



**Britax Childcare Pty Ltd**

# **Trading Terms**

# Trading Terms

## **Application**

1. *By signing the Application, the Customer agrees to be bound by the Trading Terms.*
2. *From the Commencement Date, all sales of Product by the Company to the Customer are subject to these Trading Terms.*
3. *The Commencement Date is the date on which the Company notifies the Customer in writing that its credit application is accepted.*
4. *The Customer acknowledges that the Company may amend these Trading Terms at any time. Amendments to these Trading Terms apply to any transaction commenced on or after the date of the notification of the amendment.*

## **Ordering**

5. *The Customer must order Product by providing a Purchase Order to the Company, setting out the type and quantity of Product required. For the purposes of these Trading Terms, the Customer is said to **order** the Product the subject of the Purchase Order.*
6. *The Company is bound to supply and the Customer is bound to purchase the said Product, subject to the Company rejecting the order by notice in writing provided in accordance with clause 7.*
7. *For the purposes of clause 6, a notice must be provided within two (2) clear Business Days of the Company's receipt of a Purchase Order.*
8. *The Customer acknowledges that, notwithstanding anything to the contrary in these Trading Terms, the Company is free to reject any order placed by the Customer. The Customer further acknowledges that no obligation to supply Product is created by the Company having supplied Product to the Customer at any time in the past or as a result of any representations made by the Company.*
9. *The Company will provide to the Customer a tax invoice for all Product supplied by the Company to the Customer.*

## **Delivery**

10. *The Company agrees to deliver all Product sold under these Trading Terms to the address for delivery stated in the Application or as otherwise notified from time to time by the Customer.*
11. *Product is taken to be delivered at the time the Customer acknowledges receipt of the Product. A consignment note or similar document signed on behalf of the Customer is deemed to be acknowledgement for the purposes of this clause 11.*
12. *The Company will endeavour to deliver the Products sold to the Customer within fifteen (15) Business Days of the date of the Purchase Order or such later date as notified, either in writing or otherwise.*
13. *Notwithstanding clause 12, the Company is not liable to the Customer for any Loss caused directly or indirectly by any delay in delivery or failure to deliver, even where the Company has been notified of the circumstances that could result in the said Loss.*
14. *Notwithstanding anything to the contrary in these Trading Terms, the Company will not be liable for any failure to supply Product or perform any other acts under these Trading Terms if that is caused (whether in whole or in part) by a Force Majeure Event, and all obligations on the Company under these Trading Terms are suspended from the commencement of the Force Majeure Event until the Force Majeure Event ceases.*

## **Price**

15. *The Customer agrees to pay to the Company the Price for each Product supplied under these Trading Terms.*
16. *The price that applies to each Product is the price corresponding to that Product in the Company Price List, current at the date on which the Product is delivered to the Customer. The Customer further agrees to pay to the Company on demand an additional amount on the sale of each Product representing the GST incurred or that will be incurred by the Company in respect of that sale.*
17. *The Customer acknowledges that the Company publishes its Price List from time to time. All prices are effective on and from the date stated to be the effective date on the Price List.*

## **Payment terms**

18. *The Customer agrees to pay all invoices in cleared funds and without set off within 30 days from the end of the month of invoice.*
19. *The Customer agrees to pay the following in respect of all outstanding amounts:*
  - (a) *interest for the period the said amount remain outstanding, at a rate of 2% greater than the then current business overdraft rate as quoted by the Commonwealth Bank of Australia; and*
  - (b) *all debt recovery costs incurred by the Company, including legal costs (calculated on an indemnity basis) and disbursements.*
20. *Further to clause 19(b), the Customer acknowledges that the Company may at any time whatsoever take any measures it considers appropriate to recover outstanding amounts, including issuing proceedings.*
21. *Notwithstanding the Company's rights under clause 18, where an amount is and remains outstanding, the Company may do any one or more of the following for the period during which the said amount remains outstanding:*
  - (a) *refuse to supply any Product, including Products that have been sold to the Customer but not yet delivered;*
  - (b) *supply Product on a cash on delivery basis; or*
  - (c) *impose any other terms on the supply of Product that the Company considers reasonable in all the circumstances.*
22. *The Company's rights under clause 20 may be exercised with immediate effect, but only by the Company first providing to the Customer notice to that effect.*

