

ESDEVIUM GAMES LIMITED – CONDITIONS OF SALE

1.	<u>DEFINITIONS</u>	
1.1	“Buyer”	means the person, firm, company or public corporation by whom or on whose behalf the order is given.
1.2	“Conditions”	means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller.
1.3	“Delivery date”	means the date specified by the Seller when the Goods are to be delivered.
1.4	“Goods”	means the articles which the Buyer agrees to purchase from the Seller.
1.5	“Price”	means the price for the Goods, carriage, packing and insurance costs up to the Buyer’s premises.
1.6	“Publisher”	means the person, firm, company or public corporation which holds the intellectual property rights governing the sale and distribution of any particular article sold by the Supplier
1.7	“Seller”	means Esdevium Games Limited, registered office 27-28 EASTCASTLE STREET LONDON W1W 8DH Company No. 03055732.
2.	<u>CONDITIONS APPLICABLE</u>	
2.1	All orders are accepted subject to these Conditions the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document.	
2.2	All orders for Goods shall be deemed to be offers by the Buyer to purchase Goods pursuant to these Conditions.	
2.3	Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer’s acceptance of the Conditions.	
2.4	Any variation to the Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.	
2.5	Catalogues, price lists and advertisements and other published information are only indications of the type of products available and shall not form part of the contract of sale or any other contract with the Buyer nor be considered a collateral warranty or representation including the same.	
2.6	Any failure by the Seller at any time or for any period to enforce any one of more of the Conditions shall not be a waiver of them or a waiver of the right to enforce such Conditions on a future occasion.	
2.7	Goods are supplied to the Buyer for resale within the EU/EEA. Export to territories outside the EU/EEA may be restricted by the Publisher. The Buyer acknowledges that it is their sole responsibility to check upon such restrictions and accepts all liability in the event of a breach and will indemnify Seller against all damages and costs arising from any breach of Publisher's such restrictions.	
2.8	The Buyer represents and warrants that it is familiar with all applicable laws, regulations and other governmental requirements regarding the importation, handling, labelling, sale, demonstration and use of the Products within the territory in which it is reselling the Goods. The Buyer warrants that it will comply with all such laws and will bear the cost of such compliance and will fully indemnify Seller against all damages and costs arising from any liability to Seller caused by breach of such local requirements. The Buyer acknowledges that the Supplier’s liability is limited to that set out in Clause 4.	
3.	<u>THE PRICE AND PAYMENT</u>	
3.1	Prices are subject to alteration without notice. Goods will be invoiced at the prices in force on acceptance of order. The Price is exclusive of VAT which shall be due at the rate ruling on the date of the Seller’s invoice. If the Price increases between the placing of the order and acceptance then the Buyer may cancel the order provided it does so within 48 hours of notification of the increased Price and returns forthwith any Goods that have been delivered.	
3.2	Payment of the Price and VAT shall be due on placing the order unless credit terms have been agreed in writing. Where the Seller does not require payment when the order is placed and in the absence of any agreed credit terms then payment shall be due within 30 days from the date of the invoice.	
3.3	Credit limits may be given to approved accounts at the sole discretion of the Seller but the Seller will require trade references. At its sole option and without notice the Seller may cancel or amend a credit limit previously granted.	
3.4	Interest on overdue invoices shall accrue from the date when the payment becomes due from day to day until the date of payment at a rate of 8% above HSBC plc’s base rate from time to time in force and shall accrue at such a rate after as well as before any judgment.	

