

Even By Odd – Terms & Conditions

Last updated: 27 June 2022

**DEFINITIONS**

<b>Conditions:</b>	the terms and conditions set out in this document, as amended from time to time in accordance with clause 13.
<b>Contract:</b>	the contract between Even By Odd and the Customer for the sale and purchase of the Goods in accordance with these Conditions.
<b>Customer:</b>	the person or firm who purchases the Goods from Even By Odd.
<b>Data Protection Legislation:</b>	the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).
<b>Goods:</b>	the goods (or any part of them) set out in the Order.
<b>Order:</b>	the Customer’s order for the Goods.
<b>UK Data Protection Legislation:</b>	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
<b>Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:</b>	as defined in the Data Protection Legislation.

**1. GENERAL**

- 1.1** Even By Odd is prepared to supply the Customer with vinyl records, CDs and other goods on the basis only of these Conditions. These Conditions apply to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.2** The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions.
- 1.3** The Order shall only be deemed to be accepted when Even By Odd issues a written acceptance of or otherwise processes the Order, at which point the Contract shall come into existence.
- 1.4** Any samples, descriptions or advertising produced by Even By Odd and any descriptions or illustrations contained in Even By Odd’s catalogues, brochures or websites are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the contract nor have any contractual force.
- 1.5** Even By Odd are a seller of Goods only. Even By Odd does not have any intellectual property in the Goods being sold and accepts no responsibility for the contents of the Goods, their accuracy, or any opinions expressed therein. Even By Odd has no control over the contents of the Goods sold.

## 2. TRADE DESCRIPTION

### 2.1 Subject to clause 3 the goods supplied to the Customer shall:-

- 2.1.1 be of merchantable quality;
- 2.1.2 if sold by description conform with their description;
- 2.1.3 if sold by sample, conform to that sample;
- 2.1.4 if the purposes for which they are required is indicated to Even By Odd in writing by the Customer before Even By Odd accepts the Customer's order, be suitable for that purpose.

## 3. WARRANTY

Save as aforesaid Even By Odd gives no warranty, guarantee or promise whatsoever in relation to the Goods and all warranties, conditions, representations and guarantees whatsoever in relation to the Goods, save as set out in clause 2 above and any warranties that may be implied by custom, law or otherwise are hereby excluded.

## 4. PRICE

- 4.1 All quoted prices are net of VAT and exclude delivery charges.
- 4.2 The prices for the Goods shall be those ruling at the date despatch and Even By Odd reserves the right to amend its quoted prices at any time prior to the date of despatch.
- 4.3 Shipping will be at the Customer's cost. All charges forward.
- 4.4 It is the responsibility of the Customer to ensure they have adequate insurance cover for all Goods shipped to them.

## 5. CREDIT POLICY AND PAYMENT INFORMATION

- 5.1 Once your application to open an account with us has been accepted, you will be notified of your payment terms. Statements are sent out at monthly intervals to enable you to check your current invoices paid and due. Accounts with overdue balances may be placed on credit hold. This means that no further goods will be shipped until the account is brought into order. Repeated failure to keep to our credit terms may result in the permanent loss of your credit facility. **A surcharge of 2.5% will be made for any accounts settled by credit card on all transactions.**
- 5.2 In the event of non-payment under your agreed terms, we reserve the right to commence charging interest on the full balance due, on a daily basis at the rate of 2% above the base lending rate of HSBC Bank plc from the due date until payment of the unpaid balance is received in full.

**Please note our bank details will be emailed to you upon the successful opening of an account with us.**

## 6. DELIVERY

- 6.1 Even By Odd shall deliver the Goods to the location set out in the Order (Delivery Location). Even By Odd may use a third party courier or carrier to deliver the Goods.
- 6.2 Risk in the Goods shall pass to the Customer once the Goods have been despatched from Even By Odd's premises or collected by the courier for delivery, whichever occurs first. From this point onward the Goods are carried entirely at the Customer's risk.

- 6.3** Even By Odd shall not be liable for any loss, damage or delay occurring during transit once the Goods have been despatched from Even By Odd's premises. Any claims relating to loss or damage in transit must be made against the relevant carrier.
- 6.4** Even By Odd shall use reasonable endeavours to meet any delivery date or delivery schedule agreed with the Customer, but such dates are estimates only and shall not be of the essence. Even By Odd shall not be liable for any delay in delivery caused by a Force Majeure Event, the actions of the carrier, or the Customer's failure to provide adequate delivery instructions.
- 6.5** If Even By Odd fails to deliver the Goods, its liability shall be limited to the net invoice value of the Goods not delivered. Even By Odd shall have no liability for any indirect or consequential loss arising from failure or delay in delivery.
- 6.6** Unless otherwise agreed by Even By Odd, all Goods must be collected within ten Business Days after the day on which Even By Odd notifies the Customer that the Goods are ready for delivery. Where Goods are to be prepaid, payment must be received before release of the Goods for delivery.
- 6.7** If ten Business Days after notification that the Goods are ready for delivery the Customer has not accepted delivery, Even By Odd may resell or otherwise dispose of part or all of the Goods.
- 6.8** Even By Odd may deliver the Goods by instalments. Each instalment shall constitute a separate contract and shall be invoiced and paid for separately. Any delay or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 6.9** Minor cosmetic damage to outer packaging, sleeves, shrink wrap or similar packaging occurring during transit which does not affect the functionality or usability of the Goods shall not be considered a defect and shall not entitle the Customer to reject the Goods.