## **Acceptance of product**

23. *The Customer must notify the Company in writing within 15 Business Days of delivery if:*
  - (a) *any Product delivered is Defective at the date of delivery; or*
  - (b) *the Products delivered do not correspond with the Purchase Order, in terms of Product type, quantity, variety or otherwise.*
24. *Save where a Defect is not readily apparent in any reasonably conducted inspection of the Product at the time of delivery, if the Customer fails to notify the Company pursuant to clause 23, the Customer is deemed to accept the Products.*

25. *If the Customer accepts Products supplied under these Trading Terms in accordance with clause 24 or otherwise, the Customer loses all rights it would otherwise have against the Company in respect of the matters referred to in clause 23.*

### **Representations**

26. *The Customer acknowledges that no person may give or make on behalf of the Company any Representation in respect of a Product unless that person acts with the express written authority of a director or the secretary of the Company and the Customer obtains from that person written evidence of his or her authority to act.*

27. *Notwithstanding clause 26, the Customer agrees that the only Representations made by the Company are those of which the Company notify the Customer in writing.*

28. *The Customer acknowledges the following in respect of any Representation not given in accordance with clause 26 and notified to the Company in accordance with clause 27:*

*(a) the Representation is not binding on the Company; and*

*(b) the Customer agrees not to rely on the Representation for any purpose whatsoever.*

29. *The Company makes no Representation in respect of any Product, other than as provided for in these Trading Terms.*

### **Sale restrictions**

30. *The Customer must not sell a Product to any person unless the Product (including packaging) is in or substantially in its original condition. For the purposes of this clause, a Product is in its original condition if, at the date of sale by the Customer, as compared with the state of the Product at the time of delivery:*

*(a) there is no alteration of the state or condition of the Product;*

*(b) there is no alteration or obliteration of any of the trade marks, numbers, codes or other written indicators used on or in relation to the Product or its packaging; and*

*(c) the Product is in its original sealed packaging (if any).*

31. *The Customer agrees not sell any Product to any retailer, reseller or any other person that the Customer suspects or reasonably ought to know will or may resell the Product to another person.*

32. *The Customer agrees not to sell Product from any location, other than the location specified in the Application or any other location to which the Company consents in writing.*

33. *The Customer agrees not to transact more than 10% of its total sales of Products in any 12 month period over the internet. For the purposes of this clause, an internet sale is any sale initiated (whether in whole or part) and completed (whether in whole or part) by way of communications between the Customer and its customer by e.mail or otherwise using the internet. Where the customer offers product via the internet, the following shall apply:*

- *The customer shall maintain commercial premises whereby display stock and any related promotional merchandising endorsed by Britax supports all internet based sales.*

- *Internet sales represent an incidental and not major method for achieving sales to consumers.*

- *Internet sales are through a dedicated site whereby the customer has ownership of domain naming rights*

- *It shall on request, provide to Britax a breakdown of retail store and the internet/phone sales, and documentary evidence in support.*

34. *The Customer agrees to procure each of its Affiliates not to engage in conduct that would or could breach any of clauses 30 to 33 (inclusive), for the purposes of which, any reference to “the Customer” is replaced by the name of the relevant Affiliate.*

35. *Any recommended or suggested price provided by the Company to the Customer for the resale of a Product is a recommended price only and there is no obligation to comply with the recommendation.*

**Risk and title**

36. *Risk in respect of a Product passes to the Customer at the time the Product leaves the possession of the Company.*

37. *Title in and to any Product passes to the Customer when the Company receives payment in full (without deduction and in cleared funds) of the Price of that Product.*

38. *Until payment is received for a Product in accordance with clause 37, the Customer agrees to do the following in respect of that Product:*

- (a) hold the Product as bailee of the Company;*
- (b) store the Product in such a manner as to make it clearly identifiable as the property of the Company; and*
- (c) allow the Company at any time (including at or after the occurrence of an Insolvency Event) to enter any premises occupied by the Customer for the purpose of removing the Product; and*
- (d) if the Product is sold prior to the Company receiving payment for that Product:*
  - (i) hold the book debt and proceeds of resale of the Product as fiduciary of the Company in a separate account; and*
  - (ii) otherwise clearly identified in the books and records of the Customer as being so held.*

