comply with the warranty set out in clause 5.1),the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full in addition to any reasonable return costs in accordance with clause 5.2.3.

- 5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:
- 5.3.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
  - 5.3.2 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;
  - 5.3.3 the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
  - 5.3.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
  - 5.3.5 the Customer mixes other substances or goods with such Goods other than in accordance with industry accepted standards and/or procedures;
  - 5.3.6 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - 5.3.7 the Goods differ from their description and any Specification provided as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 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.
- 5.5 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.
- 5.6 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 in accordance with clause 4 above.
- 6.2 Title to the Goods shall not pass to the Customer until the earlier of:
- 6.2.1 the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums and
  - 6.2.2 the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

- 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - 6.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.2; and
  - 6.3.5 give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:
- 6.4.1 it does so as principal and not as the Supplier's agent; and
  - 6.4.2 title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, then, without limiting any other right or remedy the Supplier may have:
- 6.5.1 the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
  - 6.5.2 the Supplier may at any time:
    - 6.5.2.1 require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
    - 6.5.2.2 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 set out in the Supplier's written acceptance of the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery or, if earlier in accordance with this clause 7, when payment becomes due.
- 7.2 The Supplier may, by giving notice to the Customer at any time up to 5 Business Days 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, or the Specification; 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 Unless otherwise agreed between the parties, the price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 7.4 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 7.5 The Customer shall pay for the first three Orders made by the Customer to the Supplier in full within 10 Business Days of written acknowledgement of each Order to the bank account nominated in writing by the Supplier. If payment is not received within 10 Business Days of written acknowledgement for any such order then delivery of the Goods will not be made and the Supplier reserves the right to terminate the Order in accordance with the provisions of the Contract.
- 7.6 The Customer may apply for a credit account in writing following the completion of and payment in full for three Orders from the Customer to the Supplier in accordance with the Contract. Such application will then be determined in the Supplier's absolute discretion taking into account, amongst other things, the Customer's credit application and the results of a credit search against the Customer. The Customer acknowledges and agrees that it has no recourse against the Supplier if the Supplier refuses to provide credit.
- 7.7 Where credit is made available, the Customer will be notified in writing of such credit arrangement and the terms and conditions under which such credit is provided, which includes the provisions at clauses 7.8 to 7.11 below. Credit may be withdrawn at any time in the Supplier's absolute discretion and the Customer acknowledges and agrees that it has no remedy against the Supplier in relation to any withdrawal of credit.
- 7.8 The Supplier may invoice the Customer for the Goods on or at any time after the despatch of the Goods from the Supplier's premises for delivery.
- 7.9 The Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.
- 7.10 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Co-operative Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.11 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). 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 suspension**

8.1 If the Customer becomes subject to any of the events listed in clause 8.2, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer.

8.2 For the purposes of clause 8.1, the relevant events are:

8.2.1 the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

8.2.2 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), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

8.2.3 the Customer takes any step or action in connection with the Customer being made bankrupt, entering any composition or arrangement with his creditors, having a receiver appointed to any of his assets, or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

8.2.4 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;

8.2.5 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and

8.2.6 (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

8.3 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 8.2.1 to clause 8.2.6, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the

Customer fails to pay any amount due under this Contract on the due date for payment.

- 8.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
- 8.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 8.6 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 its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - 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;
  - 9.1.4 defective products under the Consumer Protection Act 1987; or
  - 9.1.5 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 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 any:
    - 9.2.1.1 loss of profit;
    - 9.2.1.2 loss of goodwill;
    - 9.2.1.3 loss of business;
    - 9.2.1.4 loss of business opportunity;
    - 9.2.1.5 loss of anticipated saving;
    - 9.2.1.6 loss or corruption of data or information; or
    - 9.2.1.7 any indirect or consequential loss,that arises under or in connection with 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 the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total net price of the Goods paid by the Customer to the Supplier under the Contract.

## **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. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

## **11. General**

### **11.1 Assignment and other dealings.**

11.1.1 The Supplier may at any time assign, transfer, mortgage, 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, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all 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 (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.

11.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, 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 provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 11.3.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 11.4 **Waiver.** A waiver of any right or remedy under the Contract or law 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 prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent 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 to enforce its terms.
- 11.6 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Supplier.
- 11.7 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 11.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).