

GENERAL TERMS AND CONDITIONS OF SALE (VERSION 2.0)

INTRODUCTION

Tover B.V. is a limited liability company organized under the laws of the Netherlands, having its principal office at Hamburgerstraat 28A, 3512 NS, Utrecht, The Netherlands and registered in the Dutch Chamber of Commerce under number 77596722 (“**Tover**”, “**us**” or “**we**”).

Definitions

Terms are defined in the clauses of these General terms and conditions of sale and the following terms have the meaning as defined below:

“**Agreement**”: any agreement between our customers (“**you**”) and Tover, including offers accepted by you, concerning the sales, licensing or delivery of a Product.

“**Product(s)**”: a Tovertafel (including accessories), a software license regarding the games, services and/or training and support.

General

1. These General terms and conditions of sale (“**GTC**”) apply to all our (Tover and its successors in title) offers, quotations, assignments and Agreements with you as well as any other legal relationship between you and us resulting from or related to the same. These GTC constitute, or are otherwise expressly incorporated into and made part of each Agreement.
2. These GTC also apply for the benefit of all persons who are employed by us, including third parties or auxiliary persons engaged by us in the execution of any Agreement.
3. Your purchase terms and conditions or any other terms or conditions, including those implied by course of dealing or by custom or practice, will not apply unless we have explicitly accepted these in writing.
4. All our offers and quotations are without obligation unless explicitly stated otherwise in writing. We are entitled to withdraw or change the offer and / or quotation prior to your acceptance thereof in writing. Quotations and offers are valid for the duration of the period stated in the offer. If no period of validity is stated, quotations and offers are valid for a period of 30 (thirty) days.
5. If the provisions of these GTC conflict with or deviate from one or more provisions of the Agreement, the provisions of the Agreement prevail, but only if and insofar as the Agreement explicitly deviates from these GTC.

Delivery

1. The Products are delivered EXWorks, Incoterms 2010, Utrecht, the Netherlands. If included in our offer, we will arrange shipment of the Products to the address you provide, unless agreed otherwise.
2. Upon delivery of the Products you will visually inspect each of the Products to determine whether or not the packaging is damaged upon arrival, in which case you will make report of this, preferably in the presence of the courier, and shall immediately notify us in writing (along with a copy of the proof of delivery and the report of damage).
3. Time for delivery or performance shall not be of the essence. Specified delivery dates are estimates only and not binding or to be regarded as deadlines, unless expressly agreed otherwise in writing.

4. Risk of loss or damage will pass to you at the time of delivery of the Tovertafel to you or, with respect to licenses for games including updates, the moment we make these available for download on the Tovertafel. You are responsible for connecting to the internet to actually download (new) games and/or updates.
5. You agree to provide us full, free and safe access for installation (if this is included in our services to be provided under the Agreement) and for the provision of services.
6. We are entitled to suspend the delivery of Products as long as you have not fulfilled any and all of your obligations towards us. This suspension is valid until the moment you comply with any and all of your obligations, or Tover has repudiated (“ontbinden”) the Agreement due to attributable non-performance.

Installation of the Product

1. Installation of the Products after delivery will be your responsibility, unless explicitly agreed otherwise in writing. Installation should be performed by a technical person in accordance with the technical specifications and requirements and installation instructions we provide to you. Upon first request you will sign a document stating that you have fulfilled the aforementioned obligation.
2. Because it is IMPORTANT that our instructions, especially with regards to the installation, are strictly followed, you agree that you will contact us in the event that you find that our instructions raise questions, are ambiguous or are otherwise not clear to you before you proceed.

Term of Open Play & Learn licenses

1. The initial term of each OP&L is a consecutive period of two years, unless specified otherwise in the Agreement. The start- and end date of this period depends on when the Tovertafel 2 is delivered to you (to allow you time for installation):
 - Delivery before or on the 15th of a month (e.g. September 10, 2020): the period runs from the first day of the following month (in the example: October 1, 2020) until the first day of the month two years later (in the example: October 1, 2022).
 - Delivery after the 15th of a month (e.g. September 20, 2020): the period runs from the first day of the second subsequent month (in the example: November 1, 2020) until the first day of the month two years later (in the example: November 1, 2022).

