

# Yalp Inc. General Terms & Conditions

## 1. Definitions

1.1 Agreement: shall mean the agreement between the Customer and YALP for the delivery of Products, together with any amendment or addition to such Agreement.

1.2 YALP: shall mean YALP, Inc., a Delaware corporation.

1.3 Customer(s): shall mean any natural person or business entity with whom YALP deals in the course of its business, including distributors, end-purchasers of the Products and Software, dealers, representative(s), agent(s), successor(s) and including visitors of the YALP website.

1.4 Defect(s): shall mean any substantive defect of a Product in breach of any written specification by YALP, as a result of which the Product is not fit for its intended use, at YALP's sole discretion.

1.5 Party or Parties: shall mean YALP and Customer, individually or collectively.

1.6 Product(s): shall mean the YALP products provided pursuant to the Agreement, including but not limited to, interactive products for children, and including Software.

1.7 Software: shall mean computer software, with accompanying documentation and specifications, including software embedded in the Products.

1.8 Terms: shall mean these International Terms and Conditions.

## 2 Applicability

2.1 These Terms apply to all offers by YALP and any Agreement between YALP and Customer, and any subsequent amendment or addition to such Agreement. By entering into an Agreement with YALP, Customer accepts these Terms. These Terms shall be applicable regardless of whether YALP uses third parties to deliver Products. Any changes to these Terms must be agreed upon in writing by the Parties.

2.2 No other terms shall be binding upon YALP unless accepted by YALP in writing. YALP expressly rejects any general terms and conditions used by Customer. Customer may issue a purchase order for administrative purposes only. Additional or different terms contained in any such purchase order will be null and void and do not bind YALP.

2.3 YALP reserves the right to amend these Terms at any time. New or amended Terms shall be applicable upon thirty (30) days' notice to Customer.

2.4 In case of inconsistencies between the terms of an Agreement and those contained in these Terms, the Agreement shall control.

## 3 Offers, products, prices and taxes

3.1 All offers made by YALP are non-binding and may be revoked at any time, unless stated otherwise in writing. Any amendment made by Customer to an offer by YALP will be deemed a new offer by Customer, which YALP may accept or reject in its sole discretion. Offers will only be deemed accepted by YALP if it does so in writing. YALP has the right to revoke any offer accepted by Customer within three days of receiving notification of such acceptance.

3.2 In the event YALP enters into an Agreement with more than one party, each party shall be jointly and severally liable for fulfilling the Agreement. If an Agreement is entered into by a third party with the authority to bind Customer, these Terms shall be deemed accepted by Customer. In the event such third party does not have the authority to bind Customer, the third party is bound to these Terms as if it were the Customer itself.

3.3 Any information or data related to Products, provided verbally or in writing, is binding only to the extent it is by reference expressly included and confirmed in writing in the Agreement with YALP.

3.4 All offers made by YALP are based on the information and documentation provided by Customer, and YALP may rely on the accuracy thereof. Customer warrants the accuracy, completeness and reliability of the information and documentation, even if it originates with or is acquired from a

third party.

3.5 Customer hereby understands and accepts that all samples, colors, drawings, models, figures, dimensions, weights or any other specifications for Products are estimates only, although YALP will use best efforts to ensure their accuracy.

3.6 Product configurations and prices are subject to change at any time, and YALP shall at all times be entitled to modify price lists, brochures, printed matter, quotations and other documents.

3.7 All prices are exclusive of, and Customer shall pay, all taxes, duties, levies or fees, or other similar charges imposed on YALP or Customer by any taxing authority (other than taxes imposed on YALP's income), related to Customer's order, unless Customer has provided YALP with an appropriate resale or exemption certificate for the delivery location. In case of changes in law such that a tax is levied that is or becomes irrecoverable with a consequent increase to the costs to YALP of delivering the Products, YALP is entitled to increase its prices accordingly and retro-actively.

3.8 The prices or fees quoted are in US Dollars, or in another currency if stated by YALP in writing.

3.9 All Agreements for the delivery of Products shall be treated as separate agreements.

## 4 Payment

4.1 Unless otherwise agreed upon in writing by YALP, Customer agrees to pay, without the right to set-off any amount, all invoiced amounts within the terms set forth on the invoice. In the event Customer (i) terminates or suspends all or a substantial portion of its business activities, (ii) becomes insolvent, (iii) admits its inability to pay its debts, or (iv) in case of the voluntary or involuntary filing of a petition for or adjudication of bankruptcy of Customer under any federal, state or municipal bankruptcy or insolvency act, the appointment of a receiver, trustee, custodian, or liquidator, or any act or action constituting a general assignment by Customer of its properties and/or interest for the benefit of creditors, all amounts will be due immediately.

