

## **GENERAL CONDITIONS WWW.WYPLAYER.COM**

In these general conditions, the terms “we” and “our” refer to WYPLAY, and the term “you” refers to the customer. WYPLAY is a company operating under French law whose head office is at 200, Avenue de Provence in Allauch (13190), registered at Marseilles Registre du Commerce et des Sociétés (Registry of Business and Companies) under the number: 488 937 269.

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### **DEFINITIONS**

In these general conditions, some words starting with a capital letter are defined terms which have the meaning indicated below:

“**Order Form**” refers to the electronic order form on our website;

“**Order**” refers to an order placed by you in accordance with these general conditions;

“**Order Confirmation**” refers to the order confirmation which we send out to acknowledge receipt of your Order;

“**Consumer**” refers to a customer who purchases Products for purposes other than those associated with his/her professional activity;

“**Contract**” refers to a contractual package comprising these general conditions and the Order;

“**Invoice**” refers to the invoice we issue for the payment of Products;

“**Working Day**” refers to any day other than Saturday, Sunday or a Bank Holiday in France;

“**Export Laws**” refers to all laws, regulations and bills of the United States, the European Union and France applicable to the export, re-export, transfer or resale of Products.

“**Products**” refers to products for sale on our website;

“**WYPLAYER Internet Site**” or “**Website**” refers to our Internet site which can be consulted at <http://www.wyplayer.com> designed to take orders from consumers in selected European countries.

### **ARTICLE 1. OBJECT – SCOPE OF APPLICATION**

1.1 These general conditions have the purpose of specifying our respective rights and obligations relating to the sale/purchase of Products via our Web Site. You may consult them before making any purchase, save or publish them.

1.2 We may change the general conditions at any time. However, the general conditions applicable are those in force at the time your Order is validated, which shall remain in force for the period of time required to supply the ordered Products, until the expiry of warranties which are due to you. Any other general conditions shall not be applicable.

1.3 The general conditions, as well as the Order, comprise the Contract between you and us for the supply of Products. The Contract may only be changed if we agree to change it in writing or by e-mail. If the Contract concerns an amount greater than or equal to that specified by article L 132-4 of the Consumer Code, we shall archive it and give you access to it simply on request. However, we have no obligation to archive your Contract if you have placed an Order for your professional activity.

## **ARTICLE 2. ORDERS**

2.1 To place an Order, you must be 18 or over, and have a valid personal e-mail address.

2.2 The offers on our Website are valid for the current day and/or as long as they are shown on our Website, limited however to available stock and availability of supplies. Furthermore, offers for an unrealistically low price as a result of a display error do not bind us.

2.3 You may place your Order by filling in the Order Form available on the WYPLAYER Internet Site after having successfully gone through the various stages which will be shown to you and having provided all the information concerning yourself. In particular, you should ensure that you indicate your contact details and delivery address as accurately as possible to avoid any errors or difficulties during delivery. You should carefully check the summary of your Order and the total price to pay before validating it by clicking on the "Validate (my order)" icon. Until validation, you may return to the previous pages and correct or change your Order and the information previously provided. We will only register your Order after your accepting the general conditions beforehand; this acceptance not requiring your handwritten signature. The Contract is made when you click on the "validate" button to confirm your Order. We do not accept any Order placed by means other than those mentioned above.

2.4 All information provided and the saved confirmation serve as proof of the Order. An e-mail of confirmation, acknowledging receipt of your Order, summarising all the information and allocating you an order number will be sent to you by e-mail shortly. We are not liable if the e-mail address which you provided when placing the Order is wrong or incomplete. In the event that the Order Confirmation does not reach you or in the event of a problem at the time the Order was placed, we urge you not to place your Order again and to contact us by e-mail or telephone.

2.5 We shall make every effort to supply you the ordered Products. However, we may be unable to supply you these Products because, in particular, (i) these Products are no longer available or no longer manufactured; or (ii) we are unable to source relevant components; or (iii) if, as a result of a display error on our Website, the price of the Products selected is unrealistically low. In this case, we shall inform you by e-mail as soon as we are aware of unavailability. At that time, we may offer to supply you, in exchange, with Products of comparable quality and price. Failing such an offer, or if you do not accept our offer, the Order will be cancelled and we shall refund you any sum that you may have paid us for these Products. The refund of these sums shall comprise our only liability towards you if we cannot deliver you the Products ordered.

