



General Terms and Conditions

Of Sales and Delivery

03-04-2017

ELI Play



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General terms and conditions of sale and delivery

These general terms and conditions of sale and delivery apply to all offers and agreements concerning delivery of goods and/or services, of any nature whatsoever, by the private limited-liability company European Leisure Industries B.V., having its registered office at Korenmolen 18 (5281 PB) in Boxtel (registered with the Chamber of Commerce for Eindhoven under number 17204274) The general terms and conditions will be registered at the Chamber of Commerce in Eindhoven under the number: "17204274".

The terms and conditions take effect as of 16 December 2016.

Article 1. Definitions

The following definitions are applied in these terms and conditions:

- a. 'ELI Play': the private limited-liability company European Leisure Industries BV;
- b. 'other party': the party entering into negotiations with or entering into an agreement with ELI Play;
- c. 'the conditions': these terms and conditions of sale and delivery;
- d. 'delivery': actual offer of the goods sold by or on behalf of ELI Play to the other party; actual offer is defined as notification by or on behalf of ELI Play that the goods are ready for the other party in the warehouse.

Article 2. Applicability

1. These conditions apply to all offers and agreements concerning deliveries of goods and/or services, of any nature whatsoever, by ELI Play.
2. Deviation from these conditions is possible only if such has been agreed in writing by ELI Play and the other party.
3. Any terms and conditions of purchase or other conditions on the part of the other party do not apply, except if such have been accepted in writing by ELI Play.
4. If in any contract a deviation from one or more of the articles in these terms and conditions is agreed, the remaining terms and conditions will remain fully applicable.

Article 3. Offers and agreements

1. All offers by ELI Play, unless it is explicitly stated otherwise in the offer concerned, are without obligation. If the other party accepts an offer, ELI Play is entitled to revoke this offer within 3 working days of receipt of this acceptance.
2. The offer is valid for a period of 2 days only as an invitation for the other party to place an order.
3. ELI Play is not bound within the context of offers made by the content of information or advertising materials, samples or models. The information included or implied in these is of an indicative nature only.



4. ELI Play reserves the intellectual property rights, if and in as far as applicable, to designs, illustrations, drawings, samples and models provided with offers. These must be returned immediately to ELI Play at ELI Play's first request, without prejudice to other legal measures open to ELI Play for the protection of its rights.
5. Acceptance of the offer means that the other party is in agreement with the application of these conditions and that the other party waives any declaration of applicability of its own terms and conditions (of purchase).
6. Any agreement between ELI Play and the other party is only entered into once ELI Play has issued a written order confirmation or ELI Play has commenced implementation of the agreement.
7. The other party is obliged to inform ELI Play of facts or circumstances that may have an influence on the implementation of the agreement.

Article 4. Cancellation

1. In the event of cancellation of the agreement by the other party before ELI Play has commenced implementing the agreement, the other party will be liable to pay compensation of 30% of the agreed amount.
2. After ELI Play has commenced implementation of the agreement, cancellation is no longer permitted. In such cases, the other party remains liable to pay the agreed amount in full.

Article 5. Price

1. Unless it is stated otherwise in offers or order confirmations, the prices quoted by ELI Play are to be increased by turnover tax and these prices are for delivery 'ex warehouse'.
2. Any extra cost associated with recorded delivery, cash on delivery and express shipments and/or low-value deliveries will be charged on to the other party.
3. Agreed prices may be increased on the grounds of government regulations or other compulsory measures, without the other party being entitled to dissolve the agreement.
4. In the event that ELI Play's suppliers increase their prices, ELI Play is entitled to increase the price it has agreed with the other party accordingly.
5. Every change in the factors that influence ELI Play's price and the extra costs referred to in paragraph 2, including purchase costs, exchange rates, import and export duties and other levies imposed upon import or export, insurance premiums, freight charges and other levies and taxes, may be charged on by ELI Play to the other party.



6. The other party indemnifies ELI Play against all costs and damages ensuing for ELI Play from the fact that:
 - a. the other party is not properly registered for B.T.W. [Dutch VAT] or a comparable tax in another relevant EU Member State; and/or
 - b. the other party provides incorrect or late data to ELI Play and/or the authorities in the area of B.T.W. or comparable taxes in a relevant EU Member State.

