

# thetoybox

## Credit Account Application T & C's

### Terms and Conditions

1. **Definitions:** In this agreement: **"parties"** means The Toybox NZ Ltd and the Customer **patents"** means any patents held by The Toybox NZ Ltd **"Products"** means the Products offered by The Toybox NZ Ltd from time to time. **"Store/s"** means the Customer's store/s" **trade marks"** means any trade mark/s held by The Toybox NZ Ltd from time to time.
2. **Retail rights:** The Toybox NZ Ltd grants to the Customer the non-exclusive right to buy Products from The Toybox NZ Ltd for sale and distribution in the Store during the term of this Agreement. The Customer may not sell or distribute the Products by any other means without the prior written consent of The Toybox NZ Ltd.
3. **Customer's obligations:** The Customer agrees:
  - (a) to actively and diligently promote the Products for sale within the Store;
  - (b) to comply with its obligations under this agreement; (c) to act with the utmost good faith in all matters toward The Toybox NZ Ltd;
  - (d) not to alter or in any way modify the Products or the packaging; and
  - (e) to indemnify and keep indemnified The Toybox NZ Ltd from and against any and all loss, damage or liability suffered by The Toybox NZ Ltd resulting from any breach of this agreement by the Customer or any act, neglect or default of the Customer or its agents, employees, or licensees.
4. **Prices:** Prices for Products shall be as set out in The Toybox NZ Ltd 's price list issued from time to time. Prices may vary without notice. A quoted price for Product will be binding on The Toybox NZ Ltd once a written order from the Customer is confirmed in writing by The Toybox NZ Ltd. The Toybox NZ Ltd may charge the Customer for delivery, packaging and handling costs.
5. **Payment Terms:** The provision of credit is at the discretion of The Toybox NZ Ltd. Where The Toybox NZ Ltd agrees to extend credit, payment will be due within **30** days after invoicing or as otherwise specified by The Toybox NZ Ltd. Receipt of a cheque, bill of exchange or other negotiable instrument by The Toybox NZ Ltd shall not constitute payment and the Customer shall remain liable until funds are cleared and such cheque, bill of exchange, or negotiable instrument is paid in full.
6. **Supply of Products:** Subject to availability, and to the Customer complying with the requirements of this agreement, The Toybox NZ Ltd shall supply to the Customer Products in accordance with orders received in writing from time to time by the Customer.
7. **Delivery times:** The Toybox NZ Ltd shall use all reasonable endeavours to meet delivery times but delivery times are approximate only and are not guaranteed.
8. **Delivery and risk:** Delivery shall be deemed to have been completed, and the risk of any loss or damage to or deterioration of the Product due to any cause whatsoever shall be borne by the Customer, from the time that the Product leaves the premises of The Toybox NZ Ltd
9. **Ownership:** Ownership and title in the Product shall pass from The Toybox NZ Ltd to the Customer upon payment in full by the Customer.
10. **Default interest/costs:** Without limiting its other rights and remedies, The Toybox NZ Ltd may charge default interest on any amount that is due and unpaid from due date until the date of payment. Default interest shall be charged at 2% per month on any overdue amount. The Customer undertakes to pay The

Toybox NZ Ltd on demand all costs (including solicitor/client costs) incurred in connection with obtaining payment of any moneys owing to The Toybox NZ Ltd.  
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11. **Suspension of credit/delivery:** The Toybox NZ Ltd may in its discretion cancel any credit and require payment in full or require security for payment. The Toybox NZ Ltd may withhold delivery of any Product on order until all payments have been made in accordance with The Toybox NZ Ltd 's requirements.

12. **Set-off:** The Customer consents to any amount owed by the Customer to The Toybox NZ Ltd being deducted or set-off against any amount payable by The Toybox NZ Ltd to the Customer.

13. **Defective Products:** The Toybox NZ Ltd 's liability for loss arising directly or indirectly in any manner whatsoever from any Products supplied, whether from any defect or otherwise, shall be limited, at the option of The Toybox NZ Ltd, to replacement of the affected Products or a refund or credit not exceeding the invoice value of the affected Products. Any Products that The Toybox NZ Ltd agrees to replace or in respect of which The Toybox NZ Ltd provides a refund must be returned to The Toybox NZ Ltd (including packaging).

14. **Claims process:** If the Customer considers that any Product supplied by

The Toybox NZ Ltd is defective, the Customer shall notify The Toybox NZ Ltd in writing setting out details of the claim and return a sample of the Product to The Toybox NZ Ltd for its inspection and analysis. The Customer shall comply with its obligations under this clause within 72 hours of becoming aware of any problem with a Product. The Toybox NZ Ltd shall not be liable to replace any Product or provide any refund where the Customer fails to comply with this clause.

15. **Claims about Products:** The Customer is not authorised to make any claims or warranties about the Products except for such claims as are expressly authorised in writing by The Toybox NZ Ltd. The Customer shall not attribute any claims or warranty regarding the Products to The Toybox NZ Ltd. The Customer shall be the sole party responsible to the Customer's customers in connection with the supply of Products to such customers.

