

## 1. Application of Terms and Conditions

1.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any quotation or offer of the Seller which is accepted by the Buyer, or any order of the Buyer which is accepted by the Seller ; and

1.2 These Terms and Conditions shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted by the Seller, or any such order is made or purported to be made, by the Buyer.

## 2. Interpretation

2.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

“Buyer” means the person who accepts a quotation or offer of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller;

“Contract” means the contract for the purchase and sale of the Goods which shall incorporate, and be subject to, these Terms and Conditions;

“Delivery Date” means the date on which the Goods are to be delivered as agreed between the buyer and seller;

“Goods” means the learning game, What Would You Do, as per the published specification at the time of the order;

“Seller” means Thinking Focus Limited, a company registered in England under No. 1015192 of 40 Bloomsbury Way, Lower Ground Floor, London WC1a 2SE.

## 3. Basis of Sale

3.1 The Seller’s employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing.

3.2 No variation to these Terms and Conditions, or to the Contract, shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.

3.3 Sales literature, price lists and other documents issued by the Seller in relation to the Goods are subject to alteration without notice and do not constitute offers to sell the Goods

which are capable of acceptance.

## 4. Orders and Specifications

4.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller’s authorised representative.

4.2 The specification for the Goods shall be that set out in the Seller’s sales documentation available at [www.thinkingfocus.com/wwyd](http://www.thinkingfocus.com/wwyd).

4.3 Illustrations, photographs or descriptions whether in catalogues, brochures, price lists or other documents issued by the Seller are intended as a guide only and shall not be binding on the Seller.

## 5. Price

5.1 The Price of the Goods shall be the price listed on the Seller’s website current at the date of acceptance of the Buyer’s order or such other price as may be agreed in writing by the Seller and the Buyer.

5.2 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all prices are exclusive of the Seller’s charges for packaging and transport.

5.3 The Price is exclusive of any applicable value added tax, excise, sales taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Goods, which the Buyer shall be additionally liable to pay to the Seller.

## 6. Payment

6.1 The Buyer shall pay the Contract Price of the Goods (less any discount or credit allowed by the Seller, but without any other deduction, credit or set off) within 21 Days of the date of the Seller’s invoice or otherwise in accordance with such credit terms as may have been agreed in writing between the Buyer and the Seller in respect of the Contract. Payment shall be made on the due date notwithstanding that delivery may not have taken place and/or that the property in the Goods has not passed to the Buyer.

## 7. Delivery

7.1 The Delivery Date is approximate only and time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the

Seller in advance of the Delivery Date upon giving reasonable notice to the Buyer.

7.2 If the Seller fails to deliver the Goods or any part thereof on the Delivery Date other than for reasons outside the Seller's reasonable control or the Buyer's or its carrier's fault as long as the Seller delivers the Goods at any time thereafter the Seller shall have no liability in respect of such late delivery.

## 8. Inspection/Shortage

8.1 The Buyer is under a duty whenever possible to inspect the Goods on delivery or on collection as the case may be.

8.2 The Seller shall be under no liability for any damage or shortages that would be apparent on reasonable careful inspection if the provisions of this Clause 9 are not complied with and, in any event, will be under no liability if a written complaint is not delivered to the Seller within 14 Days of delivery detailing the alleged damage or shortage.

8.3 Subject to sub-Clauses 8.2, the Seller shall make good any shortage in the Goods and where appropriate replace any Goods damaged in transit as soon as it is reasonable to do so, but otherwise shall be under no liability whatsoever arising from such shortage or damage.

## 9. Risk and Retention of Title

9.1 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 the Seller has tendered delivery of the Goods.

9.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms and Conditions, legal and beneficial title of the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods.

## 10. Defective Goods

10.1 If on delivery any of the Goods are defective in any material respect and either the Buyer lawfully refuses delivery of the defective Goods or, if they are signed for on delivery as "condition and contents unknown" the Buyer gives written notice of such defect to the Seller within 14 Days of such delivery, the Seller shall at its option:

- a) replace the defective Goods within 28 Days of receiving the Buyer's notice; or
- b) refund to the Buyer the price for those Goods (or parts thereof, as appropriate) which are defective;

but the Seller shall have no further liability to the Buyer in respect thereof and the Buyer may not reject the Goods if delivery is not refused or notice given by the Buyer as set out above.

10.2 The Seller shall be under no liability in respect of any defect arising from fair wear and tear, or any wilful damage, negligence, subjection to normal conditions, failure to follow the Seller's instructions (whether given orally or in writing), misuse or alteration of the Goods without the Seller's prior approval, or any other act or omission on the part of the Buyer, its employees or agents or any third party.

10.3 Except in respect of death or personal injury caused by the Seller's negligence, or as expressly provided in these Terms and Conditions, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law or under statute, or under the express terms of the Contract, for any direct or consequential loss or damage sustained by the Buyer (including without limitation loss of profit or indirect or special loss), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its servants or agents or otherwise) which arise out of or in connection with the supply of the Goods

## 11. Limitation of Liability

11.1 Subject to the provisions of Clauses 7 and 10 the following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

- a) any breach of these Terms and Conditions or the Contract;
- b) any use made (including but not limited to modifications) or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
- c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

11.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

11.3 Nothing in these Terms and Conditions excludes or limits the liability of the Seller:

- a) for death or personal injury caused by the Seller's negligence;
- b) for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability; or
- c) for fraud or fraudulent misrepresentation.

11.4 Subject to sub-Clauses 11.2 and 11.3:

- a) the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Price paid under this agreement; and
- b) the Seller shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## 12. Confidentiality, Publications and Endorsements

12.1 The Buyer will regard as confidential the contract and all information obtained by the Buyer relating to the business and/or products of the Seller and will not use or disclose to any third party such information without the Seller's prior written consent provided that this undertaking shall not apply to information which is in the public domain other than by reason of the Buyer's default.

12.2 The Buyer will not use, authorise or permit any other person to use any name, trademark, house mark, emblem or symbol which the Seller is licensed to use or which is owned by the Seller upon any premises, note paper, visiting cards, advertisement or other printed matter or in any other manner whatsoever unless such use shall have been previously authorised in writing by the Seller and (where appropriate) its licensor.

12.3 The provisions of this Clause 12 shall survive the termination of the Contract.

## 13. Communications

13.1 All notices under these Terms and Conditions and under the Contract shall be in writing and be deemed duly given if

signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

13.2 All notices under this Agreement shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

## 14. Force Majeure

Neither Party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

## 15. Waiver

The Parties agree that no failure by either Party to enforce the performance of any provision in these Terms and Conditions or under the Contract shall constitute a waiver of the right to subsequently enforce that provision or any other provision. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.

## 16. Severance

The Parties agree that, in the event that one or more of the provisions of these Terms and Conditions or the Contract are found to be unlawful, invalid or otherwise unenforceable, that those provisions shall be deemed severed from the remainder of these Terms and Conditions (and, by extension, the Contract). The remainder of these and the Contract shall be valid and enforceable.

## 17. Third Party Rights

A person who is not a party to the Contract shall have no rights under the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

## 18. Law and Jurisdiction

18.1 These Terms and Conditions and the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.