

## **GENERAL TERMS AND CONDITIONS**

of the private company **TFL TOTAL PROMOTION B.V.**, acting under the name Gamesformation and established in Deventer  
filed at  
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under number

### **Article 1 Applicability**

- 1.1 These terms and conditions apply to every offer and every agreement between TFL Total Promotion B.V., acting under the name Gamesformation, hereinafter referred to as: "GFM", and a purchaser, unless the parties have stipulated deviations from these terms and conditions in writing.
- 1.2 Unless otherwise agreed in writing, GFM does not agree to general terms and conditions of the purchaser.
- 1.3 Where these terms and conditions refer to the delivery of goods, this also includes the performance of services and work by GFM or by third parties called in by GFM.

### **Article 2 Offers**

- 2.1 Unless GFM stipulates otherwise in writing, all quotations and offers from GFM are without obligation. These quotations and offers should be designated as invitations for potential purchasers to place an order and they do not bind GFM.
- 2.2 Quotations given and offers made by GFM comprise the following – in particular also with regard to the provisions of the previous paragraph – : designs, drawings, models, samples, descriptions, illustrations, specifications of dimensions and the like, as well as possible appendices and documents relating to the said quotations/offers. All these continue to be the property of GFM and at GFM's initial request to this effect must be returned to GFM; without GFM's explicit consent, they may not be copied or issued to third parties. In addition, GFM reserves all intellectual and industrial property rights.

### **Article 3 Establishment of the agreement**

- 3.1 An agreement with GFM is only established when GFM accepts an order given to GFM in writing, or if GFM has begun to fulfill an order.
- 3.2 GFM's order confirmation is deemed to completely and accurately reflect the contents of the concluded agreement. The purchaser is deemed to agree to the contents of the order confirmation, unless the purchaser informs GFM in writing within seven days after the date of the order confirmation that he does not agree to the contents.
- 3.3 Oral promises made by and agreements made with employees of GFM who do not have any representation authority do not bind GFM except if and insofar as GFM has confirmed such promises and agreements in writing.
- 3.4 A customary tolerance of 10% more or less applies with regard to the quantities of the goods to be delivered specified in the quotation and/or GFM's order confirmation, unless otherwise agreed upon in writing. Unless the parties have stipulated otherwise in writing, the purchaser cannot derive any rights from deviations within this margin.

#### **Article 4 Prices**

- 4.1 Unless stipulated otherwise in writing, all prices quoted by GFM are exclusive of value added tax and the costs of transport, assembly and packaging.
- 4.2 GFM determines the manner of packaging and sending. Unless otherwise agreed upon in writing, GFM does not accept any returned packaging.
- 4.3 GFM's prices are based on the cost factors that apply at the time the agreement is concluded, such as exchange rates, manufacturer's prices, prices of raw materials and materials, wages and transport costs, taxes, import duties and other government levies.
- 4.4 GFM reserves the right to change prices, unless otherwise agreed in writing. In the event of price changes, the purchaser has the right to dissolve the concluded agreement by written statement, if the price increase exceeds 10%. Dissolution must take place immediately after the purchaser has been notified of the price increase. If a price increase is a result of a statutory or other government measure, GFM is entitled to pass on the price increase to the purchaser, even where the price has been agreed as a fixed price, without this resulting in a right to dissolution on the part of the purchaser.
- 4.5 Changes in the concluded agreement only bind GFM in the event that the parties agree upon these changes in writing. In the event that the change has financial and/or quality-related consequences, GFM will inform the purchaser of this. At any rate, the purchaser has to pay GFM the higher costs related to a change in the agreement if the agreement has been changed at the request or at the instruction of the purchaser.

