

ULTRA SPORT EUROPE LIMITED also T/A TMG SUPPORT

## TERMS AND CONDITIONS OF TRADE

These Terms & Conditions supercede all previous Terms & Conditions and apply from the 1<sup>st</sup> November 2019

### 1. General

1.1 "These Conditions are the only conditions upon which Ultra Sport Europe Limited ("USE") is prepared to deal with you ("the Buyer") and they shall govern the Contract to the entire exclusion of any other express or implied conditions";

#### 1.2 In these Conditions:

"Goods" means the sports equipment and other goods (including any instalment of the goods or any parts for them) which USE are to supply;

"Contract" means the contract between us for the sale and purchase of the Goods.

1.3 These Conditions may only be modified by a variation in writing signed on behalf of USE by a Director and no other action on our part (whether delivery of the Goods or otherwise) shall be construed as an acceptance of any other conditions.

1.4 These Conditions (as modified in accordance with condition 1.3 and together with the matters referred to on the face of our quotation and/or acceptance of order) embody the entire understanding of the parties and supersede any prior promises, representations, undertakings or implications. None of these Conditions shall exclude either party's liability in respect of any statement made fraudulently by that party prior to the date of the Contract

1.5 USE's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by USE in writing. In entering into the Contract the Buyer acknowledges that he does not rely on any such representations which are not so confirmed.

1.6 No contract shall be concluded until USE despatches an acceptance of order to the Buyer. Any quotation in whatever form given to the Buyer is given subject to these Conditions and does not constitute an offer to sell.

### 2. Price and Payment

2.1 The price for the Goods shall be the list price published on the date of despatch. Prices on quotes are the prices prevailing at the date of the quote and may be increased by USE prior to despatch of the Goods. All prices are exclusive of value added tax or any similar taxes, levies or duties which will be added to or charged on invoices at the appropriate rates.

2.2 Invoices are dated on the day of despatch and thirty days credit is given to Buyers who have a credit facility with USE. Settlement discounts when offered are shown at the foot of the invoice. Settlement discounts can only be taken if there are no other invoices outstanding.

2.3 Three approved trade references and a bankers reference together with a copy of the Buyer's latest balance sheet must be submitted before a credit account can be opened. All accounts will become due for payment in full thirty days from the date of invoice.

2.4 If the Buyer shall fail to make payment within the credit period interest will be applied to overdue accounts on a day to day basis from the date when payment was due at a rate of 5% per annum over the base lending rate charged by Lloyds Bank PLC from time to time. USE may at its discretion include the interest in the invoice for the purpose of proceedings or sue for the same as if it were a separate and several obligation.

2.5 If any payments due are not made within the credit period USE reserves the right to refuse to deliver any further Goods to the Buyer until such payment (including interest if applicable) is made.

### 3. Delivery

3.1 USE will endeavour to deliver the exact quantities of Goods ordered but USE reserves the right to deliver up to 5 per cent more or 5 per cent less than the quantity ordered. The Buyer will only be invoiced for the price of Goods actually delivered.

3.2 USE may deliver the Goods in instalments, and where it does so each delivery shall constitute a separate contract. Failure by USE to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

3.3 Any time or date for deliveries specified by USE is an estimate only; USE shall not be responsible for any delay for whatever cause.

3.4 In the case of damage or shortage of the Goods in transit the Buyer must notify USE within three days of receipt of the Goods. In the event of non-delivery of a whole consignment notice in writing must be received by USE within fourteen days of the date of invoice. All goods must be inspected by the Buyer at the time of delivery.

### 4. Risk and Property

4.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when USE has tendered delivery of the Goods.

#### 4.2 Notwithstanding delivery

and the passing of risk in the Goods, or any other provision of these Conditions, the property and legal title in the Goods shall not pass to the Buyer until USE has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by USE to the Buyer for which payment is then due.

4.3 Until such time as the property and legal title in the Goods passes to the Buyer, the Buyer shall hold the Goods as USE's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as USE is property, but the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business.

4.4 Until such time as the property and legal title in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), USE shall be entitled at any time to require the Buyer to deliver up the Goods to USE and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

4.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of USE but if the Buyer does so all moneys owing by the Buyer to USE shall (without prejudice to any other right or remedy of USE) forthwith become due and payable.

### 5. Cancellations and Returns

5.1 Orders which have been accepted by USE can only be cancelled by the Buyer with the prior written agreement of USE and on condition that the Buyer shall indemnify USE in full against all loss (including loss of profit), costs (including the cost of all transportation costs, labour and materials used), damages, charges and expenses incurred by it as a result of cancellation.

5.2 USE will not accept the return of any Goods of faulty manufacture without first receiving written notification which must state the nature of the fault of each item and the invoice number relating to the purchase of each item. All transportation charges relating to the return of the Goods shall be borne by the Buyer unless otherwise agreed in writing. Goods found to be of faulty manufacture will be replaced by USE provided that the procedure for return in this sub-clause has been complied with. In replacing faulty Goods USE may, at its discretion, offer a betterment option (ie offer replacement goods of a better specification and/or quality). The terms of such a "betterment offer" will vary according to each individual case. USE will return Goods that, after examination, are found to have no fault or defect, and reserves the right to recover from the Buyer any loss (including loss of profit), costs (including the cost of all transportation costs, labour and materials used), damages, charges and expenses incurred by it as a result of such returns.

