

## Conditions of Sale

- 1. General:** These Conditions of Sale ("the Conditions") supplied by J & R Sports Limited ("the Company") to a purchaser ("the Buyer") shall be incorporated into each contract ("the Contract") made by the Company for the sale of the Company's goods ("the Goods"). The Company contracts as foreshad upon such terms as are agreed between the Company and the Buyer and upon the terms of the Conditions alone. No conditions or terms of the Buyer shall apply to this Contract. No variation of any of the Conditions shall be effective unless in writing and signed by a duly authorised representative of the Company.
- 2. Quotations and Acceptance of Orders:** (a) The Contract shall become binding only upon the confirmation of acceptance of any order by the Company in writing and accordingly all quotations or tenders made and price or product lists supplied by the Company shall be treated as invitations to treat only.
- (b) Subject to Clause 5 (c) any quotation by the Company remains open for acceptance for 30 days from the date on which the Company sends the quotation to the Buyer unless the quotation specifically refers to an alternative period during which the quotation shall remain valid. If no quotation is rendered the price is set out in the Company's price list which is in force on the date the goods are delivered shall apply, with any discounts granted by the Company.
- (c) The placing of an order by the Buyer shall be conclusive evidence that the Buyer having checked the quotation is fully satisfied that the quotation is in accordance with its requirements.
- 3. Specifications:** (a) The specifications and designs of the Company which without prejudice to the generality of the foregoing shall include illustrations, drawings, weights and dimensions are, unless expressly stated otherwise, subject to modification or improvement and must be regarded as approximate representations only and are not binding in detail unless expressly stated to be so.
- (b) The Buyer agrees that it shall not disclose to any third party any of the information relating to the Company's specifications without the prior written consent of the Company or the party in whom title and copyright in the specification is vested.
- 4. Packaging:** Packaging for the Goods shall be at the desecration of the Company which shall have the right to pack the Goods in such a manner and with such materials and in such quantities as it in its absolute discretion thinks fit unless detailed packaging instructions are received from the Buyer prior to agreeing a price for the Goods.
- 5. Price:** (a) All prices shall be as stated by the Company. Unless otherwise specified by the Company, carriage costs will only be charged for Goods if the price of the Goods ordered by the Buyer is less than £ 350.00 for delivery to mainland UK. Carriage charges to Northern Ireland, Channel and Offshore Islands available upon request. The Company reserves the right to amend this clause as and when it deems necessary.
- (b) All prices shall be exclusive of any applicable value added tax which the Buyer shall be additionally liable to pay the Company.
- (c) All prices stated shall be subject to variation at the sole discretion of the Company at any time without prior notice and the Company shall notify the Buyer of any variation before delivery of the goods.
- 6. Payment:** (a) Liability for payment for the Goods supplied shall arise on delivery and payment in cash is due without abatement deduction or set-off thirty days from the date of the Company's invoice. Payment shall be due and the Company shall be entitled to sue for the price whether or not property in the Goods has passed by virtue of Clause 10.
- (b) Sums unpaid after the due date shall bear interest until the day payment is received at the rate of 8% per month accruing from day to day from the date of delivery until the date of payment in full.
- (c) If the recovery of sums outstanding from the Buyer is passed to a Debt Collection Agency the Buyer shall pay the Company's costs in instructing the said Debt Collection Agency and all ancillary legal costs.
- (d) Without prejudice to any other rights or remedies of the Company any default of the Buyer in making payment on the due date shall entitle the Company to: (i) Cancel the Contract or any other contract for the sale of Goods to the Buyer; or (ii) Suspend deliveries under the Contract or any other contract into so long as the default continues and to treat the Contract as repudiated by the Buyer and determined if the Buyer has not within 14 days of receiving written notice from the Company paid all sums due to the Company; or (iii) Revoke terminate or cancel all discounts and any other special terms which may have been granted or allowed to the Buyer.
- 7. Delivery:** (a) Delivery shall take place when the Goods are unloaded at or delivered to the Buyer's premises or other delivery location agreed between the Company and the Buyer except that if the Buyer collects or arranges collection of the Goods from the Company's premises, or nominates a carrier for the Goods delivery shall take place when the Goods are loaded at the Company's premises.
- (b) Time for delivery shall not be of the essence. The Company will use its reasonable endeavours to complete delivery before any delivery dates requested by the Buyer or estimated by the Company but will not be liable for any delay in delivery.
- (c) The Buyer shall accept immediate delivery or arrange to collect the Goods or arrange suitable storage, failing which the Company may either: (i) Effect delivery by whatever means it thinks most appropriate; or (ii) Arrange storage at the Buyer's risk and expense pending delivery; or (iii) Re-sell or otherwise dispose of the Goods without prejudice to any other rights the Company may have against the Buyer for breach of Contract or otherwise.
- (d) Where the Contract provides for delivery by instalments each instalment shall constitute a separate Contract and any failure or defect in any one or more instalments delivered shall not entitle the Buyer to repudiate the Contract nor to cancel any subsequent instalments.
- (e) The Buyer shall not be entitled to reject the Goods by reason only of short delivery.
- (f) The quantity of the Goods delivered under the Contract shall be recorded by the Company upon despatch from the Company's factory or warehouse and the Company's record shall be accepted by the Buyer as conclusive evidence of the quantity delivered.
- (g) It is the Buyer's responsibility to notify the Company if the goods have not been received by the Buyer within 14 days of the date of receipt of the Company's invoice. If no notification is made the Buyer shall be deemed to have received the Goods.
- 8. Examination and Claims:** (a) The Buyer shall upon delivery examine the Goods and shall promptly (but in any event within 3 working days of delivery) notify in writing the Company and the carrier, where relevant, of any apparent damage defect or shortage.
- (b) The Buyer shall comply with the carrier's rules and regulations so as, when appropriate, to enable the Company to make a claim against the carrier in respect of any damage or loss in transit.
- (c) Claims in respect of damage defects or shortage not apparent on examination under (a) must be notified in writing to the Company within 14 days of the date of delivery.
- (d) Notification under (a) and (c) above shall be first made by telephone then by notice in writing delivered by facsimile or by first class recorded delivery mail and addressed to:-  
J & R Sports Limited, Unit 4, Vesty Business Park, Vesty Road, Aintree, Merseyside, L30 1NY.