#### **Article 5 Delivery and delivery time**

- 5.1 A delivery time agreed upon is not a firm deadline, unless explicitly agreed otherwise. Therefore, in the event of late delivery the purchaser must give GFM written notice of default.
- 5.2 The delivery time only commences after the purchaser has provided GFM all the information GFM indicates is necessary or which the purchaser should reasonably realise is required for the purpose of performing the agreement. Delivery times are extended by the period during which the purchaser failed to pay any amount that became payable to GFM after this amount fell due.
- 5.3 Changes to a concluded agreement may result in an agreed delivery time being exceeded. GFM does not accept liability for this in any event.
- 5.4 GFM is permitted to make partial deliveries of goods sold. If the goods are delivered in parts, GFM is authorised to invoice for each part separately. This does not apply if a part delivery has no independent value.
- 5.5 Unless otherwise agreed upon, delivery is ex works. If one of the "Incoterms" is agreed as a term of delivery, the Incoterms that are valid at the time the agreement is concluded will apply.
- 5.6 As soon as the goods to be delivered have been loaded into the means of transport, all risk with respect to these goods passes to the purchaser.
- 5.7 If the purchaser requests the delivery of goods in any manner other than the customary manner, the purchaser has to pay GFM the related (additional) costs.
- 5.8 The purchaser is required to take delivery of the purchased goods within the term agreed upon. Failing this, pursuant to the stipulations of Section 6:60 BW (Dutch Civil Code) GFM is entitled to claim that the competent court release GFM of its obligation to deliver the agreed goods or to demand payment of the purchase price for the part of the goods not taken delivery of without giving any prior notice of default. In the event that the purchaser fails to comply with its payment obligations, GFM is entitled to dissolve the agreement without judicial intervention. In the event that the purchaser fails to take delivery of the purchased goods within the agreed term and GFM claims payment of the purchase price, the goods will be deemed to have been delivered and GFM will store the goods at the expense and risk of the purchaser and against compensation of all related costs, in any case including the storage costs. In the event that no

term for taking delivery has been agreed upon, GFM is authorised to take the measures mentioned in this article in the event that the purchaser has failed to take delivery of the goods within one month after an invitation to this effect from GFM.

#### **Article 6 Defects and complaint terms**

- 6.1 The purchaser guarantees the accuracy and completeness of and is responsible for the information it provides GFM. With respect to the information, numbers, materials, weights, colourfastness, etc. provided by GFM, the purchaser must allow for the customary tolerances and for minor deviations and minor changes in constructions or parts, to the extent that these are required for proper fulfillment of the agreement.
- 6.2 The purchaser must notify GFM of any visible defects or shortcomings within eight days after delivery by registered letter or by fax, giving a clear and accurate description of the complaint and specifying the invoice which covers the goods in question.
- 6.3 The purchaser must notify GFM of any hidden defects within eight days after such defects have come to light or reasonably should have come to light, but no later than within twelve months after delivery in the manner set forth in paragraph 2 of this article.
- 6.4 Any cause of action the purchaser has against GFM and regarding defects in goods delivered by GFM become null and void in the event that:
  - a. GFM has not been notified of the defects within the terms specified in paragraphs 2 and 3 of this article and/or in the manner specified in these paragraphs.;
  - b. the purchaser renders GFM no or insufficient assistance regarding the investigation into the validity of the complaints;
  - c. the purchaser has used, handled and/or stored the goods in breach of any instructions for use, handling and/or storage, or otherwise in an improper way.

#### **Article 7 Warranty**

- 7.1 Unless otherwise stipulated in writing, GFM warrants that the goods it delivered – if and to the extent that these goods are not intended for consumption – are free of design and manufacturing defects and faults in the material for a period of twelve months (calculated from the date of delivery by GFM to the purchaser). For goods intended for consumption (such as games made of chocolate) separate warranty arrangements will be made.
- 7.2 In the event that the good displays a design or manufacturing defect or a fault in the material, the purchaser is entitled to repair of the good, unless this defect or fault is the result of a design, direction or request from the purchaser. GFM is entitled to choose to replace the good if there are objections to repairing the good. The purchaser is only entitled to replacement if the good cannot be repaired. Replaced goods become the property of GFM.
- 7.3 The warranty does not apply if the defect or damage results from incorrect handling. Incorrect handling includes making repairs and/or changes to the delivered goods without prior written consent from GFM.

#### **Article 8 Liability**

- 8.1 Defects in delivered goods are governed exclusively by the warranty as described in Article 7 (Warranty) of these terms and conditions.
- 8.2 GFM's liability, to the extent that this is covered by its liability insurance, is limited to the amount of the payment made by the insurer. If the insurer does not pay in any event or the damage is not covered by the insurance, GFM's liability is limited to the invoice value of the agreement in question.
- 8.3 GFM is not liable for consequential loss, such as damage in the form of lost profits and other indirect damage.

- 8.4 Any legal claim the purchaser has against GFM becomes null and void one year after the goods have been delivered or made available to the purchaser in conformance with the agreement, unless the purchaser has initiated legal proceedings against GFM within this term.
- 8.5 The purchaser indemnifies GFM against claims for damages from third parties in connection with goods which GFM delivered to the purchaser or services which GFM rendered to the purchaser to the extent that this damage does not come at GFM's expense and risk in the relationship to the purchaser pursuant to the agreement and these general terms and conditions.
- 8.6 The limitations of liability included in these terms and conditions do not apply if the damage can be attributed to intent or wilful recklessness on the part of GFM or its managerial employees.