## **7. BUYER'S RISK**

Risk in the Goods passes to the Customer in accordance with clause 6.2. From the point at which risk passes, the Goods shall be held at the Customer's risk and the Customer shall be responsible for any loss, damage or deterioration of the Goods.

## **8. RETENTION OF TITLE**

- 8.1** Title to the Goods shall not pass to the Customer until Even By Odd has received payment in full (in cleared funds) for the Goods and for any other goods supplied by Even By Odd to the Customer.
- 8.2** Should Even By Odd have reasonable grounds for suspecting the Customer cannot make payment for the goods in their possession, the Customer shall return all such Goods to Even By Odd. If the Customer fails to return Even By Odd's stock, Even By Odd may recover from the Customer the Goods remaining in the Customer's possession and for the purpose thereof may enter upon any premises of or occupied by the Customer or any third party (with the consent of that third party). All costs associated with the recovery of Even By Odd's Goods will be met by the Customer.
- 8.3** The Customer has the right to dispose of the Goods in the course of its business for the account of Even By Odd and to pass title to the Goods to their customers being bona fide purchasers for value without notice of Even By Odd's rights.

- 8.4** If Even By Odd by reason of failure of the Customer to pay any invoice in respect of the Goods supplied under its agreed terms, refers the invoices to a collection agency for recovery, then the Customer shall pay and Even By Odd may charge the Customer the collection charges of such collection agency.
- 9. LOSS OR DAMAGE IN TRANSIT OR NON DELIVERY**
- 9.1** The Customer shall examine the Goods immediately on delivery.
- 9.2** If there is clear visible damage to the outside of the shipment, please sign for the delivery and add the word DAMAGED next to the signature or in a relevant space if provided.
- 9.3** If there is no clear damage but the condition of the shipment still raises concern, please sign for the delivery and add the word UNCHECKED next to your signature or in a relevant space if provided.
- 9.4** For any visibly damaged shipments it would also be appreciated if you could provide any photos of the shipment as it was delivered prior to opening. We would be grateful for your cooperation in this procedure for all future deliveries received from Even By Odd. All claims for shortages or damages must be notified to Even By Odd in writing within 3 days from receipt of the Goods.
- 9.5** Any loss or damage occurring in transit after risk has passed in accordance with clause 6.2 shall be the responsibility of the Customer and any claim must be pursued with the relevant carrier.
- 10. DEFECTIVE GOODS**
- 10.1** Goods may not be returned without the prior written agreement of Even By Odd.
- 10.2** The Customer must inspect the Goods immediately upon receipt and notify Even By Odd of any alleged defect, shortage or damage within three days of delivery. Failure to notify Even By Odd within this period shall be deemed acceptance of the Goods.
- 10.3** Even By Odd's liability in respect of defective Goods shall be limited, at its option, to replacing the defective Goods or issuing a credit note for the value of those Goods. Such measures shall relate only to the actual defective Goods or their value, and Even By Odd shall not in any circumstances be liable for any indirect or consequential loss, damage or loss of profits suffered by the Customer.
- 10.4** No credit or replacement will be issued until the Goods have been returned to Even By Odd and verified as defective.
- 10.5** Minor cosmetic damage to outer packaging, sleeves, sleeve corners, shrink wrap or similar packaging that does not affect the functionality or usability of the Goods shall not be considered a defect and shall not entitle the Customer to reject the Goods.
- 10.6** Goods returned for reasons other than being defective must be in the original packaging and in clean resaleable condition. Otherwise, at Even By Odd's discretion, the Goods may be refused or a restocking fee charged to cover additional costs.
- 10.7** Depending on the nature and type of return, Even By Odd reserves the right to decide whether:
- 10.7.1 Even By Odd will bear the full cost of the return;
- 10.7.2 Even By Odd and the Customer will share equally the cost of the return; or
- 10.7.3 Even By Odd will not contribute towards the cost of the return.
- 10.8** Even By Odd shall not be responsible for Goods returned that are lost or damaged in transit.