Without prejudice to any other condition, the Buyer shall not be entitled to return any Goods for which a claim in respect of damage, defects or shortage has been made in accordance with this Clause 8 unless authorisation is given by the Company. In default of such notification the Company shall, subject to any claim which the Buyer may have under the Warranty referred to in Clause 9, be deemed conclusively to have properly performed its obligations under the Contract.

- 9. Warranty:** (a) The Company warrants only ("the Warranty") that the Goods are reasonably free from defects in design (other than design submitted or specified by the Buyer) material or workmanship for 3 months from the date of delivery ("the Warranty Period") provided always that in respect of goods, materials, parts or components supplied but not manufactured by the Company the Warranty shall be equivalent to the warranty (if any) which the Company may have received from the manufacturer or supplier of such goods, materials, parts or components but not so as to impose a liability greater than that imposed on the Company by the aforesaid Warranty and provided that the Buyer has given the Company written notice and satisfactory proof of any defect promptly upon discovery of such defect but in no case later than 28 days after the Warranty Period has expired.
- (b) The Company's obligations to the Buyer under the Warranty shall not apply, (i) to damage caused by the Buyer's or any other third party's act, default or misuse of the Goods or by failure to follow any instructions supplied with the Goods; (ii) if the Goods have been stored, handled or applied in such a way that damage is likely to occur; (iii) if the Goods are altered, modified or repaired in any place other than the Company's factory or premises or by the persons not expressly nominated or approved in writing by the Company; (iv) if the Buyer shall not have paid by the due date for payment for all the Goods supplied whether under the Contract or under any other contract between the Company and the Buyer; (v) in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer.
- (c) Subject as expressly provided in these Conditions and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by Law.
- (d) Subject to (b) above the Company shall at its sole option repair or replace the Goods or credit the Buyer for the purchase price for the Goods found to be defective in design materials or workmanship.
- (e) Save for liability for death or personal injury arising from the Company's negligence (which if proved is not excluded) the Company's obligation to repair or replace or give credit as foreshad shall constitute the full extent of the Company's liability in respect of any loss or damage sustained by the Buyer whether caused by any breach of the Contract or by the misrepresentation or by the negligence of the Company, its employees or agents or arising from any other cause whatsoever and the Company shall not be liable for any consequential, economic, direct or indirect loss suffered by the Buyer arising therefrom.
- (f) The cost to the Company of and incidental to the return by the Buyer to the Company of any of the Goods delivered hereunder shall, except to the extent that the Company has accepted responsibility hereunder, be the responsibility of the Buyer who shall indemnify the Company against any such costs including, but without limitation to the generality of the foregoing, costs of transport and testing or any other cost or loss to the Company arising therefrom.
- (g) Notwithstanding sub-clause (e) above the Buyer shall, except where he is a person who suffers personal injury or death or loss or damage to property such as to give rise to a claim under the Consumer Protection Act 1987, indemnify the Company against loss, damage, liability, legal fees and costs arising from any such claim made against the Company under the Consumer Protection Act 1987.
- (h) If upon the inspection of returned Goods which are alleged by the Buyer to be defective the Company detects no fault or defect in such Goods the Company shall be entitled at the cost of the Buyer to re-deliver the Goods to the Buyer and in addition and without prejudice to any other rights or remedies which it may have to charge a sum not exceeding 20% of the invoice value of the Goods by way of reimbursement of its reasonable expenses in inspecting the Goods alleged to be defective.
- 10. Property at Risk:** (a) Risk shall pass to the Buyer on delivery and the Goods should be insured accordingly.
- (b) (i) Property (both legal and beneficial) in the Goods shall remain in the Company until all sums owing to the Company whether under the Contract or any other contract at any time between the Company and the Buyer made prior to the date of the Contract or which may arise at any time before payment for the Goods is made under the Contract ("the Indebtedness") shall have been paid in full. Until such time, and subject to the provisions hereof, the Buyer shall hold the Goods as bailee for the Company. Until their resale the Goods shall be stored separately by the Buyer and shall be clearly marked as the property of the Company.
- (ii) The Buyer will otherwise notified by the Company or on the happening of any of the events specified in (iii) ("the Events") may be in the ordinary course of its business offer for sale and sell the Goods at the best obtainable price as a principal vis a vis sub-buyers and not as the agent of the Company. Prior to any such sub-sale of the Goods the Buyer shall first notify the Company of its intention to sell the Goods.
- (iii) The Events are:-