**Defective and replacement product**

39. *Save for any claim under section 74H of the Trade Practices Act, the Customer agrees that its only rights against the Company in respect of a Defective Product (including, any Loss incurred in respect of that Product) are set out in clause 40.*

40. *The Company shall at its option either:*

- (a) replace any Defective product with an equivalent product (**Replacement Product**);*  
*or*
- (b) credit the total cost paid by the Customer in respect of the Defective Product (less GST) as against any debt owed by the Customer to the Company or as against future purchases of Product.*

41. *If the Company replaces Defective Product pursuant to clause 40(a), the Company must pay all costs associated with that replacement, including the cost of the Customer returning the Defective Product to the Company and the cost of delivering the Replacement Product to the Customer.*

42. *All Replacement Product are supplied by the Company on these Trading Terms, including and without limitation clause 36 (the passing of risk).*

### **Implied rights**

43. Nothing in these Trading Terms purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying any Implied Term, where to do so would have the effect of rendering the relevant provision void or otherwise unenforceable.
44. Subject to clause 43, all Implied Terms and any other conditions or warranties otherwise implied by law are excluded from these Trading Terms, and the Company's liability for a breach of any Implied Term is limited to the full extent expressly allowed for in the relevant legislation.
45. The Customer acknowledges that it is fair and reasonable for the Company to rely on any limitation of liability under clause 44 given its rights under section 74H of the Trade Practices Act.

### **Liability**

46. The Customer agrees that the Company has no liability to the Customer in respect of any Claim made under these Trading Terms or on any other ground, including negligence, in respect of any Loss incurred or likely to be incurred by the Customer as a result (whether directly or indirectly and whether in whole or in part) of:
- (a) the supply and delivery of the Products by the Company to the Customer and/or the storage, advertising and/or sale of the Products by the Customer; or
  - (b) the Company otherwise acting in accordance with these Trading Terms or any Purchase Order provided by the Customer to the Company under these Trading Terms.
47. To the extent necessary to give effect to clause 46, the Customer waives any right it has or may have to make or pursue any Claim against the Company and otherwise releases the Company in respect of that Loss and/or Claim.
48. The limitation of liability in clause 46 does not apply to the following:
- (a) any Losses incurred directly by the Customer directly as a result of the Company's willful misconduct or gross negligence; or
  - (b) any Claim by the Customer pursuant to section 74H of the Trade Practices Act.
49. The Customer hereby indemnifies and agrees to hold the Company, its officers, directors, employees, successors, and assigns harmless against all Loss (including Losses resulting from Claims made against the Company by end-users of any Product) resulting (whether directly or indirectly and whether in whole or part) from:
- (a) any claim, representation or statement made (whether expressly or by implication) by the Customer in respect of the Products; and
  - (b) any advice or services provided by the Customer to an end-user, including advice or instruction on how to fit or operate the Product,
- save to the extent that the claim, representation or statement or advice or services is consistent with the information provided in writing by the Company to the Customer.
50. The obligations in clause 49 survive the expiration or termination of these Trading Terms.

### **Intellectual Property**

51. The Customer acknowledges that the Product IP is the exclusive property of the Company.
52. The Customer agrees not to use any Company Trade Mark:

- (a) *save with the prior written consent of the Company and only in accordance with any directions provided by the Company; and*
- (b) *otherwise in any manner whatsoever that would, or would be likely to, prejudice the continued registration of the Company Trade Marks under the Trade Marks Act 1995 (Cth) or give rise to cancellation or suspension from registration of any Company Trade Mark.*

53. *The Customer agrees not to conduct its business in any manner that detrimentally affects or could detrimentally affect the value, market profile or Goodwill attached to any Company Trade Mark.*

54. *The Customer agrees not to do or cause to be done any act or thing that could in any way impair any part of the Company's right, title or interest in the Product IP, including and without limitation, by reverse engineer any Product.*

55. *The Customer agrees to procure its Affiliates not to engage in any conduct that would, if undertaken by the Customer, constitute a breach of any of clauses 52 to 54 (inclusive).*

### **Confidentiality**

56. *Any Confidential Information of a Party disclosed to or otherwise obtained by the other Party (or an Affiliate of that other Party) under or in connection with these Trading Terms must:*

- (a) *not be used by the receiving Party for any purpose other than the promotion and sale of Product; and*
- (b) *be kept confidential and must not be disclosed by the receiving Party to any other person, except to the extent permitted under clause 57.*

