

FlashBay Limited Terms and Conditions of Supply

These terms and conditions ("**Terms**") (together with the documents referred to on it) tell you the Terms on which we supply the products listed on our website ("**Products**") to you. You should understand that by ordering any of our Products, you agree to be bound by these Terms to the exclusion of all other terms and conditions.

1 Information About Us

www.flashbay.com ("**our website**") is a website operated by FlashBay Limited ("**we,our, us**"). We are registered in England and Wales under company number 04676938 and with our registered office and trading address is 6 The Fountain Centre Imperial Wharf, SW6 2TW London, United Kingdom, and our contact details are telephone number +44(0) 207 371 7333, fax number +44(0) 870132 5835, email contact@flashbay.com. Our VAT number is GB 8 32 2989 09.

2 How the Contract is formed between You and Us

2.1 After placing an order, you may receive an e-mail from us acknowledging that we have received your order. Please note that this does not mean that your order has been accepted. Your order constitutes an offer to us to buy a Product. All orders are subject to acceptance by us and we will confirm such acceptance to you by sending you an e-mail that confirms that your order has been accepted (the **Order Confirmation**). The contract between us (**Contract**) will only be formed when we send you the Order Confirmation.

2.2 The Contract will relate only to those Products whose order we have confirmed in the Order Confirmation. We will not be obliged to supply any other Products which may have been part of your order until the order of such Products has been confirmed in a separate Order Confirmation.

2.3 Any quotation is given on the basis that no Contract shall come into existence until we send the Order Confirmation. Any quotation is valid for a period of seven (7) days only from its date, provided that the Company has not previously withdrawn it.

3 Description

3.1 The quantity and description of the Products shall be as set out in our quotation or Order Confirmation.

3.2 All samples, drawings, descriptive matter, specifications and advertising we issue and any descriptions or illustrations contained in our catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Products described in them.

4 Delivery

4.1 Any dates specified by us for delivery of the Products are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

4.2 If we deliver to you a quantity of Products of up to 5% more or less than the quantity ordered, you shall not be entitled to object to or reject the Products or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.

4.3 We may deliver the Products by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

4.4 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle you to repudiate or cancel any other Contract or instalment.

4.5 You shall be deemed to have accepted the Products after fourteen (14) days after delivery unless we are otherwise advised.

5 Non-Delivery

5.1 The quantity of any consignment of Products as recorded by us or our agent upon Order from our or our agent's place of business shall be conclusive evidence of the quantity received by you on delivery unless you can provide conclusive evidence proving the contrary.

5.2 If for any reason you fail to accept delivery of any of the Products when they are ready for delivery, or we are unable to deliver the Products on time because you have not provided appropriate instructions, documents, licences or authorizations:

- (a) risk in the Products shall pass to you (including for loss or damage caused by our negligence);
- (b) the Products shall be deemed to have been delivered; and
- (c) we or our agent may store the Products until delivery, whereupon you shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

5.3 We shall not be liable for any non-delivery of Products (even if caused by our negligence) unless you give written notice to us of the non-delivery within seven (7) days of the date when the Products would in the ordinary course of events have been received.

5.4 Any liability of ours for non-delivery of the Products shall be limited to replacing the Products within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Products.

6 Cancellation of Order

6.1 You may not cancel any order or part or any order which is due for delivery within forty five (45) days. You may not be permitted to cancel an order where we have already begun the process of customization and where the Product has been rendered impossible to resell in the process. Any cancellation request will only be accepted by written notice provided you pay to us such amount of cancellation charges as we shall notify in respect thereof.

6.2 If you commit any breach of these Terms or if:

- (a) you have a bankruptcy order made against you or you make an arrangement or composition with your creditors, or convene a meeting of creditors (whether formal or informal), or enter into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or have a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by you or your directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for your winding-up or for the granting of an administration order in respect of your business, or any proceedings are commenced relating to the insolvency or possible insolvency of your business; or
- (b) you suffer or allow any execution, whether legal or equitable, to be levied on your or obtained against you, or you fail to observe or perform any of your obligations under the Contract or any other contract between us, or you are unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986 or you cease to trade; or
- (c) you encumber or in any way any of the Products ("**Insolvency Events**") we may, at our discretion, cancel the contract between us.

7 Licence

By entering into this Contract you acknowledge the fact that you are granting us a non-exclusive licence to use your trade mark for the purpose of customisation of the products and their associated packaging.

8 Risk and Title

8.1 The Products will be at your risk from the time of delivery.

8.2 Ownership of the Products will only pass to you when we receive full payment of all sums due (in cleared funds) in respect of the Products, including delivery charges.

8.3 Until ownership of the Products has passed to you, you shall:

- (a) hold the Products on a fiduciary basis as our bailee;
- (b) store the Products (at no cost to us) separately from all your other goods or those of any third party in such a way that they remain readily identifiable as our property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Products; and
- (d) maintain the Products in satisfactory condition and keep them insured on our behalf for their full price against all risks to our reasonable satisfaction. On request you shall produce the policy of insurance to us.

8.4 You may resell the Products before ownership has passed to you solely on the basis that any such sale shall be a sale of our property and you shall deal as principal when making such a sale.

8.5 Your right to possession of the Products shall terminate immediately if you experience any Insolvency Events.

8.6 We shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from us.

8.7 You grant us, our agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or, where your right to possession has terminated, to recover them.

8.8 On termination of the Contract, howsoever caused, our rights contained in this condition 8 shall remain in effect.

9 Price and Payment

9.1 The price of any Products will be as quoted on our website from time to time, except in cases of obvious error.

9.2 These prices are quoted inclusive of packaging, loading, unloading and carriage but exclusive of VAT, delivery and insurance, the costs of which will be added to the total amount due.

9.3 Prices are liable to change at any time, but changes will not affect orders in respect of which we have already sent you an Order Confirmation.

9.4 Subject to condition 9.2, payment of the price for the Products is due in pounds sterling thirty (30) days following the date of the invoice we send you.

9.5 An invoice shall be sent to you on the date of despatch of the Products.

9.6 Time for payment shall be of the essence.

9.7 No payment shall be deemed to have been received until we have received cleared funds.

9.8 All payments payable to us under the Contract shall become due immediately on its termination despite any other provision.

9.9 Our website and price lists contain a large number of Products and it is always possible that, despite our best efforts, some of the Products listed on our website may be incorrectly priced. We will normally verify prices as part of our Order procedures so that, where a Product's correct price is less than our stated price, we will charge the lower amount when dispatching the Products to you. If a Product's correct price is higher than the price stated on our website, we will normally, at our discretion, either contact you for instructions before dispatching the Products, or reject your order and notify you of such rejection.

9.10 We are under no obligation to provide the Product to you at the incorrect (lower) price even after we have sent you an Order Confirmation.

9.11 Payment for Products may be made by bank transfers, credit or debit card. If you elect to pay by credit or debit card we reserve the right to charge your account with a two per cent (2%) processing charge for each transaction. We will charge your credit or debit card when we dispatch your order.

9.12 You shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless you have a valid court order requiring an amount equal to such deduction to be paid by us to you.

9.13 We reserve the right to take any of the following courses of action if you fail to pay us any sum due pursuant to the Contract:

- (a) to charge you a one-off administration fee of £25.00; and
- (b) to charge you any costs relating to debt collection charges incurred by us because of your late payment; and
- (c) to claim interest from you on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank, accruing on a daily basis until payment is made, whether before or after any judgment; and
- (d) to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

10 Quality

10.1 Where we are not the manufacturer of the Products, we shall endeavour to transfer to you the benefit of any warranty or guarantee given to us.

10.2 We warrant that (subject to the other provisions of these conditions) upon delivery and for a period of one hundred and eighty (180) days from the date of delivery, the products shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.

10.3 We shall not be liable for a breach of the warranty in condition 10.2 unless:

- (a) you give written notice of the defect to us, within 7 days of the time when you discover or ought to have discovered the defect; and
- (b) we are given a reasonable opportunity after receiving the notice of examining such Products and you (if asked to do so by us) return such Products to our place of business at your cost for the examination to take place there.

10.4 We shall not be liable for a breach of the warranty in condition 10.2 if:

- (a) you make any further use of such Products after giving such notice; or
- (b) the defect arises because you fail to follow our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the products or (if there are none) good trade practice; or
- (c) you alter or repair such Products without our written consent.

10.5 Subject to condition 10.3 and condition 10.4, if any of the Products do not conform with the warranty in condition 10.2 we shall at our option repair or replace such Products (or the defective part) or refund the price of such Products at the pro rata Contract rate.

10.6 Where we elect to replace a defective Product we reserve the right to supply the replacement Product without the original customization features.

10.7 If we comply with condition 10.5 we shall have no further liability for a breach of the warranty in condition 10.2 in respect of such Products and any Products replaced shall belong to us.

11 Our Liability

11.1 Subject to the other provisions of these Terms we shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Products (even if caused by our negligence), nor shall any delay entitle you to terminate or rescind the Contract unless such delay exceeds 180 days.

11.2 We shall not be liable for injury or adverse effects caused through use of the Product beyond that expected from normal use.

11.3 Where you have requested us to transfer your data onto a Product we shall not be liable for the content or the quality of such data or the quality or effectiveness of its transfer.

11.4 Our liability for losses you suffer as a result of us breaking this agreement is strictly limited to the purchase price of the Product you purchased.

11.5 This does not include or limit in any way our liability:

- (a) for death or personal injury caused by our negligence;
- (b) under section 2(3) of the Consumer Protection Act 1987;
- (c) for fraud or fraudulent misrepresentation; or
- (d) for any matter for which it would be illegal for us to exclude, or attempt to exclude, our liability.

12 Import Duty

12.1 If you order Products from our website for delivery outside the UK, they may be subject to import duties and taxes which are levied when the delivery reaches the specified destination. You will be responsible for payment of any such import duties and taxes. Please note that we

have no control over these charges and cannot predict their amount. Please contact your local customs office for further information before placing your order.

12.2 Please also note that you must comply with all applicable laws and regulations of the country for which the products are destined. We will not be liable for any breach by you of any such laws.

13 Written Communications

13.1 When using our website, you accept that communication with us will be mainly electronic. We will contact you by e-mail or provide you with information by posting notices on our website. For contractual purposes, you agree to this electronic means of communication and you acknowledge that all contracts, notices, information and other communications that we provide to you electronically comply with any legal requirement that such communications be in writing. This condition does not affect your statutory rights.

13.2 All notices given by you to us must be sent either via email to contact@flashbay.com or to Flashbay Limited at 6 The Fountain Centre, Imperial Wharf ,London SW6 2TW.

13.3 Notices will be deemed received and properly served immediately when posted on our website, 24 hours after an e-mail is sent, or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail that such e-mail was sent to the specified e-mail address of the addressee.

14 Transfer of Rights and Obligations

14.1 The contract between you and us is binding on you and us and on our respective successors and assigns.

14.2 You may not transfer, assign, charge or otherwise dispose of a Contract, or any of your rights or obligations arising under it, without our prior written consent.

14.3 We may transfer, assign, charge, sub-contract or otherwise dispose of a Contract, or any of our rights or obligations arising under it, at any time during the term of the Contract.

15 Events Outside Our Control

15.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under a Contract that is caused by events outside our reasonable control ("**Force Majeure Event**").

15.2 A Force Majeure Event includes any act, event, non-happening, omission or accident beyond our reasonable control and includes in particular (without limitation) the following

strikes, lock-outs or other industrial action (whether or not relating to our workforce); civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war; fire, explosion, storm, flood, earthquake, subsidence, epidemic, adverse weather conditions or other natural disaster or acts of God; impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport; impossibility of the use of public or private telecommunications networks; and the acts, decrees, legislation, regulations or restrictions of any government.

15.3 Our performance under any Contract is deemed to be suspended for the period that the Force Majeure Event continues, and we will have an extension of time for performance for the duration of that period. We will use our reasonable endeavors to bring the Force Majeure Event to a close or to find a solution by which our obligations under the Contract may be performed despite the Force Majeure Event.

16 Waiver

If we fail, at any time during the term of a Contract, to insist upon strict performance of any of your obligations under the Contract or any of these Terms, or if we fail to exercise any of the rights or remedies to which we are entitled under the Contract, this shall not constitute a waiver of such rights or remedies and shall not relieve you from compliance with such obligations.

17 Severability

If any of these Terms or any provisions of a Contract are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

18 Entire Agreement

These Terms and any document expressly referred to in them represent the entire agreement between us in relation to the subject matter of any Contract and supersede any prior agreement, understanding or arrangement between us, whether oral or in writing.

19 Our Right to Vary These Terms and Conditions

19.1 We have the right to revise and amend these Terms from time to time in order to, without limitation, reflect changes in market conditions affecting our business, changes in technology, changes in payment methods and changes in relevant laws and regulatory requirements.

19.2 You will be subject to the policies and Terms in force at the time that you order products from us, unless any change to those policies or these Terms are required to be made by law or

governmental authority (in which case it will apply to orders previously placed by you), or if we notify you of the change to those policies or these Terms before we send you the Order Confirmation (in which case we have the right to assume that you have accepted the change to the Terms, unless you notify us to the contrary within seven (7) working days of receipt by you of the Products).

20 Law and Jurisdiction

Contracts for the purchase of Products through our website will be governed by English law. Any dispute arising from, or related to, such Contracts shall be subject to the non-exclusive jurisdiction of the courts of England and Wales.