

Figgy's Ltd Terms and Conditions of Sale (B2B) 2023

The Customer's attention is drawn in particular to the provisions of clause 8.

1. INTERPRETATION

Definitions:

| | |
|----------------------------|--|
| Business Day | a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business. |
| Contract | the contract between Figgy's and the Customer for the sale and purchase of the Goods in accordance with the terms of this Agreement. |
| Customer | the individual, company or organisation who purchases the Goods from Figgy's. |
| Delivery Date | the date agreed between Figgy's and the Customer on which Goods will be delivered to the Delivery Location. |
| Delivery Location | the location set out in the Order Confirmation or such other location as the parties may agree at any time after Figgy's notifies the Customer that the Goods are ready. |
| Figgy's | Figgy's Limited whose registered address is Michael House, Castle Street, Exeter, United Kingdom, EX4 3LQ (registered in England and Wales with company number 9851007). |
| Force Majeure Event | an event, circumstance or cause beyond a party's reasonable control. |
| Goods | the goods (or any part of them) set out in the Order Confirmation. |
| Order | the Customer's order for the Good by email or telephone, details of which are as set out in the Order Confirmation. |
| Order Confirmation | the email confirmation issued to the Customer by Figgy's which may include additional terms which form part of this Agreement. |

Interpretation:

- 1.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2 A reference to a party includes its personal representatives, successors and permitted assigns.
- 1.3 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- 1.4 Any words following the terms including, "include", "in particular", "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.5 A reference to writing or written includes email but not fax.
- 1.6 Any additional terms contained in an Order Confirmation take precedence over any terms contained within this Agreement.

2. BASIS OF CONTRACT

- 2.1 This Agreement applies to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice, or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with this Agreement. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when Figgy's issue the Order Confirmation, at which point the Contract shall come into existence.
- 2.4 Orders for Christmas must be placed by the end of October each year. Whilst Figgy's will try to fulfil orders placed after this time, Figgy's cannot guarantee that these orders will be fulfilled either fully or partially.
- 2.5 Any samples, drawings, descriptive matter or advertising produced by Figgy's and any descriptions or illustrations

contained in Figgy's marketing materials are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

- 2.6 A quotation for the Goods given by Figgy's 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 as described on the Order Confirmation.
- 3.2 Figgy's reserves the right to amend the Goods if required by any applicable statutory or regulatory requirement, and Figgy's shall notify the Customer in any such event, except where any such amendment is immaterial.

4. DELIVERY

- 4.1 Figgy's shall endeavour to deliver the Goods to the Delivery Location on the Delivery Date, but does not provide any guarantee in respect of the delivery of the Goods and shall have no liability to a Customer for any Goods not delivered except that a refund of any monies paid in respect of non-delivered Goods shall be provided.
 - 4.2 Figgy's shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Figgy's with adequate Delivery Location details or instructions that are relevant to the supply or delivery of the Goods.
 - 4.3 If the Goods are not delivered, then, except as provided for in clause 4.2 or where such failure or delay is caused by a Force Majeure Event, Figgy's shall store the Goods until re-delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
 - 4.4 If 3 Business Days after the failed delivery on the scheduled Delivery Date, the Customer has not rearranged delivery of the Goods, Figgy's may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
 - 4.5 If Figgy's delivers up to and including 12% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, Figgy's shall make a pro rata adjustment to the invoice for the Goods.
 - 4.6 Figgy's 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 Figgy's warrants that on delivery, the Goods shall conform with their description and be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
 - 5.2 Subject to clause 5.3, if:
 - a. the Customer gives notice in writing to Figgy's within a reasonable time of discovery that some or all of the Goods do not comply with clause 5.1;
 - b. Figgy's is given a reasonable opportunity of examining such Goods; and
 - c. the Customer (if asked to do so by Figgy's) returns such Goods to Figgy's place of business at Figgy's cost, Figgy's shall, at its option, replace the defective Goods, or refund the price of the defective Goods in full.
 - 5.3 Figgy's shall not be liable for the Goods' failure to comply with clause 5.1 if the:
 - a. Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
 - b. the defect arises because the Customer failed to follow Figgy's oral or written instructions as to the storage and use

