

KELLY TOYS HOLDINGS, LLC TERMS AND CONDITIONS OF SALE OF GOODS

1. **GOODS AND PRICE:** The products (“Goods”), subject to these Terms and Conditions (“Agreement”) and pricing, are as listed below:
 - a. Goods: Goods determined by Kelly Toys Holdings, LLC (“Kelly Toys”) which can be changed, altered or modified from time to time at the sole discretion of Kelly Toys.
 - b. Price Per Unit to Buyer: Prices determined by Kelly Toys, which can be changed, altered or modified from time to time at the sole discretion of Kelly Toys.
2. **PAYMENT TERMS:** Payment Terms shall be set forth in the Commercial Invoice. Payments are to be made to Kelly Toys without any deduction or discount other than as stated in this Agreement or in the relevant Commercial Invoice. Interest is payable on all overdue accounts calculated on a daily basis at the rate of 1.5% per month as from the date due for payment until payment is received by Kelly Toys.
3. **PURCHASE ORDERS:** The terms and conditions of the Agreement shall apply to any and all purchase orders (“Purchase Order”) placed by Buyer. No Purchase Order shall be valid unless made in writing in a form acceptable to Kelly Toys. No verbal or telephone orders shall be valid, and Kelly Toys shall be under no obligation to accept and/or fulfill any such verbal orders. In the event of any conflict of any terms as set forth in any Purchase Order issued by Buyer under this Agreement, such conflicting terms shall be of no force or effect whatsoever, and this Agreement shall govern. No Purchase Order may be cancelled, modified or deferred without the prior written consent of Kelly Toys (which is at the Kelly Toys’ sole discretion). If such consent is given it is, at Kelly Toys’ election, subject to Kelly Toys being reimbursed for all losses and paid a cancellation fee (being not less than 20% of the Purchase Order price of the Goods).
4. **DELIVERY & ACCEPTANCE:** Kelly Toys reserves the right to deliver the Goods in whole or in installments, as well as to deliver prior to the date for delivery and, in such event, the Buyer must not refuse to take delivery of the Goods. Kelly Toys will notify Buyer if there is a reasonable likelihood that the Goods will be delivered later than the expected delivery date. Any failure on the part of Kelly Toys to deliver installments within any specified time does not entitle the Buyer to repudiate this Agreement with regard to the balance remaining undelivered.
5. **INSPECTION:** Buyer will have the right to inspect the Goods upon receipt, and within five (5) days after delivery, Buyer shall notify Kelly Toys, in writing, of any damage, defects, and/or shortages detected in the Goods. Within seven (7) days after the receipt of such notice, Kelly Toys will investigate the claim of shortages, defects or damage, inform Buyer of its findings. Kelly Toys shall replace such Goods which are found by Kelly Toys to be short in supply, defective, or damaged.
6. **TITLE & RISK OF LOSS:** Title to the Goods and risk of loss and damage to the Goods shall pass to Buyer immediately upon the Goods being picked up by or on behalf of the Buyer, its agent or transport carrier, at Kelly Toys’ warehouse or delivered to Buyer, and thereafter Kelly Toys shall not be responsible for any loss or damage to the Goods.
7. **RETURNS:** All sales to Buyer are final sales and no such returns shall be made to Kelly Toys by Buyer unless such returns are pursuant to Sections 5 and/or 11(e) herein, or such returns have been otherwise agreed to in writing by Kelly Toys.

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8. **BUYER'S RESALE OF GOODS:** Buyer will offer the Goods for sale from its retail store locations and/or its website as mutually agreed to in writing by the Parties in accordance with the terms set forth in this Agreement. Buyer shall provide Kelly Toys with an updated list of all retail locations selling the Goods. At Kelly Toys request, Buyer shall make available to Kelly Toys a reseller's certificate, or similar document, evidencing Buyer is solely responsible for paying any applicable sales and/or use (or similar) taxes.
9. **LICENSE:** Kelly Toys grants to Buyer a royalty-free, non-exclusive, within the Territory, right and license to use, reproduce, display, distribute, adapt, modify, re-format, and otherwise commercially or non-commercially exploit in any manner, subject to Kelly Toys' written consent (which shall be at Kelly Toys' sole and absolute discretion), any and all Product Content provided or made available by Kelly Toys to Buyer. "Product Content" means the materials describing or depicting the Goods sold by Kelly Toys to Buyer, including product information and descriptions, photographs, videos, product data and literature, and any trademarks and copyrights relating to the Goods. Kelly Toys represents that its Product Content does not violate another party's intellectual property rights. Notwithstanding anything contained herein, Buyer also agrees to abide by the requirements set forth in Kelly Toys' Non-Publication Agreement found in the Vendor Portal at Kelly Toys.com.

10. REPRESENTATIONS AND WARRANTIES:

- a. Buyer has full power, capacity and authority to enter into and perform this Agreement on its terms;
- b. Buyer is under no contractual or other legal obligation which might interfere in any way with its prompt and complete performance under this Agreement;
- c. Buyer will ensure that it conforms to all legislation, rules, regulations and statutory requirements in relation to the Goods currently existing, and which may exist in the future, in the Territory.
- d. Buyer shall conform to the sales and marketing policies of Kelly Toys. Buyer must obtain the Kelly Toys' prior written approval of all advertisements, sales promotions, merchandising and publicity materials for the Goods, as set forth in Kelly Toys' Non-Publication Agreement. Such approval shall not be unreasonably withheld.
- e. Kelly Toys warrants that it has good title the Goods supplied to Buyer and that where such Goods supplied are determined to be defective, in Kelly Toys sole discretion, Kelly Toys will replace such defective Goods at no cost to Buyer.
- f. Neither party shall enter into or have authority to enter into any contracts, agreements or engagements or make any representation or warranty or incur any liabilities on behalf of the other or pledge the credit of or otherwise bind or oblige the other party hereto.

