

## General terms and conditions of sale (version 1.2) of

**Tover North America 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 80173853 (“**Tover North America**”, “**us**” or “**we**”).

### 1. Definitions

A number of terms are defined in the provisions of these General terms and conditions of sale (“**GTC**”). In addition, the following terms shall have the meanings set forth below:

**"Agreement"**: any agreement between our customers ("**you/your**") and Tover North America, including offers or quotations accepted by you, regarding the sale, licensing or delivery of a Product.

**"Product(s)"**: a Tovertafel (including accessories), a software license related to the games (such as OP&L), services and/or training and support.

**"OP&L"**: our Open Play and Learn licenses as further described in our quotations.

### 2. General

- a. These GTC apply to all our (Tover North America 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 form an inseparable part of every Agreement.
- b. 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.
- c. Your purchase- or other conditions do not apply, unless we have explicitly accepted these in writing.
- d. All our offers and quotations are without obligation unless explicitly stated otherwise in writing. We are entitled to withdraw or amend 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. We are entitled to withdraw or amend pre-orders even after your acceptance thereof in writing, by giving you written notice prior to the moment of invoicing. If you don't agree with the amendments you are entitled to cancel the pre-order.
- e. If the provisions of these GTC conflict with or deviate from one or more provisions of the Agreement, the provisions of the Agreement shall prevail, but only if and insofar as the Agreement explicitly deviates from these GTC.

### 3. Delivery

- a. 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. Games are made available for remote upload on the Tovertafel via the Internet.
- b. Upon delivery of the Tovertafel, you will visually inspect it to determine whether or not the packaging is damaged upon arrival, in which case you will report this, preferably in the presence of the courier, and immediately notify us in writing (along with a copy of the proof of delivery and the damage report).
- c. Deliveries are subject to stock availability. Specified delivery dates are estimates only and not binding or to be regarded as deadlines, unless expressly agreed otherwise in writing.
- d. Risk of loss or damage will pass to you (i) upon delivery of the Tovertafel or (ii) 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.
- e. You agree to provide us full, free and safe access for installation (if this service is part of the Agreement) and for the provision of services.
- f. We are entitled to suspend the delivery of Products until you have fulfilled all your obligations to us. This suspension is valid until such time as you have fulfilled all your obligations or Tover North America has repudiated (“ontbinden”) the Agreement due to attributable non-performance.

#### **4. Installation of the Tovertafel**

- a. Installation of the Tovertafel after delivery is your responsibility, unless explicitly agreed otherwise in writing. The installation must be carried out by a technical person in accordance with the technical specifications and requirements and the installation instructions we provide to you. Upon first request, you will sign a document stating that you have fulfilled the aforementioned obligation.
- b. Because it is IMPORTANT that our instructions, particularly with respect to installation, be strictly followed, you agree to contact us before proceeding if you find that our instructions raise questions, are ambiguous or are otherwise not clear to you.

#### **5. Term of Open Play & Learn (“OP&L”) subscriptions**

- a. The initial term of each OP&L subscription is a consecutive period of two years, unless specified otherwise in the Agreement. The start date of this period is four weeks after the offer is signed, unless delivery of the Tovertafel has not yet taken place in which case we will inform you about the starting date. As an example, you sign the quote on March 1, 2021, then the OP&L will start on March 29, 2021. The OP&L cannot be terminated in the meantime.
- b. Unless otherwise specified in the Agreement, subscriptions automatically renew at end of the initial term and each expiration date thereafter for an additional period of one year, unless either party gives the other written notice (email acceptable, please email to [cancellation@tover.care](mailto:cancellation@tover.care)) at least 1 month prior to the end date of the relevant subscription term, providing at least the following information: customer number and the number of the Tovertafel.
- c. At the end date of the OP&L subscription, you will retain the starter set of games on the Tovertafel described in the quotation. If the quotation does not include a description of the starter set, then the starter set consists of ten games, to be determined by Tover North America at the end date of the OP&L subscription. These games from the starter set will automatically remain at your disposal. As long as updates and improvements become available for these games from the starter set and they are still compatible with the type of Tovertafel you bought, they will also be available for you to download.
- d. In the event that the OP&L subscription terminates as described in Section 11, you will be obligated to pay the unpaid fees for the remainder of the term of the OP&L, to the extent permitted by applicable law.