- (A) The giving of any notice to the Buyer that a receiver, manager, administrative receiver, supervisor, nominee or administrator is to be or has been appointed over any of the property as assets of the Buyer or that a petition to wind up the Buyer is to be or has been presented or that an application for an construction order is to be all has been made or of any notice of a resolution to wind up the Buyer (save for the purpose of a bona fide reconstruction or amalgamation);
- (B) A decision by the Buyer that the Buyer intends to make any arrangement or composition with its creditors generally;
- (C) Where the Buyer pursuant to Section 123 or 268 of the Insolvency Act 1986 appears to be unable to pay a debt or appears to have no reasonable prospect of being able to pay a debt;
- (D) Any distress or execution levied or threatened to be levied on any property or assets of the Buyer;
- (E) The inability of the Buyer to pay its debts as they fall due.
- (iv) On receipt of notification from the Company under (ii) or on the happening of any of the Events, the power of sale of the Buyer in respect of the Goods shall cease and the Buyer shall immediately deliver the Goods to such address as the Company shall specify in default of which, or in the alternative, the Company shall have the right to enter on any premises or land in the ownership control or possession of the Buyer who shall indemnify the Company on a full indemnity basis against loss, damage, costs or expense so arising including loss, damage, costs or expenses in respect of third party claims. For the avoidance of doubt the Buyer hereby unconditionally and irrevocably authorises the Company or its nominated agents or representatives to enter into or upon premises or land in the ownership, possession or control of the Buyer for the purpose of the repossession of the Goods.

**11. Breach by or Insolvency by the Buyer:** If the Buyer shall not comply with any of its obligations to the Company or upon the occurrence of any of the Events referred to in Clause 10(b), the Company shall have the right forthwith to terminate the Contract but without affecting any other claim, right or remedy of the Company against the Buyer.

**12. Cancellation, Suspension and Termination:** (a) If the Buyer shall purport to cancel the whole or any part of the Contract the Company may by notice in writing to the Buyer elect to treat the Contract as repudiated and the Buyer shall thereupon be liable to pay the Company by way of liquidated damages a sum equal to all the expenses incurred by the Company in connection with the Contract including a handling charge of 20% of the invoice value of the Goods and an appropriate amount in respect of administrative overheads, costs and losses and profit. The Company's reasonable estimate of the expenses incurred shall be final and binding to the parties.

(b) If for any cause whatsoever beyond its control the Company is unable to make any delivery on the applicable delivery date or perform any of its obligations under the Contract the Company may by notice in writing to the Buyer terminate the Contract or suspend the Contract without liability for any loss or damage thereby incurred by the Buyer.

**13. Export Sales:** (a) In respect of sales of the Goods outside the United Kingdom ("Export Sales") the provisions of these Conditions shall apply unless inconsistent with the terms of this clause and the Buyer shall ensure that the terms and conditions of sale under which he or it effects re-sales of the Goods do not contain terms inconsistent with or substantially different from the terms and conditions hereunder.