57. *Confidential Information may be disclosed to the extent that such disclosure is:*

- (a) *required by law; or*
- (b) *to an Affiliate of the receiving party, but only if the receiving Party:*
  - (i) *notifies the Affiliate in writing that the information is confidential and instructs the Affiliate not to engage in any conduct that (if engaged in by the receiving Party) would breach clause 56; and*
  - (ii) *uses its best endeavors to ensure that the said Affiliate acts in accordance with the instructions referred to in clause 57(b)(i).*

### **Termination**

58. *The Company may terminate these Trading Terms with immediate effect by notice in writing in any of the following circumstances:*

- (a) *the Customer breaches any of the Trading Terms and fails to remedy the said breach within 28 days of the date of a notice in writing;*
- (b) *the Customer breaches any of the Trading Terms, which breach is not capable of remedy;*
- (c) *the Customer suffers an Insolvency Event; or*
- (d) *any amount owing to Ridge remains outstanding for 30 days or more.*

59. *All amounts due to the Company under these Trading Terms, whether or not the said amounts are payable, must be paid to the Company on termination.*

## **General provisions**

60. Any notice required to be sent under these Trading Terms shall be sent or delivered to the receiving Party at the address set out in the Application, or at such other address as that Party may from time to time designate in writing.
61. All notices referred to in these Trading Terms or other communications are deemed to have been duly given or made:
- (a) two (2) Business Days after being deposited in the mail with postage pre-paid;
  - (b) if delivered by facsimile, when the activity report confirms successful transmission; and
  - (c) if delivered by e-mail, at the time the e-mail is sent.
62. Without limiting the Company's rights under law or in equity, the Company and its Affiliates, collectively or individually, may at any time set off any amount owing to the Customer and/or its Affiliates by the Company against any amount owing to the Company by the Customer. For the purposes of this clause, the Company and its Affiliates are deemed to be a single creditor.
63. These Trading Terms constitute the entire agreement between the Parties with respect of the subject matter hereof.
64. A waiver of a provision or of a right arising under these Trading Terms may only be given in writing by the Party granting the waiver.
65. If any provision of these Trading Terms is void, voidable, unenforceable or illegal, but would not be void, voidable, unenforceable or illegal if it were read down and, it is capable of being read down, that provision will be read down accordingly.
66. If, notwithstanding clause 65, a provision is still void, voidable, unenforceable or illegal:
- (a) if the provision would not be void, voidable, unenforceable or illegal if a word or words were omitted, that word or those words are severed; and
  - (b) in any other case, the whole provision is severed,
- and the remainder of these Trading Terms will remain in full force and effect.
67. None of these Trading Terms, or anything done under or by virtue of these Trading Terms will operate as a merger of any of the rights and remedies of the parties, and those rights and remedies will at all times continue in force.
68. The Parties agree that the United Nations Convention on Contracts for International Sale of Goods does not apply to the supply of Products pursuant to these Trading Terms.
69. This Agreement is governed by the laws of Victoria and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of that State.

## **Definitions**

70. For the purposes of these Trading Terms, unless the context otherwise indicates:

**Affiliate** of a Party means:

- (a) a "related body corporate" of that Party, as that term is defined in the Corporations Act (**Related Body Corporate**); or
- (b) a director, officer, employee, agent, subcontractor, consultant or adviser of that Party or of a Related Body Corporate of that Party;

**Application** means any credit application submitted by the Customer to the Company;

**Business Day** means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Melbourne, Australia;

**Claim** means any claim, allegation, suit, action, demand, cause of action or proceeding (including any prosecution by any statutory authority, in which the authority seeks a pecuniary penalty), irrespective of:

- (a) when it arises;
- (b) whether or not it is actual or contingent; or
- (c) whether or not it is at law (including under contract or tort), in equity or under statute;

**Commencement Date** has the meaning provided for in clause 3;

**Company** means Britax Childcare Pty Ltd ACN 006 773 600;

**Company Trade Mark** means any Trade Mark in respect of which the Company promotes for sale, offers for sale or sells any Product and any Trade Mark that is misleadingly or deceptively similar to the said Trade Mark;

**Confidential Information** means the information (including information that comes to either Party's attention directly or indirectly by reason of the other Party acting in accordance with these Trading Terms) that a Party would reasonably consider to be confidential and includes (without limitation):