- of the Goods or (if there are none) good trade practice regarding the same;
- c. the Customer alters such Goods without the written consent of Figgy's;
 - d. the defect arises as a result of wilful damage, negligence, or abnormal storage; or
 - e. the Goods differ from their description 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, Figgy's shall have no liability to the Customer in respect of the Goods' failure to comply with 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 This Agreement shall apply to any replacement Goods supplied by Figgy's.
- 6. TITLE AND RISK**
- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery, at which time (and subject to clause 5) Figgy's will not accept returns of the Goods.
- 6.2 Title to the Goods shall not pass to the Customer until the earlier of:
- a. Figgy's receives payment in full, in cleared funds for the Goods and any other goods that Figgy's 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
 - b. 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:
- a. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Figgy's property;
 - b. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - c. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - d. notify Figgy's immediately if it becomes subject to any of the events listed in clause 9.1b to clause 9.1d; and
 - e. give Figgy's such information as Figgy's may reasonably require from time to time relating to the Goods and the ongoing financial position of the Customer.
- 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 Figgy's receives payment for the Goods. However, if the Customer resells the Goods before that time:
- a. it does so as principal and not as Figgy's agent; and
 - b. title to the Goods shall pass from Figgy's to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 At any time before title to the Goods passes to the Customer, Figgy's may:
- a. by notice in writing, terminate the Customer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and
 - b. require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and 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 Order and subsequently in the Order Confirmation. Figgy's will normally check prices before accepting Orders so that, where the Good's correct price at the Customer's order date is less, Figgy's will adjust the price. If the Good's correct price is higher than the price stated at the point of Order, Figgy's will contact the Customer for instructions before the Order is accepted. If Figgy's accept and process the Order where a pricing error is obvious and unmistakable and could reasonably have been recognised by the Customer as a mispricing, Figgy's may end the contract, refund any sums paid and not provide the Goods.
- 7.2 Upon placing the Order, the Customer will be informed of the payment period and method required. At Figgy's option, payment may be required in advance upon placing the Order or Figgy's may invoice for the Goods on or at any time after the completion of delivery.
- 7.3 Figgy's may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- a. any factor beyond Figgy's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - b. any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or
 - c. any delay caused by any instructions of the Customer or failure of the Customer to give Figgy's adequate or accurate information or instructions.
- 7.4 The price of the Goods:
- a. excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to Figgy's at the prevailing rate, subject to the receipt of a valid VAT invoice;
 - b. shall be in GBP; and
 - c. excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 7.5 Where Figgy's have not requested payment in advance, the Customer shall pay each invoice submitted by Figgy's:
- a. within 30 days of the date of the invoice or in accordance with any credit terms agreed by Figgy's and confirmed in writing to the Customer; and
 - b. in full and in cleared funds (GBP) to a bank account nominated in writing by Figgy's, and
 - c. time for payment shall be of the essence of the Contract.
- 7.6 If the Customer fails to make a payment due to Figgy's under the Contract by the due date, then, without limiting Figgy's remedies under clause 9, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.6 will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%.
- 7.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 8. LIMITATION OF LIABILITY**
- 8.1 The restrictions on liability in this clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- a. death or personal injury caused by negligence;
 - b. fraud or fraudulent misrepresentation;
 - c. breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - d. defective products under the Consumer Protection Act 1987.
- 8.3 Subject to clause 8.2, Figgy's total liability to the Customer shall not exceed the value of the Order in respect of which the claim has arisen.

- 8.4 Subject to clause 8.2, the following types of loss are wholly excluded:
- a. loss of profits, sales or business (including loss of agreements or contacts);
 - b. loss of anticipated savings;
 - c. loss of use or corruption of software, data or information;
 - d. loss of or damage to goodwill; and
 - e. indirect or consequential loss.
- 8.5 This clause 8 shall survive termination of the Contract.
- 9. TERMINATION**
- 9.1 Without limiting its other rights or remedies, Figgy's may terminate this Contract with immediate effect by giving written notice to the Customer if the Customer:
- a. commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
 - b. 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), obtaining a moratorium, 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;
 - c. suspends or ceases to carry on all or a substantial part of its business; or
 - d. has their financial position deteriorate so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 9.2 Without limiting its other rights or remedies, Figgy's may suspend provision of the Goods under the Contract or any other contract between the Customer and Figgy's if the Customer becomes subject to any of the events listed in clause 9.1b to clause 9.1d, or Figgy's 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.
- 9.3 Without limiting its other rights or remedies, Figgy's may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 9.4 On termination of the Contract for any reason the Customer shall immediately pay to Figgy's all of Figgy's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, Figgy's shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 9.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 9.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.
- 10. FORCE MAJEURE**
- Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 2 weeks, the party not affected may terminate the Contract by giving 5 Business Days written notice to the affected party.
- 11. ENTIRE AGREEMENT AND VARIATION**
- 11.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements, and understandings between them, whether written or oral, relating to its subject matter.
- 11.2 Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that its only liability in respect of those representations and warranties that are set out in this Agreement (whether made innocently or negligently) shall be for breach of contract.
- 12. NO WAIVER**
- 12.1 Failure to exercise, or any delay in exercising, any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.
- 12.2 No single or partial exercise of any right or remedy provided under this Agreement or by law shall preclude or restrict the further exercise of that or any other right or remedy.
- 13. NOTICES**
- 13.1 A notice given to a party under or in connection with this Agreement shall be in writing and sent to the party at the address given in this Agreement or as otherwise notified in writing to the other party.
- 13.2 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 14. NO PARTNERSHIP**
- Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.
- 15. THIRD PARTY RIGHTS**
- A person who is not a party to this Agreement shall not have any rights under or in connection with it.
- 16. GOVERNING LAW AND JURISDICTION**
- The validity, construction and performance of the Agreement shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.