The OP&L cannot be cancelled in the meantime.

2. OP&L subscription: Except as otherwise specified in the Agreement, OP&L subscriptions automatically renew at each expiration date for an additional period of one year, unless either party gives the other written notice (email acceptable) at least 30 days before the end of the relevant subscription term.
3. OP&L one off license: At the end of the initial OP&L license term, the OP&L license will automatically terminate without notice being required.
4. Upon the expiration the OP&L term, you keep the starter set of ten games on the Tovertafel 2. These will automatically remain at your disposal. As long as updates and improvements become available for these ten games of the starter set and these are still compatible with the type of Tovertafel you have purchased, they will also be available for download by you.
5. In the event that you have not fulfilled your payment obligation, infringe our intellectual property rights or in the event that you become the subject of liquidation, dissolution or a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors of termination, liquidation, dissolution, application or allocation of bankruptcy or moratorium of your organization, we can terminate the OP&L subscription or license, wholly or partially, by written notice, without notice of default being required and without prejudice to any other rights. In this event you will be obliged to pay any unpaid fees covering the remainder of the term of the OP&L subscription to the extent permitted by applicable law.

Price increases, charges and payments

1. For agreements with one time charges, price increases will not apply to Products for which we have received your order before the effective date of the price increase, provided the delivery of your order takes effect within three months of the date of your order. You are entitled to cancel an order to which a price increase applies within 30 days.
2. For agreements with recurring charges, we will always give at least three months written notice of a price increase. Price increases take effect as from the first payment period following the effective date of the price change as stated in the written notice.
3. Quotation prices are valid as specified in the offer or, if not specified, for thirty days.
4. Amounts are due and payable upon receipt of our invoice and will be paid in the currency mentioned in the offer within the period specified in the Agreement or the invoice. If the Agreement nor the invoice state a payment term, you will pay the amounts due within fourteen (14) days after the date of the invoice. The time for payment shall be of the essence. If the Agreement nor the offer state the applicable currency then payment will be made in Euros.
5. Charges are exclusive of any customs or other duty, tax, and similar levies imposed by any authority resulting from your acquisitions of Products and will be invoiced in addition to such charges and you agree to pay any and all charges, taxes, duties and government levies.
6. Your obligation to pay is unconditional and shall not be subject to any abatement, reduction, set-off, or suspension for any reason whatsoever. We may apply your payment to other outstanding invoices.
7. If you have not paid the invoices within the agreed payment term, you are automatically in default without any further notice of default or (written) demand being required. In that case and notwithstanding any other rights we may have by law or under the Agreement, we shall be entitled to charge legal interest over the outstanding amount and all reasonable costs incurred in obtaining satisfaction - in and out of court - will be for your account. The extrajudicial costs owed will never be less than 15% of the sum to be collected subject to a minimum of € 150,-. If we can prove that we incurred higher costs, that were reasonably necessary to obtain payment, then these too shall be eligible for compensation as well as any judicial and execution costs incurred.

Ownership

1. We retain ownership of all Products delivered by us to you, as long as you have not fulfilled all your payment obligations regarding the delivered Products, including obligations to pay any interest and costs that have become due.
2. As long as ownership of the delivered Products has not yet been transferred to you, you will hold the Products for us and you are not entitled to resell the delivered Product or parts thereof, or to make it available to third parties, or to pledge it to third parties or to any other way to encumber the delivered Products, without the express written permission of Tover.
3. We and / or our licensors own any and all intellectual property rights (including any claims thereto), such as copyrights, model, database, trademark rights, patent rights on the Tovertafel, the mounting system and the games. You shall not infringe our intellectual property rights, or remove, alter or destroy any proprietary, trademark or copyright markings or notices placed upon or contained with the Products and shall not use our name or trademarks without our prior consent.
4. With regard to the games made available by us on the basis of the Open Play & Learn subscription or one off license, you receive a non-exclusive, limited, revocable right to use all games developed by us (to final product) for your target group for playing on the Tovertafel within the limits that are legally prescribed by applicable mandatory law. The duration of this right of use starts from the moment we make the games available for download on the Tovertafel until the end of the OP&L subscription or license term. At the expiration of an OP&L term, we grant you a perpetual non-exclusive and, in case of breach of the Agreement or infringement of our intellectual property rights, revocable license to continue using the starter set of ten games on the Tovertafel.