4.2 YALP is entitled to raise agreed upon prices and tariffs in the event of interim price increases and/or surcharges outside of its control on (i) prices of goods, (ii) costs of materials, (iii) services necessary for the execution of the Agreement, such as shipping costs or wages or, (iv) the decrease in value of the currencies agreed upon, and (v) all other government measures having the effect of increasing prices as a result of which the cost price increases. Customer will be informed of such price increases in writing as soon as practicable.

4.3 If a delivery has been agreed upon in instalments and the first instalment has been delivered, YALP is entitled to demand payment for the costs incurred for the whole delivery.

4.4 Where payment is not made pursuant to the agreed upon terms, interest shall be owed at a rate of 2% a month, or the highest rate allowable by law, if lower, with effect from the first day following expiration of the payment term referred to in this article. Any portion of a month shall be considered a full month.

4.5 Payments made by Customer shall be used first to meet all the interest and costs owed and subsequently for the settlement of claims under the Agreement which have remained outstanding for the longest period of time, even when Customer specifies that the payment relates to another claim.

4.6 Customer shall not be entitled to refuse its payment obligations on account of an alleged Defect in the Products, or on any other account whatsoever.

4.7 If YALP believes that Customer's financial position and/or payment performance justifies such action, YALP has the right to demand that Customer immediately furnish security in a form to be determined by YALP, including a UCC Chapter 9 security right and/or that Customer make an advance payment. If Customer fails to furnish the desired security, YALP has the right, without prejudice, to immediately suspend further execution of the Agreement, and that which Customer

owes to YALP will become immediately due and payable.

4.8 Customer shall be liable for amounts which YALP incurs to collect payment, including without limitation, collection agency fees, reasonable attorneys' fees and arbitration or court costs.

## 5 Orders, shipping, delivery

5.1 All orders are subject to Product availability and YALP is entitled to make partial deliveries. Customer is aware that Products are shipped through third party carriers and that delivery times and dates are merely estimates. YALP CANNOT BE HELD LIABLE FOR ANY DAMAGES AS A RESULT OF DELAY IN DELIVERY OF PRODUCTS.

5.2 The manner of transport, shipping, packaging will at all times be determined by YALP. Provided Customer will pay the extra cost and expenses, Customer may request expedited delivery of Products through shipment by air.

5.3 Unless agreed upon otherwise by both parties, the risk of loss or damage to Products shall pass to Customer at the moment of shipment to Customer.

5.4 Customer must accept delivery of Products during normal business hours, failing which all costs arising thereof (including storage charges and freight charges) shall be charged in conformity with YALP's rates or local charges.

5.5 If other circumstances occur than those known to YALP when establishing the delivery time, it is entitled and authorized to extend the delivery time as necessary to perform under the agreement.

5.6 In the event delivery is not made within the agreed upon timeframe, as determined in the sole discretion of YALP, the Customer must give notice of default in writing to YALP. After receipt of such notice, YALP shall have a minimum of fourteen (14) days to deliver the Product and cure the default without incurring any liability.

## 6 Inspection, acceptance of products, returns

6.1 Claims in connection to shortages or errors in shipments, or obvious defects in Products, must be reported in writing to YALP within two (2) business days of receipt of such shipment. If Customer fails to timely report such shortages or errors, YALP will have no obligation to correct such shipments, unless Customer bears all the expenses thereof.

6.2 In the case of any alleged Defects, Customer shall allow YALP to inspect the Products subject to the alleged Defect.

6.3 Notwithstanding the above, YALP will have no obligation to replace or repair any Products if the Products have been treated or stored improperly by the Customer, if the Products have already been installed or if the Customer has not fully met its obligations under these Terms.

6.4 The remedy for allegedly defective products, shall, at the election of YALP, be (i) to award Customer reasonable damages, or (ii) in consultation with Customer, to agree upon an adequate solution to repair such faults and defects. In such cases, Customer shall not be able to claim additional damages.