5.3 If the Buyer enters into any voluntary arrangement with its creditors, becomes subject to an administration order, has a petition

presented or an order made for its winding-up, has a receiver, administrator or administrative receiver appointed over all or any part of its undertaking or assets, goes into liquidation or ceases or threatens to cease to trade, then without prejudice to any other remedy available to USE, USE shall have the right to cancel the Contract or suspend further deliveries under the Contract without any liability to the Buyer. If the Goods have been delivered but not paid for, the price shall become immediately due and payable, notwithstanding any previous agreement or arrangement to the contrary.

5.4 USE reserves the right to levy a handling charge at its then current rates on any Goods returned other than faulty Goods returned in accordance with clause 5.2.

## 6. Warranty and liability

6.1 USE warrants that the Goods shall at the time of delivery be free from defects in workmanship and materials. If any Goods do not conform to this warranty USE shall replace those Goods.

6.2 USE shall not be liable for any claim by the Buyer in respect of:-

6.2.1 any Goods which have been altered, modified, misused or allowed to fall into a bad state of condition or general repair;

6.2.2 any expenditure loss of profit or consequential loss of any kind howsoever caused;

6.2.3 any damage which has been sustained to the Goods in transit unless notice has been given to USE as set out in Condition 5.2 above.

6.3 Except as provided in condition 6.1 and in Section 12 of the Sale of Goods Act 1979:

6.3.1 All conditions and warranties, express or implied, as to the quality or fitness for any purpose of the Goods are expressly excluded by USE; and

6.3.2 USE shall not under any circumstances be liable in contract, tort, statute or otherwise for any direct, indirect or consequential loss or for increased costs or expenses or loss of profit, business, contracts, revenues or savings howsoever arising which may be suffered by the Buyer except in respect of liability for death or personal injury caused by negligence (which neither party seeks in any way to exclude) and as provided in Condition 6.1 and Section 12 of the Sale of Goods Act 1979.

6.4 If, notwithstanding the above provisions of this Condition, USE are found liable for any loss or damage suffered by the Buyer that liability shall in no event exceed the price of the Goods

## 7. Trade Marks

7.1 The Buyer recognises the value of the goodwill associated with the trade marks and trade names of USE and the trade marks identifying the Goods distributed by USE. The Buyer acknowledges and agrees that it has not acquired any rights to use any of the trade marks or trade names of USE or any rights to use any trade marks identifying any of the Goods currently distributed by USE (including, without limitation, any Bic Surf, Bic Sport, Bic Windsurf, Bic Boat, Bic Kayak, O'Brien, Liquid Force, ClingOn, FreeMotion, Straightline, Smith Optics, Bern, Northwave, Drake, POW, PDW, Arbor, Contour, GoldCoast and/or Nitro trade marks) or any trade marks identifying any other products that may subsequently be distributed by USE.

7.2 The Buyer may not, except with the prior written consent of USE, use any of the trade marks or trade names of USE or any other trade marks referred to in Condition 7.1 for advertising in any format or communication medium or any other purpose and, having obtained such prior written consent to use any such trade mark or trade name in the production of advertising in any format or communication medium, the Buyer shall not publish or distribute any such advertising without first obtaining USE's prior written approval.

7.3 In the event that the Buyer uses any of the trade marks or trade names of USE or any other trade marks referred to in Condition 7.1 in contravention of Condition 7.2, in any manner that is detrimental or could be construed as being detrimental to any such trade mark or trade name or in any format or communication medium that USE perceives to be inappropriate or that could devalue any such trade mark or trade name, USE shall be entitled (at its sole discretion) to immediately suspend the Contract until such time as such contravention or use is remedied or immediately terminate the Contract altogether by giving the Buyer written notice to that effect.

7.4 If, having obtained the prior written consent of USE to use any of the trade marks or trade names of USE or any other trade marks referred to in Condition 7.1 for such purpose, the Buyer uses any such trade mark or trade name to solicit the sale of any Goods via the Internet, the Buyer must ensure that it has sufficient stock of such Goods available at all times for immediate despatch and supply USE with a list of the Buyer's advertised selling prices for all such Goods on a weekly basis.

7.5 The Buyer shall at all times support and in no way undermine or detract from the attempts by USE to market and portray the image of Goods it distributes as high quality products.

7.6 All leaflets, specifications, drawings and particulars of prices, weights, dimensions and performance issued by USE or any of its suppliers in relation to any Goods are approximate only and are not intended to be nor shall they form the basis of any contract between the Buyer and USE.

## 8. Distribution

8.1 USE reserves the right to refuse any order made by the Buyer.

8.2 The Buyer acknowledges that the sale of Goods of any one manufacturer by USE does not automatically entitle that Buyer to purchase Goods of another manufacturer.

8.3 The Buyer acknowledges that USE is the exclusive distributor of the Goods within the United Kingdom and Eire. The Buyer agrees to purchase the Goods exclusively from USE and not from any other source whether retail, trade or otherwise. Any breach of this clause by the Buyer shall entitle USE to cancel any registration of the Buyer with USE forthwith and refuse to supply Goods to the Buyer.

## 9. Force Majeure

USE shall have the right to cancel or to reduce the volume of the Goods delivered if prevented from or hindered in delivery of Goods through any circumstances beyond its control (including, but not limited to, strike, lock-out or other industrial action, war, fire, Act of God, or prohibition or enactment of any kind) without incurring any liability whatsoever.

## 10. Set-Off

The Buyer will have no right of set-off statutory or otherwise.

## 11. Governing Law

The contract is governed by English Law and the parties submit to the exclusive jurisdiction of the English Courts.

## 12. Third Party Rights

Neither these Conditions nor the Contract create any right enforceable by any person not a party to the Contract.

### 01.11.19 E&OE

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[www.tmg-support.co.uk](http://www.tmg-support.co.uk)



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