5. If you provide us with ideas, comments or suggestions relating to the Products (feedback), you agree that all intellectual property rights that can be vested in anything created as a result of that feedback (including new material, enhancements, modifications or derivative works), are owned solely and exclusively by us and that we may use or disclose such feedback or creations for any purpose without your consent.

Service and support

1. During twenty-four (24) months following the date of delivery to you we will provide service and support to you at no additional costs according to the procedure described in this clause "Service and Support". If the Tovertafel does not work (correctly) and this cannot be resolved using the instructions in the manual, please immediately contact our service department and provide us with the requested information. We work according to the following service levels:
 - Service Level 1: These are the shortcomings that our Service department can handle remotely by phone or e-mail;
 - Service Level 2: If the defect cannot be resolved remotely, a trained service technician will visit your location. If this concerns a software issue or a simple hardware issue and the Tovertafel2 can be repaired on-site, the technician will do so;
 - Service level 3: If the defect cannot be resolved at level 2, the technician will install a temporary or replacement Tovertafel2 and remove the defective Tovertafel2 for the warranty services (repairs or replacement). Once the defect has been resolved, we will return the repaired Tovertafel2 so that it can be installed by yourself or our service technician. The replacement Tovertafel2 will be removed by our service technician or returned by you in accordance with our instructions.

The activities under Service Level 1 are always for our account. The activities under Service Levels 2 and 3 are for our account if and to the extent it concerns defects covered by the Product Warranty and the defects occur within the warranty period as described in clause "Product Warranty".
2. If your location cannot receive our service technician due to government regulations and/or other circumstances such as Covid-19, you will have the Product(s) ready (preferably in its original packaging) to be collected for repair or replacement in accordance with our instructions.

Product Warranty

1. The warranty and associated conditions are described on the warranty card that will be supplied with the Product. You can also find this [on our website via this link](#). The Product Warranty (repair or replacement) replaces any other statutory warranty including implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose or liability and constitutes your sole and exclusive legal remedy. This warranty does not affect statutory rights that cannot be deviated from by means of an agreement.

Product changes

1. We reserve the right to (i) change our Products, including their specifications and the composition of game packs, without being obliged to adjust earlier supplies accordingly, (ii) discontinue marketing of Products and (iii) discontinue the provision of updates and improvements to games for outdated models of the Tovertafel upon timely announcement thereof.
2. We reserve the right to change the license structure and pricing model of our Products. Such changes would not affect any license rights previously acquired by you.

Termination

1. Save of any other rights and claims we may have, we may repudiate (“*ontbinden*”) the Agreement with immediate effect, without resorting to legal proceedings and without liability on our part, by giving you written notice, if:
 - you are unable to fulfil a relevant obligation, and you fail to remedy your breach of the Agreement (if remediable) within fourteen days of receipt by you of our notice complaining of such breach;
 - you terminate your business voluntarily, are declared bankrupt or in liquidation, request for liquidation, have been granted (temporary) suspension of payments, a receiver or administrator is appointed or similar situation,
 - a considerable portion of your assets has been attached which is not vacated or set aside within thirty (30) days, or
 - your company will be liquidated or closed down for reasons other than reconstruction or merger.

Under no circumstances will we be liable for damages you suffer as a result of such termination.