16. **Customer to take due care:** The Customer shall, when supplying any Product to a customer who is the end-user, take due care to ensure that (as far as possible) the customer complies with any guidelines for use of the Product.

17. **Provisions applying to re-sellers:** A Customer will be a reseller if the Customer acquires the Products for supply to other Customers, for resale or supply to other persons in trade. If the Customer is a reseller the Customer agrees: (a) That the Consumer Guarantees Act does not apply to the sale of Products from The Toybox NZ Ltd to the Customer;

(b) To contract out of the Consumer Guarantees Act in respect of the sale of the Products to its customers (other than customers who are not consumers); And (c) To require its customers to contract out of the Consumer Guarantees Act in respect of any further sales of the Products (other than for a sale to a consumer) and to require any sub-seller(s) to do the same.

18. **Matters beyond The Toybox NZ Ltd 's control:** The Toybox NZ Ltd is not responsible for

any defect, failure or delay in relation to the supply of Products where the same arises due to a cause beyond the reasonable control of The Toybox NZ Ltd.

19. **Intellectual Property:** The name "The Toybox NZ Ltd", "CAVIUS", the names, brands, trade marks and logos used in relation to the Products and any other product names, brands, trade marks and logos used by The Toybox NZ Ltd in the course of its business are the property of The Toybox NZ Ltd and the Customer

obtains no proprietary right or interest in any of the abovementioned intellectual property. The Customer shall not use any such product names, brands, trade marks or logos except with the prior written consent of The Toybox NZ Ltd. All use of product names, brands, trade marks or logos shall accrue to the benefit of The Toybox NZ Ltd.

20. **Design etc:** The design, invention, copyrights, patents and any related intellectual property in the Products is owned exclusively by The Toybox NZ Ltd. The Customer may not use or copy the Product for any purpose other than as permitted by The Toybox NZ Ltd pursuant to this Credit Account Application TCs 250118

agreement. The Customer also undertakes to take all actions necessary, and follow all instructions of The Toybox NZ Ltd as may be issued from time to time, to protect The Toybox NZ Ltd 's proprietary interest in the Products.

21. **Trade marks:** The Toybox NZ Ltd may make application for registration of certain tradenames, brands or logos as registered trade marks. If The Toybox NZ Ltd considers it necessary, the parties will cooperate in making application for registration of the Customer at The Toybox NZ Ltd's expense as a registered user of such of the trade marks as become registered in New Zealand.

22. **Termination:** This agreement:

(a) will terminate 30 days after service of written notice by The Toybox NZ Ltd; and

(b) may be terminated by either party by written notice if:

(i) The other party commits a breach of this agreement and (if the breach is capable of being rectified) fails to rectify such breach within fourteen(14) days of service of written notice requiring rectification of it.

(ii) The other party proposes or enters into any scheme of arrangement or composition with its creditors, or goes into liquidation, has a receiver or statutory manager appointed, or is wound up otherwise than for the purpose of a reconstruction approved in writing by the other party.

(c) **Consequences of Termination:** Upon termination of this agreement for any reason, the Customer shall cease selling the Products except to the extent necessary to sell any stock of Products then on hand. The Toybox NZ Ltd shall have a first option to purchase product owned by the Customer at the lower of cost and net realisable value for such Products.

(d) **Termination without prejudice:** Termination of this agreement shall be without prejudice to any rights or obligations that have accrued at the date of termination.

(e) **Notices:** Any notice to be served on either of the parties by the other shall be sent by prepaid post or by facsimile and will be deemed to have been received by the addressee within 72 hours of posting or 24 hours if sent by facsimile to the correct facsimile number as detailed in Schedule 1 of this agreement.

23. **Disputes:** If any difference or dispute arises between the parties in relation to this

agreement, the following provisions shall apply:

(a) As soon as a party becomes aware of any difference or dispute, that party shall give notice in writing of the dispute or difference to the other parties.

(b) The parties shall use their best endeavours to promptly resolve any difference or dispute by amicable and bona fide negotiation. (c) Where a difference or dispute remains unresolved for more than 7 days the parties may by agreement refer the difference or dispute to mediation with an agreed mediator. All discussions shall be confidential and without prejudice and will not be referred to in any later proceedings. The parties will bear their own costs in the mediation and will share equally the mediator's costs.

24. Miscellaneous:

(a) **Assignment:** This agreement is personal to the Customer and the agreement may not be directly or indirectly assigned (including by declaration or trust or by change in control of the Customer) except with the prior written consent of The Toybox NZ Ltd.

(b) **No partnership:** The parties are not partners or joint venturers. No party may act or hold itself out as acting as agent of the other party except as authorised by this agreement or any other agreement entered into between the parties.

(c) **Further assurances:** Each party shall promptly do every reasonable thing to complete its obligations under this agreement and the intent of this agreement.

(d) **Governing law:** This agreement shall be governed by the laws of New Zealand and the jurisdiction of the New Zealand Courts.