

LUMINATION TERMS AND CONDITIONS OF SALE

1 Definitions

1.1 In these Conditions, the following definitions apply:

“**Buyer**” means the person or firm who buys or agrees to buy the Games from the Seller and set out in the Order;
“**Business Day**” means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

“**Conditions**” means the terms and conditions set out in this document;

“**Contract**” means the contract between the Seller and the Buyer for the sale and purchase of the Games in accordance with these Conditions;

“**Force Majeure Event**” has the meaning given in clause 10;

“**Intellectual Property Rights**” means patents, rights to inventions, copyright and related rights, moral rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world. “**Games**” means the Lumination game including the board, die, counters, cards and instructions;

“**Order**” means the order placed by the Buyer for purchase of the Games as set out either in the Seller’s order form or by email from the Buyer;

“**Seller**” means The Lumination Game Limited, Company No. 12187694 registered in England and Wales and whose registered office is at Omega Court, 364 - 366 Cemetery Road, Sheffield S11 8FT.

1.2 **Construction.** In these Conditions, the following rules apply:

(a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(b) A reference to a party includes its personal representatives, successors or permitted assigns.

(c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

(d) Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

(e) A reference to writing or written includes faxes and e-mails.

2 Conditions applicable

2.1 These Conditions apply to the Contract to the exclusion of all other terms and conditions, including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Buyer to purchase the Games in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Seller issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between

the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract.

3 The Games

The quantity and description of the Games are set out in the Order.

4 Price and payment

4.1 The price of the Games shall be the price set out in the Order.

4.2 The Seller may invoice the Buyer for the Games on or at any time after the Buyer places an Order for the Games.

4.3 The price is exclusive of the costs and charges of packaging, insurance and transport of the Games, which shall be invoiced to the Buyer.

4.4 The price is exclusive of VAT, which shall be due at the rate ruling on the date of the Seller’s invoice (if VAT is applicable).

4.5 The Buyer shall pay the invoice in full and in cleared funds within 28 days of the date of the invoice to the bank account set out in the Order. Time for payment shall be of the essence.

5 Delivery of the Games

5.1 The Seller shall deliver the Games to the location set out in the Order or such other location as the parties may agree (“**Delivery Location**”) within 28 days of the Seller receiving payment in cash or in cleared funds of the invoice.

5.2 Any dates quoted by the Seller are approximate only, and the time of delivery is not of the essence.

5.3 The Seller shall have no liability for any delay in delivery or failure to deliver the Games to the extent that such delay or failure is caused by a Force Majeure Event or the Buyer’s failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Games.

5.4 Delivery of the Games shall be completed on the Games’ arrival at the Delivery Location.

6 Title and risk

6.1 Title to the Games shall not pass to the Buyer until the Seller has received payment in full for the Games including any delivery charges and VAT payable.

6.2 Risk shall pass on delivery of the Games.

7 Intellectual Property

7.1 The Buyer acknowledges that the Seller is and shall remain the official licensee of the Intellectual Property Rights in the Games and the Buyer warrants that it shall not nor directly nor indirectly assist any other person to:

(a) Infringe the Intellectual Property Rights;

(b) register, or attempt to register or otherwise obtain any formal rights in respect of the Intellectual Property Rights or anything confusingly similar thereto;

(c) challenge the Seller’s licence of the Intellectual Property Rights or bring proceedings for any infringement of the Intellectual Property in its own name or otherwise.

7.2 The Seller hereby grants the Buyer a non-exclusive sub-licence to use the Game for individual, group or team coaching, as part of the Buyer’s professional activities.

8 Warranties

8.1 The Seller warrants that on delivery the Games shall conform in all material respects with their description;

be free from material defects in design, material and workmanship; and be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

8.2 Subject to clause 8.3, if:

(a) the Buyer gives notice in writing to the Seller within 14 days of delivery of the Games that some or all of the Games do not comply with the warranty set out in clause 8.1; and

(b) the Buyer (if asked to do so by the Seller) returns such Games to the Seller's place of business at the Buyer's cost, the Seller shall, at its option, repair or replace the defective Games, or refund the price of the defective Games in full.

8.3 The Seller shall not be liable for the Games' failure to comply with the warranty set out in clause 8.1 in any of the following events:

(a) the Buyer makes any further use of such Games after giving notice in accordance with clause 8.2;

(b) the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, use and maintenance of the Games;

(c) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.

8.4 Except as provided in this clause 8, the Seller shall have no liability to the Buyer in respect of the Games' failure to comply with the warranty set out in clause 8.1.

8.5 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.

8.6 These Conditions shall apply to any repaired or replacement Games supplied by the Seller.

9 Limitation of Liability

9.1 The Buyer acknowledges and accepts that the Games are to be used as a tool for coaching, training, action learning, staff development or similar activities but the Games are not intended to replace a consultation with an appropriately qualified coach or other relevant professional. Accordingly, the Buyer acknowledges and accepts that the Seller shall not be responsible for any claims, losses or damages arising out of or relating to the Buyer's use of the Games.

9.2 Nothing in these Conditions shall limit or exclude the Seller's liability for: death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); fraud or fraudulent misrepresentation; breach of the terms implied by section 12 of the Sale of Goods Act 1979; or defective products under the Consumer Protection Act 1987.

9.3 Subject to clause 9.2:

(a) the Seller shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

(b) the Seller's total liability to the Buyer in respect of all other 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 the price of the Games.

10 Force Majeure

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature

could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of Sellers or subcontractors.

11 General

11.1 **Severance:** If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

11.2 **Variation:** Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

11.3 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.

11.4 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy.

11.5 **Governing law and jurisdiction.** The 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, English law.