## **6. Price increases, charges and payments**

- a. 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.
- b. Unless otherwise specified in the quotation, each renewal of the OP&L subscription will be at the applicable price in effect at the time of the applicable renewal.
- c. We will invoice you in advance, unless explicitly agreed otherwise in writing. Upon receipt of your invoice you may choose your payment method as specified in the accompanying email. If you pay with credit card, you will provide us with valid and updated credit card information. If you provide credit card information to us, you authorize us to charge such credit card for all Products mentioned in the Agreement, including any renewal OP&L subscription term(s). Such charges shall be made in advance annually, unless explicitly agreed otherwise in writing. You are responsible for providing complete and accurate billing and contact information to us and notifying us of any changes to such information.
- d. Amounts are due and payable upon receipt of our invoice and will be paid in the currency specified in the quotation within the period specified in the Agreement or invoice. If neither the Agreement nor the invoice specifies a term of payment, you shall pay the amounts due net within fourteen (14) days of the invoice date. If neither the Agreement nor the quotation specifies a currency, payment shall be made in Euros.
- e. You agree to pay any and all taxes, duties and similar charges imposed by any authority as a result of your purchases of Products, regardless of their qualification, unless specified otherwise on our invoice.
- f. 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.
- g. If you have not paid the invoices within the agreed payment term, we will send a reminder. If you fail to pay within the term given therein, 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.

## **7. Ownership**

- a. Until such time as we have received the amounts due from you for the Tovertafel and the initial term of the OP&L, including obligations to pay any interest and costs due, we retain title to the Tovertafel we have supplied to you.
- b. As long as ownership of the delivered Tovertafel has not yet been transferred to you, you are not entitled to resell the delivered Tovertafel 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 North America.
- c. 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 in the Tovertafel, the mounting system and the games. You will 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.
- d. With respect to the games made available by us pursuant to the OP&L subscription, you receive a non-exclusive, limited, revocable right to use all games developed by us (to final product) for your target audience for playing on the Tovertafel within the limits legally prescribed by applicable mandatory law. You can use the games from the moment we make the games available for download on the Tovertafel until the end date of the OP&L subscription. From the

end date of the OP&L subscription, we grant you a perpetual non-exclusive license to continue using the games from the starter set on the Tovertafel, provided you comply with the Agreement and do not infringe our intellectual property rights. If these last two conditions are not met, we may revoke this perpetual non-exclusive license.

- e. 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 vested solely and exclusively in us and that we may use or disclose such feedback or creations for any purpose without your consent.

## **8. Service and support**

- a. 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, you will receive a temporary replacement Tovertafel and your defective unit will be collected at your location for the warranty services (repairs or replacement). Once the defect has been resolved, the repaired Tovertafel will be returned to you so that it can be installed by yourself. The temporary unit will be collected again in accordance with our instructions.
- b. The activities under Service Level 1 are always for our account. The activities under Service Levels 2 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”.

## **9. Product Warranty**

1. The warranty and associated conditions are described on the warranty card that will be supplied with the Tovertafel. You can also find this at [www.tover.care/us/terms-conditions-service-warranty](http://www.tover.care/us/terms-conditions-service-warranty). 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.

## **10. 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 previous supplies accordingly, (ii) discontinue sales and marketing of Products and (iii) discontinue the provision of updates and improvements to games for outdated models of the Tovertafel upon timely notice.
2. We reserve the right to change the licensing structure and pricing model of our Products. Such changes would not affect any license rights previously acquired by you.