#### **Article 9 Retention of title**

- 9.1 GFM continues to be the owner of all the goods delivered or to be delivered by GFM to the purchaser pursuant to any agreement until the purchaser has fully paid all amounts due regarding these goods. In the event that GFM has rendered or should render services pursuant to such agreement(s), the goods referred to in the previous sentence continue to be the property of GFM until the purchaser has also fully paid any amounts due to GFM with respect to such services. The retention of title also applies to claims which GFM acquires against the purchaser on account of non-fulfilment by the purchaser of such agreement(s).
- 9.2 If the law of the country of destination of the purchased goods includes possibilities relating to the retention of title that go beyond those provided for in paragraph 1 above, the parties agree that these further-reaching possibilities will be deemed to have been stipulated for GFM, with the proviso that if it proves impossible to objectively establish the further-reaching rules to which this provision relates, the provisions of paragraph 1 above will continue to apply.
- 9.3 Goods delivered by GFM and covered by the retention of title may only be resold within the scope of normal business operations. If, however, the purchaser is declared bankrupt or is granted suspension of payments, the purchaser may not sell such goods on, even within the context of normal business operations. Moreover, the purchaser is not authorised to pledge the goods or to establish any other right on the goods.
- 9.4 GFM hereby reserves the rights of pledge referred to in Section 3:237 Dutch Civil Code with respect to delivered goods whose title has passed to the purchaser as a result of payment and which are still held by the purchaser, as additional security for claims, other than the claims mentioned in paragraph 1 and paragraph 2 of this article, which GFM may have against the purchaser on any account whatsoever. The right set forth in this paragraph also applies to goods that have been delivered by GFM and have been treated or processed by the purchaser, as a result of which GFM has lost its retention of title.
- 9.5 In the event that the purchaser fails to fulfil its obligations or in case of justified fear that the purchaser will fail to fulfil its obligations, GFM is entitled to remove or have removed delivered goods that are subject to retention of title from the purchaser's premises or from third parties holding the good(s) for the purchaser. The purchaser is obliged to lend its full co-operation to such removal on pain of a penalty – per day - of 10% of the amount payable by the purchaser.
- 9.6 In the event that third parties wish to establish or exercise any right to the goods delivered subject to retention of title, the purchaser must inform GFM of this as soon as may be reasonably expected.

#### **Article 10 Payment and collection costs**

- 10.1 Unless stipulated otherwise in writing, payment must be made in Euros, in cash without deducting any discount or setoff, at the office of GFM or by transfer to a bank account specified by GFM, in both cases immediately after the goods have been delivered, or at least

no later than 30 days after the invoice date. The date of the credit entry on the bank account will be considered as the date of payment for payments to the bank account. The purchaser is in default once 30 days have lapsed after the invoice date without payment having been made in full. From the moment the purchaser is in default, the purchaser is liable to pay interest on the amount due at a rate equal to the statutory interest rate in force in the relationship between GFM and the purchaser.

- 10.2 Payments made by the purchaser always serve first to settle all interest and costs owed, and secondly to settle the invoice amounts due that have been outstanding the longest, even if the purchaser states that payment relates to a later invoice.
- 10.3 In the event that the purchaser is in default or fails to fulfil one or more of its obligations, the purchaser has to pay all the reasonable costs incurred in obtaining payment out of court, with a minimum of 10% of the outstanding amount. Extrajudicial collection costs are payable even if only a single summons has been sent.
- 10.4 The purchaser is liable to pay GFM the judicial costs which GFM incurred in all instances, unless these costs are unreasonably high. This only applies if GFM and the purchaser are conducting legal proceedings regarding an agreement to which these general terms and conditions apply and a decision from the court ruling fully or primarily against the purchaser has become final.

#### **Article 11 Right of retention**

GFM is entitled to retain goods of the purchaser that GFM holds by way of security for payment of all the claims GFM has against the purchaser within the scope of the agreement, unless the purchaser has furnished adequate security (as referred to in Article 12) for those claims.

#### **Article 12 Security**

GFM is entitled to demand that the purchaser furnish security for the fulfilment of its obligations. In the event that the demanded security is not furnished, GFM may suspend the fulfilment of its obligations under the agreement and/or dissolve the agreement, without prejudice to the other rights to which GFM is entitled, including the right to damages.

