

Customer Account Terms and Conditions & Terms and Conditions of Supply

1. DEFINITIONS AND INTERPRETATION

1.1 For the purposes of this Agreement and unless otherwise defined:

- (a) **Company** means Adventure Collections Limited, NZCN: 8244173, NZBN: 9429049945300, and includes "we", "us", and "our";
- (b) **Account Application** means the account application form attached to these terms and conditions;
- (c) **Agreement** means the Account Application, these terms and conditions, and any document specified by the Company as applying to this agreement including any docket, order, quotation or invoices;
- (d) **Customer** means the customer set out in the Account Application, and includes "you" and "your";
- (e) **Event of Default** means
 - (i) the Customer fails to pay for the Products in accordance with this Agreement;
 - (ii) the Customer is in breach of its obligations under this Agreement; or
 - (iii) there is an Insolvency Event;
- (f) **Guarantor** means the person or persons stated in the Credit Account Application and/or any party who provides a guarantee to the Company in relation to the Customer's performance of its obligations in this Agreement;
- (g) **Insolvency Event** means for the Customer, as applicable, being in liquidation or provisional liquidation, bankruptcy or under administration, having a controller or analogous person appointed to the Customer or any of the Customer's property, being unable to pay the Customer's debts as and when they fall due and payable, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing the Customer's own affairs for any reason, taking any step that could result in the Company becoming insolvent, entering into a compromise or arrangement with any of the Customer's members or creditors, or any analogous event;
- (h) **Interest Rate** means the rate of 20% per annum, calculated on a daily basis from the due date until the date of actual payment compounding during such default until the amount outstanding is paid to us in full;
- (i) **Order** means a purchase order from the Customer which has been accepted by the Company;
- (j) **Payment Date** means the date elected on the Account Application, unless agreed otherwise in writing by the Company. If no date is elected on the Account Application, the Payment Date is no later than 7 days following the date of invoice, unless agreed otherwise in writing by the Company;
- (k) **Products** means any products of the Company, including (but not limited to) cross stitch kits, paint by number kits and travel kits supplied by the Company to the Customer, or ordered by the Customer but not yet supplied;

1.2 Precedence

The following descending order of precedence will apply to the extent of any inconsistency with the terms of this Agreement:

- (a) the express terms of the Order but only in relation the Products to which it relates;
- (b) the express terms of any collateral or ancillary document that the parties agree in writing to form part of this Agreement;
- (c) the terms of the Account Application; and
- (d) the terms and conditions of this Agreement.

2. APPLICATION OF TERMS AND CONDITIONS

- 2.1 These terms and conditions apply to all dealings between the Company and the Customer under this Agreement.
- 2.2 No terms or conditions of the Customer are binding on the Company unless the Company expressly agrees to it.
- 2.3 The Customer:
 - (a) warrants that all details provided to the Company in or accompanying the Account Application are complete, true and accurate and not misleading or deceptive;
 - (b) acknowledges that the Company may in its absolute discretion accept or reject the Account Application and is not obliged to furnish reasons for its decision;

- (c) acknowledges and agrees that the Company may terminate its provision of Products to the Customer at any time without notice for any reason;
- (d) warrants that any Product purchased from the Company will only be used by the Customer for commercial purposes and not for any domestic or household purposes; and
- (e) warrants that the Account Application is not an application for consumer credit.

2.4 The Company, in its absolute discretion and without incurring any liability to the Customer, may:

- (a) cease or suspend supply of Products under this Agreement; and/or
- (b) amend the Agreement by providing written notice of such amendment to the Customer.

2.5 If an Event of Default occurs, all amounts then outstanding to the Company become immediately due and payable and the Company may, without prejudice to its rights under this Agreement and its rights generally, call up all moneys owing to it by the Customer, retain all moneys paid on account and/or cease further supply.