3.5	If the Buyer fails to make any payment on the due date then without prejudice to any of the Seller's other rights all other invoices from the Seller to the Buyer shall become payable forthwith and the Seller may:
3.5.1	Suspend or cancel deliveries of any articles due to the Buyer; and/or
3.5.2	Appropriate any payment made by the Buyer to such of the Goods supplied under any other contract with the Buyer (as the Seller may in its sole discretion think fit).
4	<u>WARRANTIES AND LIABILITY</u>
	The Seller warrants that the Goods will at the time of delivery correspond to the description given by the Seller. All other warranties conditions or terms relating to fitness for purpose, satisfactory quality or condition of the Goods whether implied by statute or common law or otherwise are excluded. If the Goods breach these terms the Seller shall repair or replace them at its option or pay damages as limited below. Seller excludes liability to the Buyer for consequential and indirect loss, loss of profit, revenue and goodwill. Seller limits its liability to the price paid by Buyer for the Goods. This clause does not limit or exclude any rights or liability not permitted to be so in English law and nothing in these terms exclude or limits liability of Seller to Buyer for death or personal injury caused by negligence nor for fraud.
5.	<u>INTELLECTUAL PROPERTY RIGHTS</u>
5.1	No assignment of rights in specifications and design rights of the Goods (including the copyright, design right or other intellectual property right in them) shall pass between the parties.
5.2	The Buyer acknowledges that the Goods are supplied for resale in the manner intended by the Publisher and that it has no right to repackage the Goods without the prior written approval of the Publisher save in so far as the law allows.
5.3	The Buyer acknowledges that the Publisher may choose to impose an "On Sale Date" and any other lawful conditions it chooses on the sale of some or all of its Goods and that this information may be communicated to the Buyer by either the Publisher or the Seller and in either case the Buyer will respect these instructions which are a condition of these terms. The Buyer further acknowledges and accepts that the Publisher has the right to take action against the Buyer should these instructions be broken and that such action may include an instruction to the Supplier to deliver to the Buyer some or all of the Publisher's future products on or after their "On Sale Date". The Buyer acknowledges that such consequences are at the complete discretion of the Publisher and that the Buyer has no claim against the Supplier for the implementation of said measures.
6	<u>DELIVERY OF THE GOODS</u>
	Delivery of the Goods shall be arranged to be made to the Buyer's address on the Delivery date. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. For international deliveries terms are EX WORKS unless otherwise agreed in writing with Seller. The Seller will use its reasonable efforts to deliver on the date requested but this shall not be or imply any legal obligation to deliver on the Delivery date.
7.	<u>ACCEPTANCE OF THE GOODS</u>
7.1	The Buyer shall be deemed to have accepted the Goods after delivery to the Buyer. Any deficiencies must be notified within 48 hours of receipt.
7.2	The Goods are not supplied by the Seller on a sale or return basis or on a consignment sale basis to the Buyer and nothing contained within these conditions shall be construed to indicate otherwise.
8.	<u>TITLE AND RISK</u>
8.1	The property in the Goods shall remain in the Seller until such time as the whole of the Price (including VAT and all accrued interest) shall have been paid by the Buyer to the Seller, whereupon the property in the Goods shall pass to the Buyer. Until such payment the Goods shall be kept separate from other Goods of the Buyer and identified as the Seller's property.
8.2	Risk in the Goods shall notwithstanding sub-clause 8.1 pass to the Buyer upon delivery by the Seller to the Buyer.
8.3	When Goods are delivered to the Buyer prior to payment the Buyer shall hold the Goods in the capacity of a fiduciary for and on behalf of the Seller until payment and in such capacity and until such time shall remain liable to account to the Seller for the Goods or if the Goods are sold by the Buyer in accordance with the next sub-clause of this clause for that part of the sale proceeds of the sale thereof ("the Seller's Part of the Proceeds") which is equivalent to the price at which the same were invoiced by the Seller to the Buyer.
8.4	The Buyer shall have the right to sell in the normal course of its business any Goods before payment provided that the Buyer shall pay the Seller's Part of the Proceeds of such a sale into a separate bank account clearly denoted as an account containing monies deposited for the benefit of the Seller by

	the Buyer acting in a fiduciary capacity.
8.5	In the case of Goods sold while the property is still vested in the Seller the Seller hereby gives the Buyer the right to pass the property therein to the sub-buyers where such sub-sales are in the normal course of its business.
8.6	The Seller shall be entitled at any time while payment for the Goods or any other debt by the Buyer to the Seller is outstanding to retake possession of such Goods and the Buyer undertakes to deliver the same to the Seller or its duly appointed authorised agent upon request and the Seller or its duly authorised agent shall have the right during normal business hours to enter upon the land or buildings of the Buyer to take possession of the said Goods.
8.7	The Buyer shall store or otherwise denote consignments of the Goods in respect of which property remains with the Seller in such a way that the same can be recognised as the property of the Seller.
9.	<u>REMEDIES OF THE BUYER</u>
9.1	Where the Buyer rejects any Goods then the Buyer shall have no further rights whatever in respect of the supply to the Buyer of such Goods or the failure by the Seller to supply Goods which conform to the contract of sale.
9.2	The Seller shall not be liable to the Buyer for late delivery of the Goods (nor for short delivery of the Goods if notification of the inaccurate quantity is not notified to the Seller within 48 hours)
9.3	A signature confirming receipt of the Goods or the words "unexamined" or similar words shall be deemed to confirm receipt of the Goods. No responsibility is accepted by the Seller for damages or shortages unless Goods are signed for on the delivery note. A signature on a delivery note will be deemed to be confirmation of the number of cartons received as stated on the delivery note. Damage to outer packaging must be notified to the carrier on receipt. Damages and shortages must be notified to the Seller within 48 hours of delivery.
10.	<u>FORCE MAJEURE</u>
	The Seller shall be under no liability for any loss (including consequential loss or loss of profit) damage or delay or expenses of any kind whatsoever caused wholly or in part by any act of Force Majeure which shall include but not be limited to; Act of God, outbreak of war, civil commotion, government policies or restrictions or control including restrictions on export or import or other licences, trade or industrial disputes of whatever nature, whether or not such dispute involves the Seller, its servants or agents, or by any other contingency whatsoever which is beyond the reasonable control of the Seller.
11.	<u>SEVERABILITY AND CHOICE OF LAW</u>
	If any provision or wording of these Conditions is held to be unlawful or unenforceable for any purpose it shall be deemed excluded for that purpose and the rest of these Conditions shall remain in full force and effect.
12.	This contract is subject to the laws of England and Wales and the parties submit to the jurisdiction of its courts.

Read and Agreed to on behalf of:

By:

Signed:

Name:

Date: