



Kookky SLU
F2 Bellmont. Aldosa, La Massana,
Andorra, AD400.
sales@kookky.com

CREDIT ACCOUNT APPLICATION

Legal Title of Business:-

VAT No:-

Trading Title (if different):-

Invoicing / Statement Address:

Delivery Address (if different)

Type of Business:-.....

Tel No:..... Fax No:.....

Number of years trading

Sales Contact Accounts Contact

Email Address..... Email Address.....

Direct Tel Direct Tel.....

Legal Form of your Business

Limited Company Partnership Sole Trader

If Limited Company, Registered Office Address

Company Registration No:-.....

FOR PARTNERSHIPS AND SOLE TRADERS ONLY: CREDIT FACILITIES WILL NOT BE GRANTED IF THE SECTION BELOW IS NOT FULLY COMPLETED

Full names and private addresses of Partners/Sole Trader are required.

Freehold

Leasehold

CREDIT ACCOUNT APPLICATION (continued)

Trade References

Please supply names and addresses of two suppliers of raw materials with whom you have traded for not less than 12 months for at least the amount of credit that you require from us. These companies should not be connected with you or your company in any way whatsoever other than a normal trading relationship.

Company Name:
Address:

Post Code:

Tel No:
Fax No:

Company Name:
Address:

Post Code:

Tel No:
Fax No

Credit Limit Required: €.....

PLEASE ATTACH A COPY OF YOUR COMPANY LETTER HEAD WHEN RETURNING THIS FORM. RETURN TO KOOOKY ACCOUNTS DEPARTMENT at barry@bchaccountancy.ie

Please inform us of any company access restrictions or tail lift requirements for deliveries:-

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APPLICANT'S STATEMENT OF ACCEPTANCE

THIS APPLICATION FORM IS MADE BY THE LIMITED COMPANY, PARTNERSHIP, LIMITED PARTNERSHIP OR SOLE TRADER OR OTHER LEGAL ENTITY DETAILED ABOVE ("THE CUSTOMER") FOR THE GRANTING OF CREDIT FACILITIES BY KOOOKY SLU ("THE COMPANY").

BY SIGNING THIS APPLICATION FORM YOU ACKNOWLEDGE THAT THE DETAILS ABOVE ARE CORRECT AND COMPLETE AS AT THE DATE OF SIGNATURE, AND THAT YOU HAVE READ AND UNDERSTOOD THIS APPLICATION AND THE TERMS OVERLEAF AND AGREE, FOR AND ON BEHALF OF THE CUSTOMER (IN RESPECT OF WHOM YOU SEPARATELY WARRANT AND REPRESENT IN YOUR PERSONAL CAPACITY TO THE COMPANY THAT YOU ARE AUTHORISED TO ACT), THAT THEY SHALL APPLY TO ANY CONTRACT BETWEEN THE CUSTOMER AND THE COMPANY.

THIS APPLICATION FORM MUST BE SIGNED BY A DIRECTOR WHERE THE CUSTOMER IS A LIMITED COMPANY OR AN AUTHORISED MEMBER WHERE THE CUSTOMER IS A LIMITED LIABILITY PARTNERSHIP.

SIGNED..... FULL NAME

DATE..... POSITION IN COMPANY.....

Please note that we will expect our terms to be adhered to at all times. All accounts queries or disputes should be notified to us within 7 days of receipt of invoice because accounts that remain unpaid beyond 30 days and which are not in dispute will become liable for legal action.

1. INTRODUCTION

- 1.1 This page (together with the documents expressly referred to on it) sets out the general terms and conditions (**Terms**) applying to any products (**Products**) which we, Koooky SLU, a company registered in Andorra under company number 14450, with our registered office at Placa Guillemo Num. 3, 1R Pis. Andorra La Vella, AD500 and trading address at F2, Belmont, L'Aldosa, La Massana, AD400, Principal D'Andorra (**we or us**), provide to you as our customer (**you**).
- 1.2 These Terms apply only if you are not an individual acting for purposes which are wholly or mainly outside your trade, business, craft or profession, and are based in within the European Community, i.e. you are not a "consumer". If you are a "consumer" (as defined above), these Terms shall not apply to any Contract between you and us, which shall instead be governed by our Terms and Conditions for Online Sales, which are available online or on request.
- 1.3 These Terms will apply to any contract between us for the sale of Products to you (**Contract**), as will the terms of the credit account application (**Application**) you sign when opening an account with us. Please read these Terms carefully and make sure that you understand them, before ordering any Products from us. You will be required to agree to these Terms when signing the Application. If you refuse to accept these Terms, you will not be able to order any Products from us.
- 1.4 You should print a copy of these Terms or save them to your computer for future reference. These Terms, and any Contract between us, are only in the English language.
- 1.5 We may amend these Terms from time to time as set out in clause 7. Every time you wish to order Products, please check these Terms to ensure you understand the terms which will apply at that time. These Terms were most recently updated on 7 April 2015.
- 1.6 If there is any conflict, inconsistency or ambiguity between the Terms set out on this page, and any of the documents referred to on it, the terms set out on this page shall take precedence to the extent of any conflict, ambiguity or inconsistency.
- 1.7 Nothing in these Terms, our price lists or sites shall constitute an offer. Likewise, any quotation given by us shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue. For the purposes of these Terms, **'Business Day'** shall mean a day other than a Saturday and Sunday or Bank or Statutory Public Holidays in the Republic of Ireland or England.

2. OUR PRODUCTS

- 2.1 Although we have made every effort to be as accurate as possible, all sizes, weights, dimensions and measurements indicated on our sites and other material have a 5% tolerance.
- 2.2 Any samples, drawings, descriptive matter, or advertising produced by us and any descriptions or illustrations contained in our catalogues, brochures or sites are produced for the sole purpose of giving an approximate idea of the Products described in them. They shall not form part of any Contract or have any contractual force.
- 2.3 The packaging of the Products may vary from that shown on images on our sites, and we reserve the right to update our packaging from time to time.
- 2.4 All Products shown on our sites are subject to availability. We will inform you by e-mail as soon as possible if the Product you have ordered is not available and we will not process your order (**Order**) if made.

3. USE OF OUR SITES

Your use of any websites operated by us is governed by our Website Terms of Use which is available on our websites or on request. Please take the time to read this, as it includes important terms which apply to you.

4. HOW WE USE YOUR PERSONAL INFORMATION

We only use your personal information in accordance with our Privacy Policy which is available on our sites or on request. Please take the time to read our Privacy Policy, as it includes important terms which apply to you.

5. THE CONTRACT

- 5.1 Any person signing an Application or ordering Products on your behalf warrants and represents that they have authority to bind any business on whose behalf they act.
- 5.2 These Terms and any document expressly referred to in them constitute the entire agreement between you and us and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between us, whether written or oral, relating to its subject matter. They shall apply to the Contract between you and us to the exclusion of any other terms that you may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 5.3 You acknowledge that in entering into the Contract you do not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms or any document expressly referred to in them.
- 5.4 You and we agree that neither of us shall have any claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

6. HOW THE CONTRACT IS FORMED BETWEEN YOU AND US

- 6.1 Any order for Products placed by you with us constitutes an Order. Orders can be made by completing a purchase order and submitting it to us by emailing sales@koooky.com. Please take the time to read and check your Order before submitting it.
- 6.2 After you place an order, you will receive an e-mail from us acknowledging that we have received your order. However, please note that this does not mean that your order has been accepted. Our acceptance of your order will take place as described in clause 6.3 below. We reserve the right to refuse any Order.
- 6.3 The Order shall only be deemed to be accepted when we issue a written acceptance of the Order, at which point the Contract shall come into existence.
- 6.4 If we are unable to supply you with a Product, for example because that Product is not in stock or no longer available, because we cannot meet your requested delivery date, or because of an error in the price on our sites as referred to in clause 10.6, we will inform you of this by e-mail and we will not process your order. If you have already paid for the Products, we will refund you the full amount including any delivery costs charged as soon as possible.
- 6.5 Please note that you cannot purchase the Products via telephone and Orders may only be placed by email, as outlined in clause 6.1 above.

7. OUR RIGHT TO VARY THESE TERMS

- 7.1 We may amend these Terms from time to time. Please look at the top of this page to see when these Terms were last updated.
- 7.2 Every time you order Products from us, the Terms in force at the time of your Order will apply to the Contract between you and us.
- 7.3 We may revise these Terms as they apply to your Order from time to time to reflect changes in relevant laws and regulatory requirements and for other necessary reasons.
- 7.4 If we have to revise these Terms as they apply to your Order, we will contact you to give you reasonable advance notice of the changes and let you know how to cancel the Contract if you are not happy with the changes. You may cancel either in respect of all the affected Products or just the Products you have yet to receive. If you opt to cancel, you will have to return (at our cost) any relevant Products you have already received and we will arrange a full refund of the price you have paid, including any delivery charges.

8. DELIVERY

- 8.1 We shall ensure that: (a) each delivery of the Products is accompanied by a delivery note which shows the date of the Order, all relevant reference numbers, the type and quantity of the Products (including the code number of the Products, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Products remaining to be delivered; and (b) if we require you to return any packaging materials to us, that fact shall be clearly stated on the delivery note. You shall make any such packaging materials available for collection at such times as we shall reasonably request. Returns of packaging materials shall be at our expense.
- 8.2 We shall deliver the Products to the location set out in the Order or such other location as we and you may agree (**Delivery Location**) at any time after we notify you that the Products are ready.
- 8.3 Delivery of the Products shall be completed on the Products' arrival at the Delivery Location.
- 8.4 Estimated delivery dates may be confirmed to you in any email confirmation of your Order we send to you as contemplated in clause 6.3. Delivery dates are estimates only. The time of delivery is not of the essence. If we are unable to meet the estimated delivery date because of an Event Outside Our Control (as defined below), we will contact you with a revised estimated delivery date. We shall not be liable for any delay in delivery of the Products that is caused by such an Event Outside Our Control or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Products. If we fail to deliver the Products, our liability shall be limited to refunding you any price paid for the Products, plus any additional charges raised by us and paid by you in respect of your Order.
- 8.5 If no one is available at your address to take delivery, we will leave you a note that the Products have been returned to our premises, in which case, please contact us to rearrange delivery. Please note that, we reserve the right to charge you a reasonable amount for storage of the Products at our premises and for the cost of re-delivery where you fail to accept delivery. It is your responsibility to offload all goods from transport vehicles.
- 8.6 We may deliver the Products 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 you to cancel any other instalment.
- 8.7 If you prefer to arrange for the Products to be collected from our premises by your own carrier delivery shall be deemed to have taken place at the moment the Products are collected from our premises by the carrier and the other clauses of the Contract will be construed accordingly. In this case no further delivery or insurance charges shall be made to you.

9. INTERNATIONAL DELIVERY

- 9.1 We deliver to the following countries: Ireland, UK, and on request some European Countries.
- 9.2 If you order Products from us for delivery to any international delivery destinations, your Order may be subject to import duties and taxes which are applied when the delivery reaches that destination. Please note that we have no control over these charges and we cannot predict their amount.
- 9.3 You will be responsible for payment of any such import duties and taxes. Please contact your local customs office for further information before placing your Order.
- 9.4 You must comply with all applicable laws and regulations of the country for which the Products are destined. We will not be liable or responsible if you break any such law. We cannot guarantee that the Products are compliant with the applicable laws and regulations of the country for which the Products are destined, and cannot accept any responsibility where the Products are in breach of any such laws.
- 9.5 Any delivery of Products shall be made ex works in accordance with Incoterms® 2010.

10. PRICE OF PRODUCTS AND DELIVERY CHARGES

- 10.1 The prices of the Products will be the price set out in the Order, or, if no price is quoted, the price set out in our published price list in force as at the date of delivery. We take reasonable care to ensure that the prices of Products are correct at the time when the relevant information was entered onto the system. However please see clause 10.6 for what happens if we discover an error in the price of Products you have ordered.
- 10.2 We may, by giving notice to you at any time up to 5 Business Days before delivery, increase the price of the Products set out in any Order to reflect any increase in the cost of the Products that is due to: (a) any factor beyond our control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); (b) any request by you to change the delivery date(s), quantities or types of Products ordered; or (c) any delay caused by any of your instructions or your failure to give us adequate or accurate information or instructions.
- 10.3 Prices for our Products (including list prices) may change from time to time without notice, but changes will not affect any order you have already placed.
- 10.4 The price of a Product excludes VAT (where applicable) at the applicable rate which shall be payable by you in addition to and at the same time as the price of Product and any other consideration due in respect of that Product.
- 10.5 The price of a Product does not include delivery charges, the costs of any non-standard Product packaging, or the costs of insuring the Products while in transit. These charges will be set out in the email acceptance of your Order we send to you in accordance with clause 6.3.
- 10.6 Our websites and price lists contain a number of Products. It is always possible that, despite our reasonable efforts, some of our Products may be incorrectly priced. If we discover an error in the price of the Products you have ordered we will contact you to inform you of this error and we will give you the option of continuing to purchase the Product at the correct price or cancelling your Order. We will not process your Order until we have your instructions. If we are unable to contact you using the contact details you provided during the order process, we will treat the Order as cancelled and notify you in writing.
- 10.7 We will normally invoice you for the Products on or at any time after the completion of delivery, but may at any time require you to make payment in advance of delivery.
- 10.8 You shall pay the invoice in full and in cleared funds within 20 Business Days of the date of the invoice. Payment shall be made to the bank account nominated in writing by us. Time of payment is of the essence.
- 10.9 If you fail to make any payment due to us under the Contract by the due date for payment, then you shall pay interest on the overdue amount at the rate of 10% per annum above Andbank Grup Agricol's base rate of lending from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. You shall pay the interest together with the overdue amount.
- 10.10 In the event that we shall employ a professional debt collection agency or attorney to collect any monies due to us (whether or not a demand wherefore shall have previously been made) the full costs incurred by us in doing so shall be paid by you to us and be due 30 days after we shall have made a written demand therefore, interest shall be payable at the rate mentioned in clause 10.9 on such sums as are not paid by the due date.
- 10.11 You shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). We may at any time, without limiting any other rights or remedies we may have, set off any amount owing to us by you against any amount payable by us to you.

11. QUALITY

- 11.1 We warrant that on delivery the Products shall, subject to the other provisions of these Terms: (a) conform in all material respects with their description and any applicable specification; and (b) be free from material defects in design, material and workmanship.
- 11.2 Subject to clause 11.4, if: (a) you give notice in writing to us within 3 Business Days (time being of the essence) of delivery taking place that the relevant Products do not comply with the warranty set out in clause 11.1; (b) we are given a reasonable opportunity of examining such Products; and (c) you (if asked to do so by us) return such Products to our place of business (at your cost, which will be reimbursed if we, acting reasonably, determine the Products to be defective), we shall, at our option, repair or replace the defective Products, or refund the price of the defective Products in full. If the Products have been damaged in transit the carrier's note must be endorsed accordingly and we and the carrier must likewise be notified in writing of the damage accordingly within 3 Business Days (as set out above).
- 11.3 Failure to provide the notification in the manner and within the timeframe outlined in clause 11.2 above will invalidate any claim, and you will be deemed to have inspected and accepted Products as satisfactory. Accordingly, we shall be under no liability whatsoever in respect of any loss of or damage to the Products howsoever occurring after they left our premises and you shall remain liable to pay the full price for Products so lost, damaged or defective. We shall not in any event be obliged to consider grounds for return of Products or claims for compensation unless the claim and the reason for it are made in writing to us.
- 11.4 We shall not be liable for Products' failure to comply with the warranty set out in clause 11.1 in any of the following events: (a) you make any further use of such Products after giving notice in accordance with clause 11.2; (b) the defect arises because you failed to follow our oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Products or (if there are none) good trade practice regarding the same; (c) you alter or repair such Products without our written consent; (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or (e) the Products differ from their description or applicable specification(s) as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 11.5 Except as provided in this clause 11, we shall have no liability to you in respect of the Products' failure to comply with the warranty set out in clause 11.1.

- 11.6 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.
- 11.7 These Terms shall apply to any repaired or replacement Products supplied by us.
- 11.8 We will not accept the return of any Products without our prior written approval. Subject to the foregoing, Products which are returned for credit owing to an error on your part will be credited at 80% of the original price provided that the Products are in perfect condition. If the Products are not in perfect condition (as to which matter we will be the sole judge) they will be credited at their scrap value.
- 12. TITLE AND RISK**
- 12.1 The risk in the Products shall pass to you on completion of delivery.
- 12.2 Title to the Products shall not pass to you until the earlier of: (a) our receiving payment in full (in cash or cleared funds) for the Products and any other products that we have supplied to you in respect of which payment has become due, in which case title to the Products shall pass at the time of payment of all such sums; and (b) your reselling the Products, in which case title to the Products shall pass to you at the time specified in clause 12.4.
- 12.3 Until title to the Products has passed to you, you shall: (a) hold the Products on a fiduciary basis as our bailee; (b) store the Products separately from all other products held by you so that they remain readily identifiable as our property (at no cost to us); (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Products; (d) maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery (on request you shall produce the policy of insurance to us); (e) notify us immediately if you become subject to any of the events listed in clause 14.2; and (f) give us such information relating to the Products as we may require from time to time.
- 12.4 Subject to clause 12.5, you may resell or use the Products in the ordinary course of your business (as outlined in clause 13.1 below) (but not otherwise) before we receive payment for the Products. However, if you resell the Products before that time: (a) you do so as principal and not as our agent; and (b) title to the Products shall pass from us to you immediately before the time at which resale by you occurs.
- 12.5 If, before title to the Products passes to you, you become subject to any of the events listed in clause 14.2, fail to observe or perform any of your obligations under any Contract between us, or encumber or in any way charge any of the Products, then, without limiting any other right or remedy we may have: (a) your right to resell the Products or use them in the ordinary course of your business ceases immediately; and (b) we may at any time: (i) require you to deliver up all Products in your possession which have not been resold, or irrevocably incorporated into another product; and (ii) if you fail to do so promptly, enter any of your premises or the premises of any third party where the Products are stored in order to recover them. For the avoidance of doubt, we shall also be entitled to recover payment for the Products notwithstanding that legal and beneficial ownership and title of any Products has not passed from us.
- 12.6 By entering into the Contract, you hereby 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.
- 13. OUR LIABILITY**
- 13.1 We only supply the Products for internal use by your business or for retail sale directly to consumers or end users, and you agree not to use the Product for the purposes of wholesale to any other business.
- 13.2 Nothing in these Terms limits or excludes our liability for: (a) death or personal injury caused by our negligence; (b) fraud or fraudulent misrepresentation; (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); (d) defective products under the Consumer Protection Act 1987; or (e) any matter in respect of which it would be unlawful for us to exclude or restrict liability.
- 13.3 Subject to clause 13.2, we will under no circumstances whatsoever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract for: (a) any loss of profits, sales, business, or revenue; (b) loss or corruption of data, information or software; (c) loss of business opportunity; (d) loss of anticipated savings; (e) loss of goodwill; or (f) any indirect or consequential loss.
- 13.4 Subject to clause 13.2, our total liability to you in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Products.
- 13.5 Except as expressly stated in these Terms, we do not give any representation, warranties or undertakings in relation to the Products. Any representation, condition or warranty which might be implied or incorporated into these Terms by statute, common law or otherwise is excluded to the fullest extent permitted by law. In particular, we are not responsible for ensuring that the Products are suitable for your purposes and do not represent, undertake or warrant that the Products are in any way suitable for, or intended to, protect any iPad® or other tablet device with which they are used from damage in the event that the tablet device is dropped or mishandled, and can accept no liability whatsoever in respect of same.
- 13.6 You shall indemnify us from and against any and all liability loss, damage, injury cost, expenses, claims and demands caused by your actions or omissions and arising from the subject matter of any Contract other than as a result of negligence or breach of Contract by us.
- 14. TERMINATION AND SUSPENSION**
- 14.1 If you become subject to any of the events listed in clause 14.2 we may terminate the Contract with immediate effect by giving written notice to you.
- 14.2 The relevant events are: (a) you suspend, or threaten to suspend, payment of your debts, or are unable to pay your debts as they fall due or admit inability to pay your debts, or (being a company or limited liability partnership) you are deemed unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) you are deemed either unable to pay your debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) you have any partner to whom any of the foregoing apply; (b) you commence negotiations with all or any class of your creditors with a view to rescheduling any of your debts, or make a proposal for or enter into any compromise or arrangement with your creditors; (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with your winding up, other than for the sole purpose of a scheme for your solvent amalgamation with one or more other companies or your solvent reconstruction; (d) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over you; (e) (being a company) the holder of a qualifying floating charge over your assets has become entitled to appoint or has appointed an administrative receiver; (f) a person becomes entitled to appoint a receiver over your assets or a receiver is appointed over your assets; (g) (being an individual) you are the subject of a bankruptcy petition or order; (h) one of your creditors or encumbrancers attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of your assets and such attachment or process is not discharged within 14 days; (i) any event occurs, or proceeding is taken, with respect to you in any jurisdiction to which you are subject that has an effect equivalent or similar to any of the events mentioned in clause 14.2(a) to clause 14.2(i) (inclusive); (j) you suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of your business; (k) your financial position deteriorates to such an extent that in our opinion your capability to adequately fulfill your obligations under the Contract has been placed in jeopardy; (l) (being an individual) you die or, by reason of illness or incapacity (whether mental or physical), you become incapable of managing your own affairs or become a patient under any mental health legislation, if you fail to pay any amount due under this Contract on the due date for payment; and (m) if you fail to pay any amount due under any Contract on the due date for payment.
- 14.3 Without limiting our other rights or remedies, we may suspend provision of the Products under the Contract or any other contract between you and us if you become subject to any of the events listed in clause 14.2(a) to clause 14.2(m), or we reasonably believe that you are about to become subject to any of them.
- 14.4 On termination of the Contract for any reason you shall immediately pay to us all of our outstanding unpaid invoices and interest.
- 14.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 14.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 15. INTELLECTUAL PROPERTY**
- 15.1 *Koooky*® is a registered trade mark of Koooky SLU registered in the European Community, China, the United States of America, Japan, Australia and Mexico. That trade mark, and any further logos, trade marks or trade names that we may, in writing, permit you to use in respect of the Products shall be known as the "**Trade Marks**".
- 15.2 We hereby grant to you the limited, non-exclusive right, which is revocable at will, in the territory in which you do business (**Territory**), to use the Trade Marks in the promotion, advertisement and sale of the Products. You acknowledge and agree that all rights in the Trade Marks shall remain ours, and that you have and will acquire no right to them, except the right to use them as expressly provided in these Terms.
- 15.3 You shall market and sell the Products only under the Trade Marks, and not in association with any other trade mark, brand or trade name, except as otherwise permitted by us. You shall ensure that the appropriate Trade Marks shall appear on all Products, containers and advertisements for the Products, followed by the symbol ®.
- 15.4 All representations of the Trade Marks that you intend to use shall be submitted to us for written approval before use. You shall comply with all rules for the use of the Trade Marks reasonably issued by us from time to time and shall not, without our consent, alter or make any addition to the labelling or packaging of the Products displaying the Trade Marks. You shall not alter, deface or remove any reference to the Trade Marks, any reference to us or any other name displayed on the Products or their packaging or labelling.
- 15.5 We make no representation or warranty as to the validity or enforceability of the Trade Marks nor as to whether they infringe any intellectual property rights of third parties in the Territory.
- 15.6 You shall not sub-license, transfer or otherwise deal with the rights of use of the Trade Marks granted under the Contract.
- 15.7 You shall not do, or omit to do, anything in its use of the Trade Marks that could adversely affect their validity or reputation.
- 15.8 You shall promptly give us notice in writing if you become aware of any infringement or suspected infringement of the Trade Marks or any other intellectual property rights relating to the Products within the Territory, or any claim that any Product or the manufacture, use, sale or other disposal of any Product within the Territory, whether or not under the Trade Marks, infringes the rights of any third party. We shall have sole discretion to decide what action to take in respect of the matter (if any), shall conduct and have sole control over any consequent action that we deem necessary; and shall pay all costs in relation to that action and shall be entitled to all damages and other sums that may be paid or awarded as a result of that action. You shall, at our request and expense, provide any reasonable assistance to us which we reasonably request with any such action.
- 15.9 We alone are responsible for the registration and maintenance of any marks or designs that relate to the Products. You shall not obtain or try to obtain or register for itself anywhere in the world any trade marks or trade names the same as or similar to the Trade Marks.
- 15.10 You shall not use the Trade Marks as part of the name under which you conduct business, or in any other way, except as expressly permitted under these Terms. Upon termination of the Contract for any reason, you will immediately stop using all or any part of the Trade Marks.
- 16. EVENTS OUTSIDE OUR CONTROL**
- 16.1 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 an Event Outside Our Control. An Event Outside Our Control is defined below in clause 16.2.
- 16.2 An **Event Outside Our Control** means any act or event beyond our reasonable control, including without limitation strikes, lock-outs or other industrial action by third parties, 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 or other natural disaster, or failure of public or private telecommunications networks or impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport, or default of our suppliers or subcontractors.
- 16.3 If an Event Outside Our Control takes place that affects the performance of our obligations under a Contract: (a) we will contact you as soon as reasonably possible to notify you; and (b) our obligations under a Contract will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control. Where the Event Outside Our Control affects our delivery of Products to you, we will arrange a new delivery date with you after the Event Outside Our Control is over.
- 16.4 You may cancel a Contract affected by an Event Outside Our Control which has continued for more than 30 days. To cancel please contact us. If you opt to cancel, you will have to return (at our cost) any relevant Products you have already received and we will refund the price you have paid, including any delivery charges.
- 17. COMMUNICATIONS BETWEEN US**
- 17.1 When we refer, in these Terms, to "in writing", this will include e-mail.
- 17.2 If you wish to give us formal notice of any matter in accordance with these Terms: (a) any notice or other communication given by you to us, or by us to you, under or in connection with the Contract shall be in writing and shall be delivered personally, sent by pre-paid first class post or other next Business Day delivery service or e-mail (b) a notice or other communication shall be deemed to have been received: if delivered personally, when left at our registered office at Placa Guillemo Num. 3, 1R Pis. Andorra La Vella, AD500; if sent by pre-paid first class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting or if sent by e-mail, one Business Day after transmission; (c) 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; and (d) the provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 17.3 If you wish to contact us for any other reason other than as set out in clause 17.2 you can contact us by telephoning our customer service team at 00 353(0) 1901 1713 or by e-mailing us at sales@koooky.com.
- 18. OTHER IMPORTANT TERMS**
- 18.1 We may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of our rights or obligations under the Contract.
- 18.2 You may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of your rights or obligations under the Contract without our prior written consent.
- 18.3 Any Contract is between you and us. No other person shall have any rights to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 18.4 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 18.5 If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 18.6 If we fail to insist that you perform any of your obligations under these Terms, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 18.7 A Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 18.8 We both irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with a Contract or its subject matter or formation (including non-contractual disputes or claims).
- 18.9 Except as set out in these Terms, no variation of any Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by us.