3. LIABILITY

- 3.1 Except as otherwise set out in this Agreement and to the fullest extent permitted by law, the Company makes no express warranties or representations in respect of the Products.
- 3.2 To the extent permitted by law, the Company excludes all implied warranties, representations, guarantees and statements in respect of the Products including implied warranties of merchantability and fitness for a particular purpose unless expressly set out in this Agreement.
- 3.3 Despite anything else in this Agreement, should the Company breach any statutorily implied warranty or guarantee, then to the extent permitted by law, the Company's liability for such breach is limited to the lesser of:
 - (a) the cost of the Products; or
 - (b) the cost of remedying the defective Products;
 - (c) the actual loss suffered by the Customer; or
 - (d) the total amount paid by the Customer to the Company during the twelve month period preceding the event giving rise to liability.
- 3.4 To the extent permitted by law, the Company is not liable for any consequential or indirect loss or liability including loss of profit, loss of revenue, loss of savings, economic loss, loss of opportunity, damage to property, personal injury or death, whether in contract, or tort (including in negligence), or otherwise and whether such loss or damage arises directly or indirectly from the Customer's purchase, use or reliance of the Products.

4. PRICE AND PAYMENT

- 4.1 The price for the Products will be according to our price list from time to time. We reserve the right to adjust the price list upon 60 days written notice to the Customer.
- 4.2 Payment is due on or before the Payment Date, without deduction or set off, unless by prior arrangement with the Company.
- 4.3 Amounts received by the Company may be applied by the Company in its absolute discretion toward payment of interest, costs and expenses payable to the Company under this Agreement, before being applied against any amounts invoiced for Products which remain unpaid from time to time.
- 4.4 All payments shall be in New Zealand dollars and by direct credit to our bank account, or by any other method as agreed to in writing by us.

5. INTEREST

- 5.1 The Customer is liable to pay the Company the Interest Rate on the balance of all amounts invoiced for Products sold to the Customer under this Agreement remaining unpaid as at the Payment Date from time to time. The Customer acknowledges that the amount payable under this clause is a genuine pre-estimate of the Company's loss as a result of the Customer's failure to pay invoices on time.

6. WARRANTIES, REPRESENTATIONS, ACKNOWLEDGEMENTS AND INDEMNITY

- 6.1 In signing this Agreement, you warrant, represent, acknowledge and agree as follows:
 - (a) you have read and understand and wish to be bound by the full terms, conditions and effect of this Agreement;
 - (b) all purchases by the Customer under this Agreement are for commercial purposes only;
 - (c) the person who signed this Agreement was authorised by you to do so;
 - (d) the particulars contained in this Agreement are in all respects true and correct;