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11. **DEFAULT:** The occurrence of any of the following shall constitute a material default ("Material Default" by the Buyer under this Agreement:
 - a. The failure of the Buyer to make a payment when due;
 - b. The insolvency or bankruptcy of either party;
 - c. The subjections of any of Buyer's property to any levy, seizure, general assignment for the benefit or creditors, application or sale for or by any creditor or government agency.

12. **REMEDIES FOR DEFAULT:** In addition to any and all other rights available under the law, if Buyer commits a Material Default, Kelly Toys may elect to terminate this Agreement if such Material Default is not cured within thirty (30) days after Kelly Toys provides written notice to Buyer of the Material Default. In the event of such termination for default, all monies owed to Kelly Toys at the time of termination must be paid to Kelly Toys upon termination.

13. **CONFIDENTIALITY:**
 - a. Definition: The term "Confidential Information" as used in this Agreement means secret, confidential or proprietary information of either Party, including without limitation, lists of distributor(s), customers, business methods, products and supplies, and pricing. The term "Confidential Information" does not include (a) information that has become generally available to the public by the act of one who has the right to disclose such information without violating any right of the disclosing party; (b) information which is known to the receiving party prior to its disclosure to the receiving party, as evidenced by the receiving party's written records; or (c) information which is independently developed without using the confidential information.
 - b. Ownership: Ownership of all trade secrets of receiving party and the Confidential Information furnished or disclosed by disclosing party and shall remain the property of the disclosing party. Any reproductions, notes, specifications, manuals, summaries or similar documents relating to the trade secrets and Confidential Information shall become and remain the property of disclosing party immediately upon creation.
 - c. Nondisclosure: The receiving party agrees that it will not, during or after the term of this Agreement for so long as any such information remains Confidential Information including, trade secrets, use or permit the duplication or disclosure of any Confidential Information, including trade secrets (other than to an employee of Receiving party who must have such information for the sole purpose of supplying the Goods contemplated under this Agreement), unless such use, duplication, or disclosure is specifically authorized in advance and in writing by the disclosing party.

14. **INDEMNIFICATION:** Each Party shall indemnify, defend and hold harmless the other Party and their respective affiliates from and against all loss, damage, cost and expense resulting from all claims, demands, actions, causes of action and judgments arising out of and attributable to any claim, action or suit initiated by third parties on a basis that, if proven, shall constitute a breach of the indemnitor's representation or warranty set forth herein.

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15. **LIMITATION OF LIABILITY:** Neither party shall be liable to the other in respect of any loss of profits, goodwill or any type of special indirect or consequential loss even if such loss was reasonably foreseeable or the party had been advised of the possibility of the other party incurring the same.
16. **WARRANTY:** Kelly Toys represents and warrants that all Goods delivered by Kelly Toys shall be of good and merchantable quality and fit for the purpose for which they are intended to be used. The Goods have been tested and are compliant with applicable safety standards. Buyer understands and agrees that the Goods shall at all times be stored in a safe and commercially reasonable manner by the Buyer. Kelly Toys' liability under the foregoing warranty is limited to replacement of the Goods or refund of the Buyer's price at Kelly Toys' sole option. No other warranty, express or implied, is made by Kelly Toys, and none shall be imputed, except as required by applicable law.
17. **INSURANCE:** Kelly Toys shall maintain, at all times while this Agreement is in effect, product liability insurance coverage in commercially reasonable types/amounts. Upon request, Kelly Toys shall provide to Buyer a certificate evidencing the above insurance that provides that Buyer is an additional insured or loss payee to the extent of its interest.
18. **TAXES:** Except as limited by law, all sales taxes, tariffs, and other governmental charges shall be paid by the Buyer and are Buyer's responsibility.
19. **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the Laws of the State of Florida and each Party agrees to submit to the exclusive jurisdiction of the State and United States Federal District Courts in connection therewith.
20. **MISCELLANEOUS:**
 - a. Buyer may not assign or delegate its rights or obligations under this Agreement without Kelly Toys prior written consent. Kelly Toys may assign its rights or obligations under this agreement by any means, including by operation of law.
 - b. The parties expressly acknowledge that this Agreement contains the entire agreement of the parties with respect to the relationship specified in this Agreement and supersedes any prior arrangements or understandings between the parties with respect to such relationship.
 - c. In the event of a party failing to perform any obligation under this Agreement (except for the making of any payment due under or pursuant to this Agreement) as a result of strike, lock-out or other labor difficulties, fire, flood, act of God, embargo, act of war, regulation or restriction of government or law or any other occurrence of circumstance beyond the reasonable control of the party, that party shall not be liable in damages or otherwise for failure to perform that obligation and such failure shall not be a ground for terminating this Agreement.
 - d. Any provision in this Agreement which, by its nature, would reasonably be expected to be performed after the termination of this Agreement shall survive and be enforceable after such termination.

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- e. This Agreement may be amended only by a writing signed by both parties hereto.
- f. Any written notice called for in this Agreement may be given by personal delivery, certified mail, overnight delivery service or via e-mail. Notices given by personal delivery will be effective on delivery; by overnight service on the next business day; by first class mail five business days after mailing; and by e-mail when an answer back confirming receipt by the recipient's email is received.
- g. Nothing in this Agreement shall confer any benefit on any person who is not a party to this agreement.
- h. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.