## **ARTICLE 3. PRODUCTS**

3.1 The Products are those which we specifically present for sale on our Website, which we manufacture, have manufactured, or those which we have supplied to us by third parties.

3.2 We present these Products to you, outlining their main specifications prior to any Order, in accordance with the provisions of article L 111-1 of the Consumer Code. However, we would invite you to read any overview and instructions carefully, as well as any installation guides which accompany the Products, and also any information shown on the Products themselves or their packaging, and which, in particular, relate to precautions concerning installation, use and maintenance of the Products.

3.3 We shall not be held liable for information shown by manufacturers which may be incorrect. Moreover, Products having minimal variations as compared with the specifications shown on the Website at the time the contract was made shall not be deemed as non-conforming. In the same way, Products may be subject to improvement or changes, without notice. It is agreed that these changes shall in no way affect the conformity of the Product to the Order. We also reserve the right to make any changes, improvements, updates or adaptation of our Products at our sole discretion, by making any new version and/or any downloadable module available.

3.4 We may change the selection of Products offered for sale on our Website at any time, particularly depending on limitations relating to suppliers, without prejudice to Orders which you may have already placed.

3.5 The Products offered for sale on the Website comply with French legislation in force and with applicable standards in France. If you wish to import to, or use the Product in, another country, you must, under your sole responsibility, ensure that such import and/or use are authorised in that country, and you must comply with applicable tax and customs regulations.

#### **ARTICLE 4. PRICES**

4.1 Product prices are those indicated on the Website; they are in Euros and include (i) V.A.T. applicable on the day of the Order; (ii) ecotax, within the framework of regulations applicable to Waste Electric and Electronic Equipment (WEEE), and, if necessary, the private copy levy. Any change to the V.A.T. or ecotax rates will be automatically reflected in Product prices on sale on the Website.

4.2 Prices do not include delivery costs which are charged in addition. These costs are indicated before validation of the Order and are clearly shown on your Invoice.

4.3 We reserve the right to change the prices of Products on our Website at any time. However, you will be invoiced for the Products based on the current price on the day your Order is validated. The total Order price is indicated before the validation of your Order and is repeated in the e-mail of confirmation which we send you. You must pay the total Order price at the time of the Order. At no time shall sums paid be deemed as deposits or down payments.

#### **ARTICLE 5. PAYMENT**

5.1 Payment shall be made according to the payment method you chose amongst the various payment options which we offer you, when completing your Order. Whatever the method chosen, you guarantee to us that you have the necessary authorisation to use it.

5.2 Payment by bank card. We have introduced an Order verification procedure to ensure that no person uses someone else's bank details without his/her knowledge. We reserve the right to suspend any Order and, if need be, to cancel it, in the event that payment authorisation by bank card is refused by the officially accredited organisations; in the event of non-payment; if you have not totally paid or only have partially paid a previous Order; or if there is a current dispute regarding the payment of a previous Order.

5.3 Invoice. We shall send you an invoice by e-mail at the time your Order is delivered.

#### **ARTICLE 6. DELIVERY**

6.1 Delivery Service – We shall deliver to the delivery address you indicated when placing your Order, via La Poste's Colissimo service or another carrier. On handing over the Products to our carrier, we shall send you a confirmation of shipment by e-mail, provided that you indicated a valid e-mail address when Ordering. Deliveries are made every day except for Sundays and National Holidays. If you are absent at the time of delivery, you will have to collect your parcel at the post office or place indicated on the calling card.

6.2 Delivery Notes/Damage Claims – You must inspect, if necessary in front of the deliveryman/woman, the condition of the Products' packaging and the Products themselves on delivery, and indicate legibly and in detail on the delivery slip: (i) any damage observed to the packaging and/or the Products; and (ii) any Products missing in relation to what is shown on the delivery slip. If the Products are damaged, you must refuse the delivery: the Products will be returned and a new delivery will then be made at no charge to you. In the event the carrier does not give you the opportunity to inspect the packaging and the Products, you must imperatively make a note of this on the slip. Whatever the delivery notes/damage claims are, you have three (3) days to declare them by writing to the carrier by registered post with a return slip. You must also inform us by e-mail or telephone and send us a copy of the letter sent to the carrier.