- (e) you have relied solely on your own skill and judgement in entering into this Agreement, and selecting the Products ordered by you;
 - (f) except as otherwise set out in this Agreement, we have not made any other representation or promise to you of any nature in respect of any matter arising out of this Agreement, including the entering into of this Agreement;
 - (g) this Agreement represents the entire agreement as concluded between us and you, and supersedes any other agreement, terms and/or conditions between us and you;
 - (h) no representations made by us or you concerning the Products is an implied term of this Agreement or form the subject matter of a separate agreement, subsidiary or collateral with this Agreement; and
 - (i) except in relation to relying on the representations expressly set out in this Agreement, you have not been induced to enter into this Agreement by any other representation, oral or otherwise, made for or on behalf of the Company.
- 6.2 You indemnify us in respect of any claim, action, proceeding, judgment, damage, loss, expense or liability incurred or suffered by or brought or made or recovered against us in connection with a breach of this Agreement including any warranty, representation, acknowledgement or agreement contained in clause 6.1, or by reason of any of them being in any way incorrect, inaccurate, misleading or deceptive.
- 7. TERMINATION**
- 7.1 Either party may at any time by written notice served on the other and the Guarantor terminate this Agreement in respect of an Order which at time of service the Company has not accepted. Termination does not affect the rights and liabilities of the parties in respect of this Agreement accrued as at the time of termination.
- 8. PROPRIETARY RIGHTS**
- 8.1 Each party will retain all copyright and other proprietary rights in any of its confidential information and material, including documents, drawings, certifications and instructions provided to the other party (**Recipient**).
- 8.2 The Recipient must not use the other party's confidential or proprietary information or material or their contents for any purpose other than the purpose for which they were provided.
- 8.3 The Customer must not disclose, transfer, transmit or otherwise make available to any third party in any manner or form, any material or their contents or any information relating to them or the Products without the other party's prior written consent.
- 9. GUARANTEE**
- 9.1 In consideration of the Company at the request of the Customer and the Guarantor entering into this Agreement and to induce the Company to enter into this Agreement and any Order, the Guarantor guarantees to the Company the due and punctual performance and observance by the Customer of its obligations under this Agreement. The Guarantee will apply separately to this Agreement.
- 9.2 As security for payment of all amounts owing by the Customer to the Company from time to time and as security for the performance by the Customer of all obligations from time to time owed to the Company, the Guarantor:
- (a) grants as a security interest in favour of the Company over all of the Guarantor's present and after acquired personal property (as that term is defined in the Personal Property Securities Act 1999); and
 - (b) charges in favour of the supplier all of the Guarantor's other property, both equitable and legal, present or future; and
 - (c) agrees to mortgage in favour of the Company the entire Guarantor's present and future interest in any land.
- 9.3 The Guarantor shall be liable to the Company for all debt recovery fees and legal costs (on a solicitor and own client basis) in respect of proceedings for recovery under this guarantee.
- 10. COSTS**
- 10.1 The Customer is liable for and must pay, the registration and lodgement fees, taxes (including any GST) or any other kinds of government charge or fee incurred as a result of the sale of the Products by the Company to the Customer under this Agreement.
- 10.2 The Customer must pay any losses, expenses, damages, commissions, interest and costs (**Liabilities**), to the extent that such Liabilities arise from the Customer's failure to comply with its obligations, including payment of all invoices, under this Agreement and any Order. Such losses, expenses, damages, commissions, interest and costs may be recovered by the Company as a liquidated debt.
- 11. GST**
- 11.1 In this clause:
- (a) "GST" means GST within the meaning of the GST Act;
 - (b) "GST Act" means the Goods and Services Tax Act 1985; and
 - (c) Expressions used have the meanings given to them in the GST Act.
- 11.2 An amount payable by a party under this Agreement in respect of a taxable supply by the other party, unless expressed to represent the price of supply, represents the value of the supply and the recipient of the supply must, in addition to that amount and at the same time, pay to the supplier the GST payable in respect of the supply.
- 11.3 If this Agreement requires the Customer to pay, reimburse or contribute to an amount paid or payable by the Company in respect of a creditable acquisition from a third party, the amount for payment, reimbursement or contribution will be the value of the acquisition by the Company plus, if its recovery from the Customer is a taxable supply, the GST payable in respect of that supply.
- 12. PRIVACY**
- 12.1 In accordance with the provisions of the Privacy Act 2020 ("**the Privacy Act**"), if the Company considers it relevant to assessing the Account Application, the Customer consents to the Company obtaining from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Company.
- 12.2 In accordance with the provisions of the Privacy Act, if the Company considers it relevant to collecting overdue payments in respect of credit provided to the Customer, the Customer agrees to the Company receiving from a credit reporting agency a credit report containing personal information about the Customer.
- 12.3 The Customer authorises the Company to give a credit reporting agency personal information about the Customer relating to this Agreement.
- 13. TIME**
- 13.1 Subject to the terms of this Agreement, time will be of the essence unless the parties agree in writing to any time requirements being extended or abridged in which event the time so extended or abridged will be of the essence of this Agreement.
- 13.2 Despite clause 13.1, the Company shall not be responsible for any delay in delivery and the Customer shall not be entitled to cancel an Order on account of any such delay. Dates for delivery (if any) are given in good faith and not to be treated as a condition of purchase.
- 14. TITLE AND PROPERTY**
- 14.1 All Products to be supplied to the Customer will be deemed to be delivered upon the Products being delivered to the Customer's nominated site.
- Risk in all goods supplied to the Customer, including the Products, will pass to the Customer immediately on delivery to the Customer premises or the agreed location for delivery and the Customer is responsible for insuring the Products from this time.
- 14.2 Notwithstanding delivery and passing of risk, title and property in the Products will not pass to the Customer until payment of all amounts owing to the Company in relation to those Products have been received by the Payment Date, in cleared funds, by the Company. Until that time, the Customer:
- (a) must promptly, and at the Customer's cost, return the Products to the Company on demand;
 - (b) indemnifies the Company against loss or damage to the Products;
 - (c) must not pledge, mortgage, lend or otherwise encumber the Products without the Company's written consent;
 - (d) subject to dealing with the Products in the ordinary course of trade or the Customer's business, holds the Products as Bailee for the Company and will safely and securely store the Products separately from other products on the Customer's premises in such a manner as to show clearly that the Products are the property of the Company;
 - (e) in the event of the Customer failing to make payment for Products by the Payment Date or the Company otherwise becoming entitled to terminate this Agreement or any Order, irrevocably authorises the Company to, without disruption to the Customer's business, enter any premises, including the Customer's premises, where the Products are situated and to take possession of and remove those Products without incurring any liability;
 - (f) where the Customer has not been paid for the Products by the third party, may assign to the Company its claim against that party to the Company subject to the Company releasing the Customer from its payment obligations in relation to those Products, upon the Company giving the Customer notice in writing to that effect.
- 15. SECURITY INTEREST**
- 15.1 For the purposes of this clause: "PPSA" means the Personal Property Securities Act 1999, and the expressions "accession", "financing statement", "security agreement", "security interest", "perfected security interest", "purchase money security interest" and "verification statement" have the meanings given to them by the PPSA, and references to sections are sections of the PPSA.
- 15.2 This Agreement constitutes a security agreement, and the Customer grants a security interest in all Products supplied to the Customer under this Agreement.
- 15.3 Without limiting sub-clause 1. above and the operation of this Agreement generally, the retention of title arrangement described in the "Title and Property" clause above

constitutes the grant of a purchase money security interest by the Customer in favour of the Company in respect of all present and future acquired Products.

- 15.4 The Customer must immediately upon request by the Company, sign any documents, provide all necessary information and do all things required by the Company to ensure that the Company's purchase money security interest is a perfected security interest.
- 15.5 The Customer must not enter into any security agreement that allows any other person to have or to register a security interest in relation to the Products or any proceeds of sale of the Customer of the Products until the Company has a perfected security interest and if applicable, a perfected purchase money security interest.
- 15.6 If the Company registers the security interest created by this Agreement under the PPSA, the Customer waives its rights to receive a copy of the verification statements in terms of section 148 of the PPSA and also waives its rights under sections 121 and 131 of the PPSA.
- 15.7 The Company and the Customer also contract out of Part 9 of the PPSA to the extent that the rights and obligations contained in sections 114, 125, 129, 132, 133 and 134 of that part of the PPSA do not apply as between the Company and the Customer.
- 15.8 The Customer agrees that:
- (a) the Customer will, upon receiving a written request from the Company and at its own cost and expense, promptly deliver all or any of the Products to the Company. If the Customer fails to deliver the Products upon request, the Company may at any time enter into any place where the Products are located and remove the Products;
 - (b) the Company may sell all or any of the Products without giving prior notice of the sale to the Customer; and
 - (c) it will immediately notify the Company of any change in the Customer's name, address or contact person details.

16. TRUSTS

- 16.1 This Agreement binds the Customer both personally and as trustee of any trusts of which the Customer is trustee.