#### **Article 13 Intellectual and industrial property rights and copyrights**

- 13.1 GFM reserves all intellectual and industrial property rights, including but not limited to copyrights, trademark rights, patent rights, database rights, model rights and trade name rights. Unless stipulated otherwise in writing, GFM holds the intellectual and industrial property rights to the delivered goods. The same is true for designs, semi-finished goods, packaging, labels, drawings, models, patterns, templates and know-how.
- 13.2 In the event that the purchaser requests GFM to produce and/or multiply and/or reproduce goods or to have this done on the basis of drawings, models, specifications, samples or other directions supplied by the purchaser, it guarantees that the production or delivery of such goods does not infringe on any intellectual and industrial property rights of third parties. The purchaser indemnifies GFM in this respect against claims from third parties.
- 13.3 At the initial request to this effect, the purchaser will render GFM its full assistance in measures to be taken against third parties in order to enforce and defend the intellectual and industrial property rights.

#### **Article 14 Force majeure**

- 14.1 Force majeure is understood to mean: circumstances that make it impossible to honour the obligation and which cannot be attributed to GFM.  
If and in so far as these circumstances make it impossible or unreasonably difficult to honour an obligation, force majeure includes: strikes; a general shortage of the requisite raw materials

and other goods or services needed to render the agreed performance; unforeseeable delays at suppliers or other third parties on which GFM depends; a situation in which a performance relevant in connection with the performance to be rendered by GFM is not rendered, not rendered in time or not properly rendered to GFM; government measures which prevent GFM from fulfilling its obligations in time and/or properly; excessive absences due to sickness; terrorist attacks; restricted or discontinued supplies by utility companies; fire; time lost through frost or other weather influences and general transport problems.

- 14.2 GFM is also entitled to invoke force majeure if the circumstance that prevents (further) fulfillment commences after GFM should have fulfilled its obligation.
- 14.3 During a force majeure situation, GFM's delivery and other obligations are suspended. If the period of time during which fulfilment of the obligations by GFM is not possible on account of force majeure lasts longer than three months, both parties have the right to dissolve the agreement without any obligation to pay damages.
- 14.4 In the event that GFM has already fulfilled part of its obligations or can only fulfill part of its obligations at the time the force majeure situation commences, GFM is entitled to separately invoice the part GFM already delivered and/or GFM can deliver and the purchaser is required to pay this invoice as if a separate contract is involved. However, this does not apply if the part that has already been delivered or the part that can be delivered has no independent value.

#### **Article 15 Confidentiality**

Subject to the statutory obligations applying to the parties, both parties are required to maintain the confidential nature of all confidential information they receive from each other or from other sources within the scope of the agreement.

Information is regarded as confidential if it is presented as such by the party supplying the information, or if this is evident from the nature of the information.

#### **Article 16 Termination**

- 16.1 GFM's claims against the purchaser will become due and payable at once, inter alia in the following cases:
- if after concluding the agreement GFM learns of circumstances which give GFM valid grounds to fear that the purchaser will not fulfill its obligations;
  - if the purchaser dies, is placed under guardianship, winds up its business, is declared bankrupt or is granted suspension of payments;
  - if GFM has asked the purchaser to furnish security for the fulfillment and this security is not furnished or is inadequate;
  - if the purchaser is in default in some other manner and fails to fulfill its obligations under the agreement.

In the events mentioned above, GFM is authorised to suspend the further performance of the agreement and/or to dissolve the agreement, all this notwithstanding the obligation of the purchaser to compensate the damage GFM suffers as a result and without prejudice to the other rights of GFM.

- 16.2 If circumstances arise relating to persons and/or materials used by GFM, or which GFM is in the habit of using, in the performance of this agreement, that make performance of the agreement impossible, or so difficult and/or disproportionately expensive that performance of the contract can in all fairness no longer be demanded, GFM is authorised to dissolve the agreement.

**Article 17 Other obligations of the purchaser**

17.1 The purchaser will always make all the goods and information GFM needs to perform the agreement available in a timely fashion; the purchaser guarantees the accuracy and completeness of such goods and information.

17.2 The purchaser will not make any changes to trademark and distinguishing signs affixed to the delivered goods. Removal is also deemed to be a change.

**Article 18 Applicable law**

All offers made by GFM and all agreements concluded with GFM are governed exclusively by the laws of The Netherlands.

**Article 19 Dispute resolution**

In deviation of statutory rules regarding the competence of the civil court, any dispute between the purchaser and GFM will be settled in the first instance exclusively by the district court in Zutphen. This does not apply to cases that have to be submitted to the Magistrate's Court (*Kantongerecht*) as referred to in article 108, paragraph 2 of the Dutch Code of Civil Procedure. However, GFM will always be authorised to submit a dispute to the court which has jurisdiction by law or according to the applicable international convention.

**Article 20 Translations**

In the event of any differences between translations of these general terms and conditions and the Dutch version of the terms and conditions, the Dutch text will prevail.