6.3 Delivery Date – A delivery date will be indicated to you before the validation of your Order, which is then confirmed with your Order Confirmation. If, despite our every effort, this date passes, we shall inform you by e-mail as soon as possible. You then have the option of terminating the Contract according to the conditions in article L 121-20-3 of the Consumer Code. This option is not available to you if you placed the Order for your professional activity. We also decline any liability in the event that the date having been passed was attributable to you; or due to a force majeure event or a third party; and in particular, to the carrier in the event of loss of the Products or strikes.

6.4 Retention of Title – Risk Transfer – THE PRODUCTS, EVEN WHEN DELIVERED, REMAIN OUR PROPERTY UNTIL WE HAVE RECEIVED TOTAL PAYMENT FOR THE ORDER. THIS CLAUSE RELATING TO RETENTION OF TITLE DOES NOT PREVENT THE FACT THAT RISK OF LOSS OR DAMAGE OF PRODUCTS PASSES TO YOU UPON DELIVERY.

## **ARTICLE 7. RETURNS**

**7.1 Right of Withdrawal** – If you are a Consumer and are not satisfied with any of the Products which you have purchased from us, you may return the Product to us within a period of seven (7) Working Days starting from the delivery date, and obtain a refund. If this time period ends on a Saturday, Sunday or National Holiday or non-working day, it is extended to the following working day. You do not have this right of withdrawal for (i) Products which have been specially customised or packaged according to your instructions; nor for (ii) software delivered in sealed packaging which you have opened; nor for (iii) software which you have downloaded from our Website. We will only take back intact Products. Products which have been damaged or have deteriorated will not be taken back. As long as the Products are in your possession or under your responsibility, that is, until we take delivery of them, you are obliged to keep them in safe custody. To return a Product, you must abide by the following procedure:

- call us (see Contact section) between 10 and 12 o'clock a.m. or between 3 and 5 o'clock p.m. on any Working Day for us to give you a Product return number (RMA number) and send you a return slip;
- put the Product back in its original packaging, including all accessories, warranties attached to the Product and any other equipment delivered with the Product, unless we have given you other instructions; the original packaging includes (i) the manufacturer's packaging required for identifying the Product; (ii) the packaging used for transport during delivery; as the Product is fragile, this packaging alone enables its transport in acceptable safety conditions and to be kept intact; or packaging which ensures a comparable standard of protection and the Product to be kept in good condition; (iii) with the exception of unessential parts of this packaging.
- You must imperatively enclose the return slip which you will have been sent;
- check that you have carefully closed the packaging;
- indicate the RMA number on the return packaging and the following address: WYPLAY, Service des Retours, 200, Avenue de Provence, Allauch (13190).
- Use the recommended shipment service indicated on the delivery slip; shipment costs are at your expense.

After having checked that the Product is intact, we shall refund you the sums paid within a period of thirty (30) days, crediting your bank card if such was the initial payment method. Under no circumstances shall the refund be made in cash or by cheque.

**7.2 Non-Conforming or Faulty Products** – If a Product has been delivered incomplete or is faulty, in the event of a delivery error and if you think that you are entitled to a replacement or repair in accordance with Article 9 below, please abide by the following procedure:

- call us (see Contact section) between 10 and 12 o'clock a.m. or between 3 and 5 o'clock p.m. on any Working Day for us to give you a Product return number (RMA number) and send you a return slip;
- put the Product back in its original packaging, including all accessories, warranties attached to the Product and any other equipment delivered with the Product, unless we have given you other instructions; the original packaging includes (i) the manufacturer's packaging required for identifying the Product; (ii) the packaging used for transport during delivery; as the Product is fragile, this packaging alone enables its transport in acceptable safety conditions and to be kept intact; or packaging which ensures a comparable standard of protection and the Product to be kept in good condition; (iii) with the exception of unessential parts of this packaging.
- You must imperatively enclose the return slip which you will have been sent;
- check that you have carefully closed the packaging;
- indicate the RMA number on the return packaging and the following address: WYPLAY, Service des Retours, 200, Avenue de Provence, Allauch (13190).
- Use the recommended shipment service indicated on the delivery slip; shipment costs are at your expense.