17. FORCE MAJEURE

- 17.1 For the purposes of this clause, "Force Majeure Event" means the occurrence of any event outside the reasonable control of a party and includes the following events or circumstances:
- (a) hurricane, typhoon, earthquake, flood, landslide or other natural disaster, or fire;
 - (b) civil riot, insurrection, revolution, terrorism, war or other like hostilities;
 - (c) any disease, pandemic or epidemic;
 - (d) strike, lockout or industrial disturbances;
 - (e) act of any governmental or public authority including any law, order or direction promulgated by a government authority in response to the outbreak or containment of Coronavirus pandemic; or
 - (f) delay in the delivery or transportation of products or the unavailability or shortage of suitable materials or products.
- 17.2 If a party is affected by a Force Majeure Event which prevents it from carrying out its obligations under the Agreement (other than to make a payment when due), that affected party must promptly notify the other party of the nature and extent of the circumstance, the likely duration and the impact on the affected party's obligations under the Agreement.
- 17.3 Notwithstanding any other provision of the Agreement neither party will be deemed to be in breach or otherwise be liable to the other for any delay in the performance or the non-performance of any of its obligations under the Agreement, to the extent that the delay or non-performance is due to any Force Majeure Event of which it has notified the other party, and the time for performance of that obligation will be extended accordingly.
- 17.4 Where the affected party is the Company, the Company is not liable or obliged to provide any financial relief to the Customer as a result of the Force Majeure Event.
- 17.5 If a Force Majeure Event subsists so that the affected party is unable to perform all or a material part of its obligations under the Agreement for three consecutive months

or six months in the aggregate as a consequence of a Force Majeure Event, either party may terminate this Agreement with immediate effect by notice to the other party. Upon issue of such notice, clause 17.4 will apply.

18. DISPUTE RESOLUTION

- 18.1 If either party has a dispute or complaint ('**Complainant**') against the other party ('**Respondent**') arising out of this Agreement or any Order, the following will apply:
- (a) the Complainant must tell the Respondent in writing:
 - (i) the nature of the dispute;
 - (ii) what outcome the Complainant wants; and
 - (iii) what action the Complainant thinks will settle the dispute;
 - (b) upon receipt of the notice, the Complainant and Respondent shall try to agree upon how to resolve the dispute;
 - (c) if, within 30 days of the first attempt to try to agree upon how to resolve the dispute, the dispute is still not resolved, the dispute will be referred to mediation by a single mediator, appointed by agreement between the parties, but failing agreement to be appointed by the President for the time being of the Manawatu Branch of the New Zealand Law Society. The Disputing Parties will pay their own costs but will share equally in the cost of the mediator;
 - (d) if the dispute is not resolved at mediation, then the dispute will be referred to a single arbitrator appointed by the President for the time being of the Manawatu Branch of the New Zealand Law Society. Such arbitration will be completed in accordance and subject to the provisions of the Arbitration Act 1996. The decision of the arbitrator (including any decision as to which party will bear the costs of the arbitration) will be final and binding on the parties;
 - (e) this clause does not affect the right of either party to take legal proceedings under this Agreement

19. MISCELLANEOUS

- 19.1 This Agreement will be governed by and construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
- 19.2 The Customer must notify the Company of any change in its structure or management, including any change of director, secretary, partnership, trusteeship and business address.
- 19.3 All notices and other written communications provided for in this Agreement must be given or served by certified or registered mail with postage pre-paid, by hand delivery or by email as follows:-
- (a) if to the Company, to us at 46 Pitama Road, Awapuni, Palmerston North 4412; and
 - (b) if to the Customer, to you at the address, and email contained in this Agreement.
- 19.4 Where the Customer comprises more persons than one, the provisions of this Agreement with respect to such party will bind all of those persons severally and jointly. In any claim arising out of a breach of this Agreement or any Purchase Agreement, proportionate liability will not be pleaded in defence by the Customer as between those persons and each of those persons comprising the Customer will be regarded as wholly liable to the Company in respect of any such breach.
- 19.5 Any waiver by us of any default by you in the strict and literal performance of or compliance with any provision, condition or requirement in this Agreement, or any delay by us in exercising any remedies available to us under this Agreement, will not constitute a variation or waiver of any provision, condition or requirement of this Agreement, or remedy available to us.
- 19.6 If any term or provision of this Agreement are found to be to be invalid, illegal or unenforceable, such term or provision is to be severed from the remainder of the terms and provisions of this Agreement and is to be deemed never to have been part of this Agreement, with the remainder of the terms and provisions of this Agreement subsisting and remaining in full force and effect unless the basic purpose or purposes of this Agreement would thereby be defeated.