Limitation of liability

1. In the event that we are obliged to pay compensation for damages, our aggregate liability to you – regardless of the theory or grounds the claim is based upon – shall at all times be confined to the damage against which we are covered under an insurance policy taken out by us or on our behalf. However, the scope of this obligation is never greater than the amount paid out under this insurance in the case in question. Should for whatever reason, the amount paid out under the insurance be nihil, our obligation to compensate damages is at all times limited to the net invoice value of the Product concerned or to that part of the net invoice value to which a claim for compensation is directly or indirectly related.
2. We will not be liable for (i) special, incidental, exemplary, indirect or economic consequential damages, including without limitation damage or loss ensuing from late delivery and loss of profit or revenues, lost business opportunity and loss of use of Product or for (ii) any type of damage or personal injury caused or sustained as a result of the fact that you and/or third parties install, use, maintain, repair or modify the Product in a manner which is not in conformity with our instructions.
3. None of the limitations of liability in these GTC and/or Agreement shall apply for damages arising from an intentional act or intentional omission or gross negligence of Tover or their executives or for damages that cannot be limited under applicable law.
4. You shall indemnify us and hold us harmless against any claim made by a third party in respect of which we are not liable under these terms.

Miscellaneous

1. We may subcontract all or part of our services to third parties, including our subsidiaries.
2. We, our group companies and contractors of either may store and otherwise process business contact information of you, your personnel and of authorised users of our online platform My Tover, for example name, email address, business telephone number, address, and user ID for business dealings with them. Where we receive such details from you and notice to, consent by the individuals or any other legal ground is required for such processing, you will notify and obtain such consent or other legal ground. Please refer to [our privacy statement on our website](#) that provides more detail on how we process this business contact information.
3. We will treat information that by law or by its nature is deemed to be confidential on a confidential basis. When you create a My Tover account you will keep the login details for the online environment confidential. These are personal and should not be shared with anyone else.
4. To the extent permissible under applicable law, the parties consent to use electronic means for communications as a signed writing, including but not limited to notices, invoices, offers, terms and conditions. Any reproduction of the Agreement made by reliable means is considered an original.

5. No action, regardless of form, may be brought by either party more than two years after the cause of the action reasonably became known.
6. In order to maintain flexibility in our business relationship, we reserve the right to change these GTC by providing you at least three months' written notice. However, these changes are not retroactive. They apply, as of the effective date we specify in the notice, only to on-going transactions that do not expire, and transactions with a defined renewable contract period. They will be applicable to new offers immediately.
7. We may assign any or all of our rights, interests and obligations under an Agreement to an affiliate as meant in articles 2:24a – c Dutch Civil Code or to any third party without your consent and you will cooperate with any such assignment.
8. Any suggested usage or guidance provided by us or our Products does not constitute medical or clinical advice and we do not undertake or assume any responsibility for your business or operations.
9. In the event that we are unable to fulfil an obligation under an Agreement due to an event of force majeure, which term shall include any event or cause beyond our control, including but not restricted to acts of God (such as earthquake, flood, storm etc.), acts or omissions of any government or agency thereof, rebellion, insurrection, epidemic such as but not limited to COVID_19, riot, sabotage, invasion, non-performance by suppliers, failure of transportation, inadequate supply of raw materials / components, strike, lock out and transportation embargoes (“**Force Majeure**”), the non-performance shall not be deemed a breach of this Agreement attributable to us and will not create any liability for damages resulting thereof, provided that we shall forthwith after any such event give written notice to you of our inability to perform such obligation and the reasons therefore.
10. If the consequences of Brexit result in a significant increase in our costs (i.e. more than 5% of the sales price) and/or limitation in (timely) fulfilling our obligations under the Agreement, due to for example a significant disruption in the supply chain, change in regulatory requirements or restrictions in free movement of people, we reserve the right to invoice the increased costs to you and/or the non-performance shall not be deemed a breach of the Agreement attributable to us and will not create any liability for damages resulting thereof.
11. No right or cause of action for any third party is created by these GTC and/or the Agreement.
12. Invalid Provisions. If any provision of the Agreement, including these GTC, is held to be illegal, invalid or unenforceable under any applicable present or future mandatory law, and if the rights or obligations of any party hereto under the Agreement will not be materially and adversely affected thereby, (i) such provision will be fully severable, (ii) the Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (iii) the remaining provisions of the Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance here from and (iv) there will be added automatically as a part of the Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.
13. All our proposals, and all Agreements between you and Tover, including these GTC, are construed and governed by the laws of the Netherlands. Disputes will be submitted exclusively to the competent Dutch court in Utrecht.