Article 6. Delivery

1. The delivery times quoted by ELI Play are an indication only. Delivery times quoted may only be seen as a deadline if such is explicitly stated and agreed.
2. If no delivery time is agreed, ELI Play will apply a reasonable term.
3. Unless explicitly agreed otherwise, the place of delivery will be ELI Play's warehouse.
4. The other party is obliged:
 - a. to allow ELI Play to make the actual offer;
 - b. to inspect that delivered immediately upon receipt;
 - c. to sign a proof of delivery provided by ELI Play as confirmation of receipt;
 - d. to state any visible defects in the goods delivered or the packaging thereof on this proof of delivery; unconditional signature of the proof of delivery is taken to signify that delivery has taken place in accordance with the agreement;
 - e. defects in the goods delivered other than those stated under d. must be reported to ELI Play in writing no later than the first working day after delivery, in accordance with the procedure as laid down in Art. 9 (complaints, default)
5. The risk for the goods is the other party's from the moment of delivery. This also applies in the event that the goods are not received by the other party on the grounds of complaint and/or guarantee.
6. The other party is obliged to receive the goods upon delivery. If the other party fails to receive the goods to be delivered by ELI Play, the goods will be stored at the other party's risk and expense. In the event that the other party, in spite of a summons by ELI Play to do so, has not collected the goods at its own expense within 10 working days, ELI Play is entitled to sell the goods to a third party and hold the original other party liable for any loss incurred. The original other party is liable at all times to pay compensation for the cost of the above-mentioned storage and the (additional) shipping and administrative expenses incurred by ELI Play.
7. If the delivery is postponed or brought forward at the other party's request, the other party is obliged to pay compensation for the costs incurred for this.
8. ELI Play is entitled to suspend further performance of its obligations as long as the other party has not fulfilled all of its obligations to ELI Play. This right to suspend applies until the moment the other party fulfils its obligations, unless ELI Play has in the meantime exercised its right to dissolve the agreement. All of which is without prejudice to ELI Play's entitlement to compensation.



Article 7. Guarantee

1. In the case of the sale of new goods, ELI Play guarantees the construction of these goods for a period of 12 months, commencing on the date on which delivery takes place. This guarantee includes production errors. The guarantee does not include losses or damage resulting from wear and tear.
2. Under this guarantee, ELI Play will, at the discretion of ELI Play, repair or replace defective goods, subject to payment by the other party of all wage, traveling and lodging costs associated with the repair or replacement.
3. If ELI Play has guarantee claims against its supplier, it will, unless the supplier has excluded such, transfer this guarantee to the other party, without being obliged to approach the supplier in this respect.
4. ELI Play's guarantee may only be transferred to a third party in the event that an explicit agreement is made with the other party in writing.
5. Any claim under the guarantee submitted in time will only be honored if the goods delivered by ELI Play have been used in accordance with their intended use and the instructions for use included followed correctly.
6. The claim under the guarantee lapses if:
 - a. the other party fails to inform ELI Play of such in writing, within 5 working days following discovery of a defect or following the time such should reasonably have been discovered;
 - b. the other party is culpable in any way in relation to the arising of the defect;
 - c. the defect arose through improper use of the good by the other party;
 - d. the other party has made changes or modifications to the good or had such made, other than by ELI Play;
 - e. the other party has transferred the goods to a third party, either in ownership, or in use;
 - f. the other party has not fulfilled its obligations, including payment of the invoice amount, by virtue of the agreement;
 - g. the defect is fully or in part a consequence of failure to observe the instructions for use and assembly or injudicious use;
 - h. the defect is the result of normal wear and tear;
 - i. the defect is the result of use for purposes other than the normal use;
 - j. the defect has arisen through repair or other work on the products/goods performed by a third party, including the other party.
7. All goods and/or parts replaced under the guarantee are the property of ELI Play.
8. Claims by the other party by virtue of this article are valid only upon submission of the original invoice and are without prejudice to the payment obligations to ELI Play.



