

CONDITIONS

Delivery Times:

Notified according to our best estimate. We assume no responsibility for any damages or loss arising from any delay in supplying the goods nor for any missing, incomplete or delayed deliveries due wholly or in part to circumstances beyond our control, such as the breakdown of production equipment, limited capacity, fire, strikes, refusal to obey instructions, lockouts and incomplete or delayed deliveries from sub-contractors or similar, failure of power or inability to obtain labour or transportation or Act of God.

Intellectual Property:

Design rights and copyright relating to the goods offered or supplied shall remain our absolute property, as will all technical and innovative features of the goods and supplied POS (Point of Sales) material.

Warranties:

To the full extent permitted by law, all conditions and warranties that would or might otherwise be implied by the supply of the goods pursuant to the Order are hereby excluded and negated. In particular but without limitation any conditions or warranties (whether express or implied) relating to fitness for a particular purpose or (whether express or implied) relating to conformity of the goods with a description shall and are excluded and negated. Notwithstanding the specific exemptions from liability it is not intended or shall it be construed that the exemption should exclude or modify any statutory rights, warranties or conditions which by virtue of any national or state Fair Trading, Trade Practices or other consumer legislation may not be modified or excluded. If permitted by such legislation, however, our liability for any breach of any such warranty of condition shall be and is hereby limited to either:

(a) The replacement of the goods or the supply of equivalent goods or payment of the cost of replacing the goods or acquiring equivalent goods;

As we, in our sole discretion, decide.

In no event shall we be liable for special incidental or consequential damages or for any indirect damages including without any limitation for the foregoing exemplary or punitive damages, damage to property or loss of profits. The customer relies upon its own inquiries and examination of the products and upon such independent advice or consultation as the customer may require for that purpose and purchases the products upon the customer's own independent knowledge, skill and judgment, particularly as to the particular use or suitability of the products for the customer's purposes and to all other characteristics and specifications of the products.

Product Liability:

We shall not be liable for injury to people or damage to property howsoever caused including without limitation whether caused by negligence or by action constituting a fundamental breach of contract.

Returned Goods:

Returned goods shall only be accepted in accordance with prior agreement. Goods that are returned without prior agreement shall be sent back at the cost of the consignees.

In normal circumstances, only unopened, undamaged, original cartons containing goods without price stickers or similar shall be accepted. Credits arising from the return of goods shall (unless special arrangement has been made) be subject to a 15% repacking charge.

Returned goods should be sent, carriage paid, to our office in Torbay, at the address stated below. In the event of a justifiable complaint, carriage will be refunded.

A Kids Life
36 Portobello Place
Torbay
AUCKLAND

Suspension of Deliveries:

In the event that any amount due to A Kids Life is not paid when due, A Kids Life shall be entitled to suspend all further deliveries of goods ordered and not delivered in addition to any other right.

If the customer defaults in payment or in any other terms or conditions in the sale of the products, or is placed in receivership, wound up, declared bankrupt, or otherwise become insolvent, or if any of such events be seen as imminent or inevitable by the vendor then in addition to any other rights or remedies the vendor reserves the right to demand the immediate payment of the purchase price and other amounts then unpaid even if not otherwise due for payment and to cancel or suspend the completion of the sale of the products or other orders of the customer not then completed.

If the customer defaults in performing its obligations under this agreement and the vendor incurs costs in enforcing its rights under this agreement, the customer shall pay those costs (including commissions, all legal costs and disbursements, and any other cost incurred in the recovery of the debt) to the vendor or its duly authorized agent on demand.

Advertising material:

Company signage/logos, catalogue and display materials remain our property. Company signage/logos, catalogue and display material may only be used in association with our goods. A Kids Life trademarks and names may not be used except with our express written consent.

Arbitration:

Any dispute concerning the construction or the performance of any of these conditions or concerning any act or thing to be done in pursuance of the contract of which this acceptance forms part shall be submitted to arbitration to be administered in accordance with the rules and practice of the New Zealand Commerce Commission conducted at Auckland.

Waivers:

No waiver by A Kids Life of any provision of this contract or of any breach shall be construed as a waiver neither of any other provision nor of a subsequent breach of the same provision.

Conflicts:

Any statement made on the face of this acceptance which conflicts with anything set out in A Kids Life price sheets or catalogues shall for the purpose of this acceptance be deemed to amend the price sheets or catalogues to the extent of the conflict.

Entire Agreement:

Notwithstanding the terms or conditions of the customer's order these conditions shall be deemed to constitute the terms and conditions of the Customer's order and shall govern the contract unless the customer otherwise objects in writing within seven (7) days of receipt of acceptance of orders.

Jurisdiction:

This acceptance and the Contract of which it forms part shall be construed according to the laws of New Zealand and the parties accept the jurisdiction of the Courts.

The Personal Properties Securities Act 1999, Title and Risk

Title in the products does not pass in any circumstances until payment of the purchase price and all other amounts is made in full in respect of those products. It is expressly agreed that title to the products does not pass upon delivery or the giving and taking of possession and the vendor reserves the right to recover possession of the products and to enter upon the customer's premises without notice for such purpose in the event of any default in payment. The customer grants to the vendor a security interest in all goods supplied under this contract, and their proceeds. At the request of the vendor, the customer will execute any documents and do anything else the vendor requires to ensure that the security interest created under these terms and conditions constitutes a first ranking perfected security over the goods and their proceeds of sale and the customer will supply all information the vendor requires to complete the financing statement or a financing change statement. The customer waives any right to receive a verification statement under the Act. The vendor and the customer agree that sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 126, 127, 129, 131, 133 and 134 of the Personal Properties Securities Act 1999 do not apply to the security created by these terms and conditions.

Notwithstanding that title does not pass, risk in the product passes upon the product being uplifted by or dispatched to the customer even if payment has not been made in full.