- (a) marketing plans, financial information (including pricing), customer lists and information, customer trading terms, equipment, processes, methods, operating conditions and formulae;
- (b) drawings, specifications, data sheets and other written material howsoever recorded and stored whether manually, mechanically, electronically or otherwise,

but does not include information that:

- (i) was at the time of disclosure in the public domain or subsequently enters the public domain (unless the information entering the public domain was in breach of these Trading Terms or other confidentiality obligations);
- (ii) is lawfully obtained by the receiving Party from a third party and is not subject to a pre-existing obligation of confidentiality; or
- (iii) was known by the receiving Party before it was disclosed under or in connection with these Trading Terms;

**Customer** means the company identified as the customer on the Application or any Affiliate of that company;

**Defective** in terms of a Product means a Product that, in the reasonable opinion of the Company, is rendered inoperable, non-compliant with any relevant mandatory Australian Standard or otherwise unsaleable, whether that is the result of a defect in the Product (whether latent or otherwise), damage to the Product or any other cause;

**Force Majeure Event** means any event, act or cause over which the Company has less than a material influence or control, which hinders, prevents or otherwise affects the Company's ability to discharge its obligations under these Trading Terms, which event, act or cause include any act of God, flood, fire, damage caused by lightning, storm or any other adverse weather condition, road blockage, labour dispute, strike, act of war or terrorism, breakdown of plant or machinery or enactment of any government agency or authority;

**Goodwill** means the goodwill of the Company's business relating to the Products and associated with the Trade Marks;

**Implied Term** means any condition or warranty implied by legislation, including the Trade Practices Act and any State or Territory legislation concerning consumer protection, fair trading or the sale of goods or services;

**Insolvency Event** means the happening of one or more of the following events:

- (a) except for the purpose of a solvent reconstruction or amalgamation which has the prior written consent of the other parties:
  - (i) an order is made that it be wound up or that a Controller (as defined in the Corporations Act) be appointed to it or any of its assets; or
  - (ii) a resolution that it be wound up is passed;
- (b) a liquidator, provisional liquidator, Controller (as defined in the Corporations Act) or any similar official is appointed to, or takes possession or control of, all or any of its assets or undertaking;
- (c) an administrator is appointed to it;
- (d) it enters into, or resolves to enter into, an arrangement, compromise or composition with any of, or any class of, its creditors or shareholders, or an assignment for the benefit of any of, or any class of, its creditors, or process is filed in a court seeking approval of any such arrangement, compromise or composition;
- (e) a reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors is proposed or effected;
- (f) it is unable to pay its debts or it is presumed to be insolvent under any applicable law;
- (g) as a result of the operation of section 459F(1) of the Corporations Act, it is taken to have failed to comply with a statutory demand;
- (h) it stops or suspends or threatens to stop or suspend:
  - (i) the payment of all or a class of its debts; or
  - (ii) the conduct of all or a substantial part of its business; or
  - (i) anything having a substantially similar effect to any of the events specified in paragraphs (a) to (h) happens to it under the law of any jurisdiction;

**Intellectual Property** means any rights in or to any patent, copyright, database, registered design or other design right, utility model, Trade Mark, eligible layout right, chip topography right, and any other rights of a proprietary nature in or to the results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether registrable or not and wherever existing in the world, including all renewals, extensions and revivals of, and all rights to apply for, any of the foregoing rights;

**Loss** means any damage, debt, loss, foregone profit, penalty, fine, expense, liability or costs (whether incurred or contingent);

**Party or Parties** means the Company or the Customer, or both;

**Purchase Order** means the document provided by the Customer to the Company pursuant to clause 5;

**Price** means the total amount payable in respect of a Product under clause 16;

**Product** means any Britax Childcare Pty Ltd branded product supplied or to be supplied by the Company to the Customer;

**Product IP** means any Intellectual Property subsisting in or otherwise associated with a Product;

**Replacement Product** has the meaning provided for in clause 40(a);

**Representation** means undertaking, assertion, statement, warranty, admission or other representation, whether express or implied;

**Trade Mark** means any trade mark, trade name, service mark or brand name (whether registered or not and including any rights in get up or trade dress); and

**Trading Terms** means the terms and conditions set out in this document.

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