Article 8. Inability to perform the work and force majeure

1. Circumstances outside the will and control of ELI Play, of such a nature that fulfilment of the agreement can no longer reasonably be demanded or no longer demanded in full, entitle ELI Play to dissolve the agreement in full or in part, without intervention by the court and/or to suspend implementation thereof in full or in part until the above-mentioned circumstances no longer exist, without any compensation being payable.
2. In the event of force majeure for ELI Play, implementation of the agreement will be suspended for as long as the cause of the force majeure makes it impossible for ELI Play to implement the agreement, without the other party being able to claim any compensation and/or dissolve the agreement.
3. In the event of force majeure lasting longer than 2 months, the other party is obliged to make a payment, in reasonable proportion to the price of the delivery as a whole, for that part of the goods that has already been delivered. ELI Play and the other party are then entitled to dissolve the remainder of the agreement. The other party has no entitlement to claim performance and/or compensation.
4. In the event that only a certain part of the agreement cannot be implemented, dissolution will take place in relation only to the non- performable part of the agreement, unless this cannot reasonably be demanded.
5. Force majeure includes, but is not limited to: war, threat of war and riot, natural and nuclear disasters, restrictive measures by the Dutch or other governments, fire, sabotage, general strike, illness on the part of personnel, interruptions to transportation, shortcomings on the part of suppliers and other unforeseeable circumstances as a result of which implementation of the agreement is temporarily or permanently impossible.

Article 9. Complaints, default

1. Complaints are considered to include all contentions concerning implementation of the agreement. Complaints about the goods delivered must be made known by the other party immediately upon delivery, and stated on the proof of delivery, although if such is not reasonably possible, no later than on the next working day following delivery and in writing. In relation to defects occurring thereafter, complaints must be reported within 10 working days of the defect being discovered or of the moment the defect should reasonably have been discovered. Late completely notification nullifies the other party's claims to performance, repair, compensation or dissolution.
2. The complaint must consist of a description of the contentions and the defects discovered.
3. Complaints about an invoice from ELI Play must be submitted within 5 working days, in writing, stating the date of invoice, invoice number and any consignment note numbers. Suspension of any payment obligation or setting off against any counterclaim is on the part of the other party is not permitted.
4. Returned goods will not be accepted by ELI Play outside of the above- mentioned complaints procedure, unless ELI Play has given its permission for such in writing in advance.



5. Complaints will never be accepted if it transpires that the instructions for use have not been followed by or on behalf of the other party, or the goods have been used incorrectly, or if any changes or modifications have been made to the goods supplied, other than by ELI Play.

Article 10. Liability

1. ELI Play is only liable for damages attributable to negligence on its part, to the extent that legally valid and convincing evidence of such negligence has been provided by the other party. Under no circumstance this liability will exceed the immediately caused material damage and/or bodily injury, under exclusion of any consequential damages and/or loss of profits.
2. ELI Play's liability will in all cases be limited to the amount of twice the net value of the invoice.
3. In as far as the claims made by the other party against ELI Play concern products that ELI Play has received from its suppliers, ELI Play's liability will be limited to the amount of compensation that ELI Play receives from the supplier in this respect.
4. ELI Play is not liable for errors by (ancillary) staff or third parties working on implementation of the agreement with the other party. This exclusion also covers damages attributable to intent or (gross) negligence or (gross) recklessness. Errors also includes attributable shortcomings and wrongful actions.
5. In the event that damages are caused to third parties, related either directly or indirectly to the implementation of the agreement between ELI Play and the other party, the other party is obliged to indemnify ELI Play and persons employed by ELI Play in the implementation of the agreement, in full.
6. If ELI Play is held liable by the other party on grounds not ensuing from the agreement, the same limitation of liability will apply as described in the paragraphs above.
7. Any claim for compensation and/or repair or replacement lapses one year following delivery of the goods.

Article 11. Hold Harmless Clause

1. The Other Party shall defend, indemnify ELI Play, and hold ELI Play, its officers, officials, employees and agents harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the gross negligence or intent of the side of ELI Play

Article 12. Payment

1. Payment must be made no later than within 14 days of the date of invoice. In the event that this term is exceeded, the other party is legally in default vis-à-vis ELI Play and ELI Play is entitled to dissolve the agreement, without prejudice to its other statutory and contractual rights.
2. In the event of late payment, the other party is obliged to pay to ELI Play a rate of interest of 1.5% per month on the invoice amount.