## 7 Intellectual property ownership and right of use

7.1 All intellectual property rights, e.g., patents, copyrights, trademarks, designs, models, know-how and all proprietary and/or commercial rights and trade secret rights, tools, documentations, etc., in relation to the Products and the Software, are owned by YALP or its licensor(s). No transfer or other grant of rights is given to Customer, unless explicitly stated in writing. This applies even if Products and/or Software have been specifically designed, developed or compiled for Customer.

7.2 Provided that Customer is also the end-purchaser/ user of the Product and the Software, the Customer will have a personal non-exclusive, non-transferable and non-sub-licensable license to use the Product and the Software for Customer's own use while the Customer complies with these Terms.

7.3 Customer understands and agrees that downtime of the Products may result from YALP's implementation of updates,

upgrades, or other maintenance activities related to the Software, and YALP shall not be liable for any damages relating to such downtime or inaccessibility.

7.4 Unless otherwise agreed in writing, Customer may not make repairs or modifications to the Products and the Software, nor allow or enable any third parties to do so. Customer may not, nor may it enable and/or allow third parties to reverse engineer, copy, display or distribute any Products and Software, without YALP's prior approval.

7.5 Customer shall not be permitted to affix any trademark to the Products, or to remove any copyright, trademark or other proprietary rights notices on same, or to use the relevant mark in any other way, or to register it in Customer's own name.

7.6 If a third party threatens to infringe any of the intellectual property rights of YALP and Customer has knowledge of it, Customer is obliged to notify YALP in writing immediately.

## 8 Confidential information

8.1 "Confidential Information" means (i) the existence and terms of the Agreement and (ii) any non-public, confidential or proprietary information relating to a disclosing Party, including any that is designated by the disclosing Party as confidential information at the time of its disclosure, either by a written or visual confidentiality designation, or otherwise if such information would, under the circumstances, appear to a reasonable person to be confidential or proprietary. Notwithstanding the foregoing, Confidential Information does not include information, data or know-how which: (i) is in the public domain at the time of disclosure or becomes available thereafter to the public without restriction, and in either case not as a result of the act or omission of the receiving Party; (ii) is rightfully obtained by the receiving Party from a third party without restriction as to disclosure; (iii) is lawfully in the possession of the receiving Party at the time of disclosure by the disclosing Party and not otherwise subject to restriction on disclosure; (iv) is approved for disclosure by prior written authorization of the disclosing Party; or (v) is developed independently and separately by either Party without use of the disclosing Party's Confidential Information.

8.2 Each Party agrees that it will safeguard the confidentiality of the Confidential Information supplied by the other Party and that it will observe the same due care with respect to such information as it would observe with respect to its own Confidential Information. The other Party shall not sell, copy and/or distribute in any way Confidential Information to third parties, without disclosing Party's prior written consent, which consent may be granted or withheld in such Party's sole and absolute discretion.

8.3 Each Party agrees that it will restrict the employees or third parties it retains who have access to the other Party's Confidential Information to the extent possible and provide such access only on an as-needed basis and after binding such employees and third parties to the same level of confidentiality as set forth in these Terms.

8.4 Immediately following the receipt of a written request by the disclosing Party, the receiving Party will return any and all Confidential Information received from the disclosing Party or destroy such Confidential Information, if the disclosing Party so requests.

## 9 Cancellation, termination and suspension of performance

9.1 If Customer believes that YALP has failed to perform under the Agreement, it must notify YALP in writing and allow twelve (12) weeks for YALP to cure the alleged performance failure.

9.2 If Customer fails to make payment of any amount due on the due date or Customer otherwise fails to perform its obligations under the Agreement or these Terms, YALP may in its sole and absolute discretion suspend performance under the Agreement with Customer and/or terminate the Agreement (in whole or part), with immediate effect, without being liable for any damages to Customer.