7.3 Abiding by these return procedures is essential in order to ensure that the Product/s arrive in good condition at the right destination and as swiftly as possible. We reserve the right to reject any Product which has not been returned in accordance with these procedures.

**ARTICLE 8. TELEPHONE SUPPORT**

8.1 We provide you with telephone support at no extra charge for the use of WYPLAY branded Products purchased on our Website. For support relating to Products not of the WYPLAY brand, you will have to contact the manufacturer.

8.2 Such support consists of advice and guidance, solely in relation to problems regarding set-up, installation and use. In providing telephone support, we will attempt to resolve your query when you first call. However, we cannot guarantee a resolution to your enquiries.

8.3 This service shall be available for ninety (90) days starting from the purchase date shown on your Invoice.

**ARTICLE 9. CONTRACTUAL WARRANTY**

9.1 All Products of the WYPLAY brand have a contractual warranty of two (2) years against any intrinsic hidden defects and manufacturing defects. For Products which are not of the WYPLAY brand, including Products which are part of a joint offer or a special offer, you must contact the manufacturer.

9.2 The terms and conditions of the warranty, which comprise part of this Contract and are incorporated by reference, may be directly consulted on the [www.wyplayer.com](http://www.wyplayer.com) website. These terms and conditions are also included in your Product's packaging. You may consult them, in particular with a view to acquainting yourself before your purchase with the limitations and exclusions, by clicking on the link above.

9.3 Before forwarding your Product to the warranty service, it is up to you to save a copy of the system's software (operating system), application software and all data separately, and disable all your passwords. You are solely responsible for reinstalling all such software, data and passwords. We cannot be held liable for loss of data caused by the warranty service.

9.4 You may also call our warranty service on working days between 10 and 12 o'clock a.m. or between 3 and 5 o'clock p.m. (see contact section); you will need to give your Product's serial number.

9.5 IF YOU ARE A CONSUMER, THIS WARRANTY IS ADDITIONAL TO THE STATUTORY GUARANTEES YOU HAVE AGAINST NON-COMPLIANCE OR HIDDEN DEFECTS IN PRODUCTS, IN ACCORDANCE WITH ARTICLES 211-4 AND THOSE SUBSEQUENT IN THE CONSUMER CODE, AND WITH ARTICLES 1641 TO 1649 OF THE CIVIL CODE.

**ARTICLE 10. LIABILITY**

10.1 If you are a Consumer, nothing in the Contract shall limit or exclude our liability for a breach of any of our obligations in accordance with mandatory public policy provisions. If you are not a Consumer, these general conditions set out all our obligations and liabilities regarding the supply of Products (as well as the use of our telephone assistance and warranty service). Furthermore, the sole obligations and guarantees incumbent upon us are those explicitly stated in the Contract, excluding any other guarantees and/or obligations. Finally, any guarantee and/or obligation regarding the Products which may be our liability in accordance with a statutory provision (including without limitation any implied obligation relating to the quality, appropriateness for a particular use, reasonable care and skill) is hereby explicitly excluded. In particular, we will not be responsible for ensuring that the Products are suitable for your purposes.

10.2 Nothing in the Contract shall limit or exclude our liability in the event of death or bodily injury caused by our negligence or fraud.

10.3 Subject to the provisions of Article 10.2, our liability shall not be incurred in accordance with the Contract for any loss of revenue, loss of profit, loss of data, or any other damage, whether caused by tort (including negligence), breach of contract or otherwise.

10.4 Subject to the provisions of Article 10.2, our liability shall not be incurred in accordance with the Contract, should the non-performance or incomplete fulfilment of the Contract be attributable to you, or on account of unforeseeable and unavoidable circumstances, or attributable to a third party to the Contract, or on account of a force majeure event as specified in Article 14. Moreover, no liability shall be incurred by us in the event of changes in manufacture, composition, packaging and/or presentation of Products, or for any possible typographical errors shown on the Products or on the Website.

10.5 You are solely responsible for ensuring that the Product ordered meets your needs. Subject to the provisions of Article 10.2, our liability shall not be incurred in accordance with the Contract in the event of inappropriate or improper use of the Products, of Product incompatibility making use of the Products partially or totally impossible or for any event resulting from the use of a Product.