(b) Unless otherwise specifically agreed between the Company and the Buyer all Export Sales shall be made ex UK warehouse.

(c) Unless otherwise agreed in writing payment shall be made by irrevocable letter of credit on presentation of the Bills of Lading.

(d) The Buyer warrants that if an import licence or permit is required for the importation of the Goods into the country of destination then such import licence or permit has been obtained or will be obtained prior to shipment.

**14. Force Majeure:** (a) In so far as the performance of the Contract by the Company may be affected by any strike, any lack of available shipping or transport or materials, any restriction regulation or decree by any local or municipal authority or government department or by any cause beyond the Company's reasonable control (which shall be constructed without reference to the preceding clauses) the Company may elect at its absolute discretion either, (i) to terminate the Contract; or (ii) to proceed to perform or continue performance under the Contract within a reasonable time after the termination of such events or circumstances.

(b) In the event that the Company makes an election under Clause 14 (a) the Buyer shall accept the Goods or such part of them as are delivered to it notwithstanding any delay.

**15. Patents, Registered Designs, Trade Marks, Trade Names and Copyright:** The Buyer undertakes with the Company that it will not apply to register Trade Marks, Trade Names, Registered Designs, Patents, Domains or Copyrights of the Company without the prior written consent of the Company and the Buyer also undertakes to notify the Company of the infringement by any other Company or individual of any Trade Names, Trade Marks, Registered Designs, Patents, Domains or Copyrights normally used by the Company in the ordinary course of its business as soon as it shall become aware of the same. The Buyer shall indemnify the Company against all damage, loss, costs, claims and expenses arising out of any infringement of any letters patent, registered design, trade mark, trade name or copyright or any claim for such infringement or any claim for passing off arising out of work carried out in accordance with the Buyer's specification. The Company reserves the right to cancel without liability any order or Contract in respect of any Goods which the Company discovers would or may infringe the rights of a third party or at its option to modify the design or specification of such Goods as may be necessary to ensure that the rights of such third party are not infringed.

**16. Rights To Sub-Contract:** The Company shall be entitled to sub-contract the whole or any part of the Contract without the Buyers written consent.

**17. Severance:** Should any one or more of these Conditions or any sub-provision thereof be found to be or become invalid, illegal or unenforceable in any respect under any law the enforceability and validity of the remaining Conditions and sub-provisions of all individual conditions shall not in any way be affected or impaired thereby.

**18. Waiver:** No waiver by the Company of any breach of the Contract by the Buyer shall be considered as a waiver of any past or subsequent breaches of the same or any other provision.

**19. Sale of Goods:** (a) Condition of sale of the Goods to the Buyer is for the Buyer to sell the Goods on a retail basis only. Goods are not to be re-sold wholesale or similar to other retailers or similar and are only to be sold by the Buyer with the sole intention of promoting the Goods and the Brands.

(b) The Buyer is not permitted to sell, pass off, exchange or contra the Goods to any other Company without the written permission of the Company. Failure to comply will be classed as a breach of the Company's Conditions of Sale and the Company will be permitted to seek damages that may be caused to the Company, the Goods or the Brands by breach of this agreement.

**20. On-Line Sale of Goods:** (a) The Company authorises the sales of certain of its brands to the Buyer for on-line sales

(b) The Company will confirm in writing which brands the Buyer is authorised to sell via a retail website only

(c) The Buyer will advise the Company of all domain names where it intends of offer for sale the products authorised at point 20 (b)

(d) The Buyer agrees to only sell the products via its own website

(e) The Buyer agrees not to sell the products supplied by the Company on any 3<sup>rd</sup> Party Site without the prior written approval of the Company. Failure to comply with our 3<sup>rd</sup> party site selling policy will result in listings being removed and the Contract between both parties terminated immediately.

(f) Should the Buyer receive written approval from the Company to sell its products via a 3<sup>rd</sup> Party Site the Buyer then agrees to offer the goods for sale via Buy It Now fixed price listing and not as an Auction Bid

(g) The Buyer must only use the images, logos and specifications supplied by the Company.

(h) The Buyer will observe the retail prices recommended by the Company.

(i) The Company will not tolerate aggressive pricing structures which may damage the brand(s) image.

**21. Proper law:** The Contract is and shall be deemed to have been made in England and shall in all respects be governed by English Law and shall be subject to the jurisdiction of the English Courts.

*J & R Sports Limited – Registered in England No. 3581972*

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