9.3 Notwithstanding the above and without any obligation to return any prepaid sums, YALP may terminate its relationship

with Customer, or may terminate or suspend YALP's delivery of Products at any time: (i) if Customer is in breach of these Terms and/or the Agreement; (ii) if YALP reasonably suspects that Customer is using Products to breach the law or infringe third party rights; (iii) if YALP reasonably suspects that Customer is trying to unfairly exploit or misuse the complaint policy, or any of YALP's policies; (iv) if YALP reasonably suspects that Customer is using Products fraudulently, or that Products provided to Customer are being used by a third party fraudulently; (v) for a force majeure event that continues for more than thirty (30) days; (vi) if Customer fails to pay any amounts due to YALP; (vii) if required due to change in laws/regulation by a regulator or authority with a lawful mandate, or by any of YALP's partners; (viii) in respect to a particular YALP Product, upon thirty (30) days' notice if YALP decides to cease offering that Product; (ix) the bankruptcy of the Customer has been applied for; (x) an attachment is levied on the goods of Customer; (xi) Customer is liquidated or discontinued; and/or (xii) Customer is in violation of any applicable laws or regulations.

9.4 Upon suspension and/or termination of the Agreement, all invoiced sums will become immediately due and payable. In the event of suspension of performance by YALP, YALP may at its sole discretion resell any Products ordered by Customer, at a public or private sale without notice to Customer and without affecting YALP's rights to hold the Customer liable for any loss or damage caused by breach of contract by Customer.

## 10 Warranty

10.1 Provided that a correctly completed My Yalp Product and Warranty Registration (the "Registration") has been returned to YALP, YALP will provide the warranty set forth in the Registration. This YALP warranty is for a period of five (5) years as of the date of first purchase and covers parts only. The YALP warranty is only valid if and when a valid service agreement has been executed by Customer and Customer is not breaching its obligations towards YALP. PLEASE READ THE REGISTRATION CAREFULLY BECAUSE IT CONTAINS ADDITIONAL WARRANTY LIMITATIONS AND RESTRICTIONS.

10.2 The YALP warranty does not cover faults or damages arising from improper storage, installation, unauthorized use or misuse of Products, and improper or defective environmental circumstances, or a failure caused by a product for which YALP is not responsible.

10.3 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND UNLESS STATED IN WRITING BY YALP, ITS LICENSORS, THIRD PARTY SUPPLIERS, AND AFFILIATES HEREBY DISCLAIM ALL WARRANTIES, CONDITIONS, CLAIMS OR REPRESENTATIONS WITH RESPECT TO THE YALP PRODUCTS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, QUALITY, NON-INFRINGEMENT, COMPATIBILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. SPECIFICALLY, YALP DOES NOT WARRANT INTERNET OR ANY OTHER DATA CONNECTION WITH THE PRODUCT. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM YALP OR ELSEWHERE WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THESE TERMS.

## 11 Liability, limitation of damages and indemnification

11.1 NEITHER YALP NOR ITS OFFICERS OR EMPLOYEES OR AFFILIATES MAY BE HELD LIABLE WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER FORM OF LIABILITY FOR ANY CLAIM, DAMAGE, OR LOSS, (AND CUSTOMER HEREBY WAIVES ANY AND ALL SUCH CLAIMS OR CAUSES OF ACTION), ARISING OR RELATING TO ALL ACTS AND/OR OMISSIONS RELATING TO PRODUCTS USED, DISTRIBUTED, OR SOLD BY CUSTOMER.

11.2 IN NO EVENT SHALL YALP, ITS AFFILIATES OR ITS LICENSORS BE LIABLE, AND WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER FORM OF LIABILITY,

FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF INCOME, BUSINESS, SALES, PROFITS (WHETHER ACTUAL OR ANTICIPATED), LOSS OF OR CORRUPTION TO DATA, OR INTERRUPTION OF BUSINESS.

11.3 NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT TO THE CONTRARY, YALP'S AGGREGATE LIABILITY ARISING OUT OF THE AGREEMENT, OR IN CONNECTION WITH ANY SALE OR USE OF ANY OF THE PRODUCTS, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON ANY CONTRACT, WARRANTY, TORT OR OTHERWISE, SHALL IN NO CASE EXCEED THE TOTAL OF AMOUNTS PAID TO YALP FOR PRODUCTS DELIVERED PURSUANT TO THE AGREEMENT, DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST DATE OF THE LIABILITY CLAIM OR \$100,000, WHICHEVER IS LESS. 11.4 THE LIMITATIONS ON YALP'S LIABILITY ABOVE SHALL APPLY WHETHER OR NOT YALP, ITS EMPLOYEES, LICENSORS OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES.