## **11. Termination**

- a. Without prejudice to any of our other rights and claims that we may have, we may repudiate (“ontbinden”) or otherwise terminate the Agreement, in whole or in part, with immediate effect, without legal process and without notice, by giving you written notice if:
  - you are unable to perform a relevant obligation, including an obligation to pay, and you do not remedy the breach of the Agreement (if remediable) within fourteen days of receipt by you of our notice informing you of such breach and requesting performance;
  - you infringe our intellectual property rights;
  - your organization becomes the subject of a closure, liquidation, dissolution for reasons other than reconstruction or merger or if a petition for bankruptcy, (provisional) suspension of payments or liquidation is filed with respect to your organization, a receiver or administrator is appointed or a similar situation,
  - there has been an attachment of a substantial part of your assets which has not been lifted or destroyed within thirty (30) days, or
- b. In no event will we be liable for any damages you suffer as a result of such termination.

## **12. Limitation of liability**

- a. IN THE EVENT THAT WE ARE OBLIGED TO COMPENSATE DAMAGES, OUR AGGREGATE LIABILITY TO YOU – REGARDLESS OF THE THEORY OR GROUNDS THE CLAIM IS BASED UPON – WILL AT ALL TIMES BE CONFINED TO THE DAMAGE AGAINST WHICH WE ARE INSURED 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. IF, FOR ANY REASON WHATSOEVER, 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.
- b. 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 USE, MAINTAIN, REPAIR OR MODIFY THE PRODUCT IN A MANNER WHICH IS NOT IN CONFORMITY WITH OUR INSTRUCTIONS.
- c. 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 NORTH AMERICA OR THEIR EXECUTIVES OR FOR DAMAGES THAT CANNOT BE LIMITED UNDER APPLICABLE LAW.
- d. 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.

## **13. Miscellaneous**

- a. We may subcontract all or part of our services to third parties, including our subsidiaries.
- b. We, our group companies and contractors of either may store and otherwise process business contact information of you, your personnel and 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. As long as we do not receive a message from you, we may assume that this information is correct. When we receive business contact information from you and (i) notice to, (ii) consent of the individuals or (iii) some other legal basis is required for such processing, you will provide such notice and obtain such consent or other legal basis. Please refer to our privacy statement at <https://www.tover.care/us/privacy> that provides more detail on how we process this business contact information.

- c. We will treat information that is considered confidential by law or by its nature as confidential. When you or your employees create or create a My Tover account, respectively, you will keep the login credentials for the online environment confidential and impose the same obligation on your employees. These are personal and may not be shared with anyone else.
- d. No action, regardless of form, may be brought by either party more than two years after the cause of the action reasonably became known.
- e. 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, to ongoing transactions that do not expire and transactions with an established renewable contract period. They will apply immediately to new offers and Agreements.
- f. 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.
- g. No suggestion for use or guidance given by us or our Products constitutes medical or clinical advice and we do not undertake or assume any responsibility for your business or operations.
- h. In the event that we are unable to fulfil an obligation under an Agreement due to an event of force majeure, which term includes any event or cause beyond our control, including but not limited 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 failure to perform will not be considered a breach of the Agreement attributable to us and will not create any liability for damages resulting thereof, provided that we notify you in writing of our inability to perform such obligation and the reasons therefor immediately after such event.
- i. Unless stated otherwise in these GTC, no right or cause of action for any third party is created by these GTC and/or the Agreement.
- j. If any provision of the Agreement, including these GTC, is found to be unlawful, invalid or unenforceable under any applicable present or future mandatory law, and if the rights or obligations of any party 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 been a part thereof, (iii) the other provisions of the Agreement will remain in full force and effect and will not be affected by the unlawful, invalid or unenforceable provision or by the severance thereof and (iv) a legal, valid and enforceable provision will automatically be added as part of the Agreement, the wording of which is as similar as possible to the unlawful, invalid or unenforceable provision.
- k. All our proposals, and all Agreements between you and Tover North America, including these GTC, are construed and governed by the laws of the Netherlands. Each party will attempt in good faith to resolve any dispute arising out of or in relation to these GTC and/or the Agreement. If the dispute cannot be settled amicably, the Parties agree to submit any and all disputes with respect to these GTC and/or the Agreement and any amendments thereto to the International Chamber of Commerce to be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one arbitrator. The place of arbitration will be The Hague, the Netherlands. The arbitral procedure shall be conducted in the English language.