## 11 LIABILITY AND TERRITORIAL RESTRICTIONS

- 11.1** Notwithstanding the delivery times set out in these terms of business, whilst Even By Odd will use its reasonable endeavours to deliver orders as soon as possible, it accepts no liability for late delivery.
- 11.2** Even By Odd will not be liable whether in contract, tort (including negligence), breach of statutory duty or otherwise for any indirect or consequential loss or loss of profit in respect of any Order or otherwise under or in connection with the Contract. Even By Odd's total liability to the Customer in respect of all other losses shall, to the full extent permissible by law, in all circumstances, be limited to the net invoice value of the Goods to which the claim relates.
- 11.3** Nothing in these Conditions shall limit or exclude Even By Odd's liability for:
- 11.3.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - 11.3.2 fraud or fraudulent misrepresentation;
  - 11.3.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - 11.3.4 any matter in respect of which it would be unlawful for Even By Odd to exclude or restrict liability.
- 11.4** In so far as any software or hardware is provided by Even By Odd to the Customer all intellectual property rights in the same shall as between the Customer and Even By Odd belong to Even By Odd and the Customer shall not alter, modify or otherwise tamper with the software or the hardware. Upon the Customer ceasing to be an account holder the Customer shall either return the software and hardware to Even By Odd or if so required by Even By Odd destroy or delete them.
- 11.5** All products are sold by Even By Odd strictly on the basis that the Customer accepts and respects the publishers intellectual and territorial rights. Whilst Even By Odd will provide information to the Customer about any territorial restrictions that apply to any Goods (as notified to Even By Odd by the originating publisher/distributor or bibliographic data provider), full responsibility for complying with any such restrictions lies with the Customer. Even By Odd shall not be liable to the Customer or any third party for any errors in the territorial restrictions communicated to Even By Odd.
- 11.6** The Customer shall indemnify Even By Odd against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Even By Odd arising out of or in connection with the Customer's failure to comply with any territorial restrictions which apply to the Goods.

## 12. DATA PROTECTION

- 12.1** Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 12, Applicable Laws means (for so long as and to the extent that they apply to the Provider) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.
- 12.2** Without prejudice to the generality of clause 12.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Even By Odd.

- 12.3** Without prejudice to the generality of clause 12.1, Even By Odd shall, in relation to any Personal Data processed in connection with the performance by Even By Odd of its obligations under this agreement:
- 12.3.1 process that Personal Data only for the Agreed Purposes unless Even By Odd is required by Applicable Laws to otherwise process that Personal Data. Where the Provider is relying on Applicable Laws as the basis for processing Personal Data, the Provider shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Customer.
- 12.3.2 ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 12.3.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 12.3.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- (a) the Customer or Even By Odd has provided appropriate safeguards in relation to the transfer;
  - (b) the data subject has enforceable rights and effective legal remedies;
  - (c) Even By Odd complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;
  - (d) Even By Odd complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 12.3.5 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 12.3.6 notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- 12.3.7 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- 12.3.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 12.
- 12.4** The Customer consents to Even By Odd appointing delivery agents as third-party processors of Personal Data under this agreement.

**13. VARIATIONS AND HEADINGS**

Even By Odd shall be entitled from time to time to make changes to these Conditions. You will be notified of these changes in writing and the Customer can request the latest terms by email to [accounts@evenbyodd.com](mailto:accounts@evenbyodd.com). The headings in these terms and conditions are for convenience only.

**14. TERMINATION**

**14.1** Without limiting its other rights or remedies, Even By Odd may terminate this Contract with immediate effect by giving written notice to the Customer if:

14.1.1 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;

14.1.2 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

14.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

14.1.4 the Customer's financial position deteriorates to such an extent that in Even By Odd's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

**14.2** Without limiting its other rights or remedies, Even By Odd may suspend provision of the Goods under the Contract or any other contract between the Customer and Even By Odd if the Customer becomes subject to any of the events listed in clause 14.1.1 to clause 14.1.4, or Even By Odd reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

**14.3** Without limiting its other rights or remedies, Even By Odd may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

**14.4** On termination of the Contract for any reason the Customer shall immediately pay to Even By Odd all of Even By Odd's outstanding unpaid invoices and interest.

**14.5** Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

**14.6** Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

**15. FORCE MAJEURE**

Even By Odd reserves the right to cancel, vary or suspend the operation including (without prejudice to the generality of the foregoing) fire, floods, storm, plant breakdown, strikes, lockouts, riot, hostilities, non-availability of materials or supplies or any other event outside of the control of Even By Odd: and Even By Odd shall not be liable for any breach of contract resulting from such an event.

**16. WAIVER**

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**17. SEVERANCE**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

**18. COPYRIGHT**

Even By Odd reserves to itself any copyright, patent, trademark, registered design or otherwise in the Goods supplied.

**19. ANTI-PIRACY**

The Customer agrees to comply with any and all applicable laws and regulations and the Customer agrees to take all commercially reasonable steps to prevent unauthorised distribution, duplication or pirating of software products.

**20. TERRITORIAL RESTRICTIONS**

All products are sold to Even By Odd account holders on the express understanding that the Customer is aware of any domestic restrictions that may apply with regards to the Goods.

**21. LAW**

The terms and conditions shall be governed by the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the High Court of England in connection with any dispute which may arise under these terms and conditions or its implementation or enforcement.