## 12 Indemnification

CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD YALP, ITS PRESENT AND FUTURE OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS AND ITS AFFILIATES HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, PENALTIES, LIABILITY AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES, IN CONNECTION WITH, OR ARISING OUT OF CUSTOMER'S BREACH OF THE AGREEMENT OR THESE TERMS, OR ARISING OUT OF ANY USE, DISTRIBUTION, OR SALE OF THE YALP PRODUCTS BY CUSTOMER, UNLESS SUCH WAS THE RESULT OF YALP'S WILFUL MISCONDUCT, GROSS NEGLIGENCE OR FRAUD.

## 13 Insurance

Customer shall maintain sufficient insurance policies in connection to possible claims relating to the Products sold by Customer.

## 14 Severability

If any provision of these Terms, the Agreement or any other agreement between the Parties, is held to be null, void or otherwise ineffective or invalid by a court of competent jurisdiction, (i) such provision shall be deemed to be restated to reflect as nearly as possible the original meaning of the terms or agreement in accordance with applicable law, and (ii) the remaining terms, provisions, covenants and restrictions shall remain in full force and effect.

## 15 Force majeure

YALP will not be liable for any delay in performing or failure to perform any of its obligations under these Terms or the Agreement caused by events beyond its reasonable control. YALP will notify Customer promptly in writing of the reasons for the delay or stoppage (and the likely duration) and will take all reasonable steps to overcome the delay or stoppage.

## 16 Assignment

Customer is not permitted to assign, delegate or otherwise transfer the Agreement or any rights hereunder. Any such attempted assignment, delegation or transfer will be null and void. YALP is permitted at its sole discretion to assign the Agreement or any rights or obligations hereunder to any third party, without giving prior notice.

## 17 Entire agreement

The Agreement and these Terms contain the entire agreement between YALP and Customer regarding Customer's purchase of the Products, and supersedes and replaces any previous communications, representations or agreements, or Customer's additional or inconsistent terms, whether oral or written.

**18 No waiver**

The failure to exercise, or delay in exercising, a right, power or remedy provided by the Agreement, these Terms or the law shall not constitute a waiver of that right, power or remedy. If YALP waives Customer's breach of any provision of these Terms or the Agreement, such waiver shall not operate as a waiver of a subsequent breach of that provision or as a waiver of a breach of any other provision.

**19 No beneficiaries**

Any agreement between the Parties is for the sole benefit of the Parties thereto and, except as otherwise contemplated therein, nothing therein expressed or implied shall give or be construed to give any person, other than the Parties thereto, any legal or equitable rights thereunder.

**20 No partnership**

Nothing contained in any agreement between the Parties shall be read or construed so as to constitute the relationship of principal and agent or of partnership between the Parties. Neither of the Parties may pledge or purport to pledge the credit of the other Party or make or purport to make any representations, warranties, or undertakings for the other Party.

**21 Injunctive relief**

Customer acknowledges that YALP shall suffer irreparable injury in case of breach of the obligations under Articles 7 and 8. Accordingly, in the event of such breach, Customer acknowledges that YALP will be entitled to injunctive relief in any state or federal court of competent jurisdiction. Customer further submits to the personal jurisdiction of such courts for the purposes of any such action.

**22 Governing law and jurisdiction**

This Agreement shall be governed by and construed under the laws of the State of New York (without giving effect to any conflict of laws principles under New York law). The parties hereby agree to submit to the personal jurisdiction of the state and federal courts of the County and State of New York. ANY CAUSE OF ACTION AGAINST YALP, REGARDLESS WHETHER IN CONTRACT, TORT OR OTHERWISE, MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED

LAW.LIMITATION OF LIABILITY IN NO EVENT SHALL YALP, ITS AFFILIATES OR ITS LICENSORS BE LIABLE, HOWEVER CAUSED AND WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER FORM OF LIABILITY, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF INCOME, BUSINESS, SALES, PROFITS (WHETHER ACTUAL OR ANTICIPATED), LOSS OF OR CORRUPTION TO DATA, OR INTERRUPTION OF BUSINESS. YALP'S AGGREGATE LIABILITY FOR CUSTOMER'S CLAIMS IN CONNECTION TO PRODUCTS SHALL NOT EXCEED THE FULL PURCHASE PRICE OF THE PRODUCTS PAID BY CUSTOMER.

This warranty applies to all orders delivered after May 28th 2020.