10.6 Our liability shall also not be incurred in the event of malfunctioning of the Internet network leading to failures in Website administration and management, processing of Orders, and more generally, in the event of any problem connected with the telecommunications network, online computers, servers, Internet Service Providers, computer equipment and software.

10.7 Subject to the provisions of Article 10.2, our total liability, whatever the grounds, is limited to the total amount paid by you for the Product/s in question.

#### **ARTICLE 11. CONTACT**

You may contact us:

- by telephone between 10 and 11 o'clock a.m. every Working Day on the following numbers:
    - o Wyplayer Department: 04 91 45 71 95 (from abroad: + 33 4 91 45 71 95)
  - by post to the following address: WYPLAY, Service Clients Wyplayer, 200, Avenue de Provence, Allauch (13190)
- by e-mail to the following address: [contact@wyplayer.com](mailto:contact@wyplayer.com)

When you contact us regarding an Order you have placed, you must give your Order number.

#### **ARTICLE 12. EXPORT CONTROL**

You agree to comply with Export Laws. You agree (i) not to export any Product to an unauthorised country in accordance with any of the Export Laws; and (ii) not to export any Product to a country for which an export licence or any other sort of administrative authorisation is required, without having first obtained the relevant licence or authorisation. You guarantee that you are not under the control of, are not a national or resident of, a country to which export of the Products is prohibited by any Export Law.

#### **ARTICLE 13. DATA PROTECTION**

When placing your Order, you consent to us storing, processing and using the data collected from your Order Form to process your Order. This data may be passed to our affiliates. All companies affiliated with us shall protect your data in accordance with our Privacy Policy. We work with other companies who are involved in supplying Products to you. Hence, we may be required to pass on your data to these companies to ensure delivery of your Products or so that you may benefit from special prices or conditions. In addition, in the event you should request financing to pay for the Products ordered, some of the information you provide us with shall be passed on to the companies providing the finance. In accordance with law no 78-17 of the 6<sup>th</sup> of January, 1978, as amended, you have a right to access personal data concerning you, a right to rectify and object to the processing of such data. To exercise one of these rights, you must update your preferences by contacting the WYPLAY head of data processing at the following address: [Droitdaces@wyplayer.com](mailto:Droitdaces@wyplayer.com).

In accordance with the “Informatique et Libertés” (Data Processing and Liberty) law, processing of your information is subject to a declaration to the Commission Nationale Informatique et Libertés – CNIL (National Commission for Data Protection and Liberty) under the number 1347264.

Cookies on our Website record certain information on your hard disk. This is used to generate statistics and to offer products suitable for your purposes. These cookies do not contain personal information.

**ARTICLE 14. FORCE MAJEURE**

We shall make every effort to fulfil our obligations in respect of the Contract. However, we shall not be held liable for any loss or damage that you may sustain and which might arise from a delay in the performance of any of our obligations or from our breach of all or part of our obligations in accordance with the Contract, should such a delay or breach be due to unforeseen, unavoidable circumstances beyond our control. In the event of delay, we shall perform our obligations as swiftly as possible.

**ARTICLE 15. PARTIAL INVALIDITY**

If any provisions of the Contract shall be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected.

**ARTICLE 16. NON-WAIVER**

Failure to enforce any provisions of the Contract shall not constitute a waiver as to that provision. Under no circumstances shall such failure affect the right to enforce the provision in the future.

**ARTICLE 17. APPLICABLE LAW - DISPUTES**

This Contract is governed by French law. Any disputes arising from the implementation of the Contract are subject to French law and only French courts may adjudicate. This applies to rules of substantive matters and procedure. In the event of disputes or claims, you must contact us first to obtain an amicable settlement. Seeking such an amicable settlement does not interrupt the time period within which to act according to the statutory or contractual warranty. If there is failure to reach an amicable settlement, or if you are not satisfied by this type of settlement, the following regulations apply: If you are a Consumer, you refer the matter to the competent Court in the region, pursuant to the imperative provisions of the “Code de Procédure Civile” (Code of Civil Proceedings). If you are a retailer, you must refer the matter exclusively to the “Tribunal de Commerce de Marseille (Marseilles Commercial Court).