3. If ELI Play feels compelled to bring in a third party for collection of the debt, both judicial and extrajudicial charges will be at the other party's expense. The extrajudicial costs will be set at 15% of the invoice amount, with a minimum of €125, and in any event with a minimum of the applicable collection rate charged by lawyers.
4. Payments by or on behalf of the other party will serve to defray, in sequence, any extrajudicial collection costs payable, the interest and then, in order of age, the outstanding principal sums, irrespective of any statements to the contrary by the other party.
5. In the event that the other party is in default and/or ELI Play has grounds to fear that the other party will not fulfil its payment obligations to ELI Play (on time), ELI Play is entitled, without being liable to pay any compensation and without prejudice to its other statutory and contractual rights, to demand payment in advance or surety from the other party, as well as to suspend implementation of the agreement in full or in part, to rescind agreed payment terms – whether these concern other agreements with the other party or not – as a consequence whereof outstanding claims become immediately payable, and ELI Play is entitled to suspend its obligations to the other party from other agreements.
6. Surety is considered to include commonly accepted cash on delivery conditions and conditions of documentary credit, such as irrevocable letters of credit, in this case confirmed by a first-rate bank, cash against documents or cash against delivery.
7. If it is agreed that payment will take place and/or if surety is granted through documentary credit and/or bank guarantees, the other party guarantees that such will take place through a reputable bank.
8. The other party is not entitled to set off a claim on its part against any claim by ELI Play, unless this is granted to it on the basis of a final and conclusive decision by the court or an arbitration board.
9. Deliveries to another party established or residing outside the Netherlands will take place only following payment in full.

Article 13. Retention of title

1. ELI Play retains the title to all goods delivered by it to the other party until the purchase price for these goods and for all other goods delivered by virtue of other agreements with the other party has been paid in full.
2. In the event that ELI Play performs work for the other party within the framework of the agreement, for example under the provisions of Article 7 (guarantee), this retention of title applies until the other party has also fulfilled these claims.
3. The retention of title also applies to claims ELI Play may obtain against the other party on the grounds of failure by the other party in its obligations to ELI Play.
4. As long as the title to the goods delivered has not passed to the other party, these goods may not be pledged or any other right to them granted to a third party by the other party, unless ELI Play has given explicit permission for such.



5. The other party is obliged to store products delivered under retention of title carefully and recognizably as the property of ELI Play, and to insure these against risks such as fire, explosion, damage and theft. At ELI Play's first request, the other party will cede all rights to the insurers concerned in this respect to ELI Play.
6. If and as long as ELI Play is the owner of the products, the other party will inform ELI Play immediately if any part of the products is lost or damaged, or the products are placed under attachment and/or any other claim is made to (any part of) the products. In addition, the other party will inform ELI Play at ELI Play's first request where the products owned by ELI Play are located.
7. In the case of attachment, request for or (temporary) moratorium on payment or bankruptcy/involuntary liquidation, the other party will immediately inform the attaching bailiff, administrator or trustee/receiver of ELI Play's (ownership) rights.

Article 14. Intellectual property

1. All intellectual property rights concerning the goods delivered and work performed by ELI Play, as well as data and know-how, will remain with ELI Play. The other party is not entitled to publish, reproduce, copy, process or undertake any similar action without express written permission from ELI Play in advance.
2. Without prejudice to that stated in paragraph 1, the other party is not entitled to remove, damage and/or amend the brands, as well as the type or identity numbers or signs placed on the goods delivered by ELI Play, including their packaging.

Article 15. Dissolution

If the other party remains in default of payment of any amount owed to ELI Play or fails to fulfil any other obligation ensuing from the agreement (in full and satisfactorily), or has acted contrary to this, if the other party requests a moratorium or is made bankrupt/goes into involuntary liquidation, of the debt rescheduling scheme for natural persons is applied to it, as well as if any attachment is made against the other party, ELI Play is entitled, without any notification of default or intervention by the court being required, to consider the agreement to be dissolved, without prejudice to ELI Play's entitlement to claim compensation for costs, damages and interest from the other party.

Article 16. Applicable law and jurisdiction

This contract is subjected to Dutch law. Any dispute between the parties, arising in connection with the content or interpretation of this contract, shall be subject to the exclusive jurisdiction of the competent court in Eindhoven, The Netherlands.