

THE WELSH NETBALL ASSOCIATION – NETBALL TOTS®
TERMS AND CONDITIONS

Welsh Netball has devised the Netball Tots programme and these are the terms on which we will licence you to use the programme. Capitalised words shall have the meanings set out in the Schedule

AGREED TERMS

Your attention is particularly drawn to the provisions of clause 11 (Limitation of liability).

1. About us

1.1 **Company details.** THE WELSH NETBALL ASSOCIATION (company number 02679598) (**we** and **us**) is a company registered in England and Wales and our registered office is at Sport Wales National Centre, Sophia Gardens, Cardiff, CF11 9SW. Our main trading address is Sport Wales National Centre, Sophia Gardens, Cardiff CF11 9SW. Our VAT number is 273870477. We operate the website www.welshnetball.com.

1.2 **Contacting us.** To contact us telephone our customer service team at 029 2033 4590 or e-mail netballtots@welshnetball.com. How to give us formal notice of any matter under the Contract is set out in clause 18.

2. Our contract with you

2.1 **Our contract.** These terms and conditions (**Terms**) together with the Order Confirmation apply to the order by you and supply of the Programme by us to you (**Contract**). They apply to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 **Entire agreement.** The Contract is the entire agreement between you and us in relation to Netball Tots. You acknowledge that you have not relied on any statement, promise or representation or assurance or warranty that is not set out in the Contract.

2.3 **Language.** These Terms and the Contract are made only in the English language.

2.4 **Your copy.** You should print a copy of these Terms or save them to your computer for future reference.

3. Placing an order and its acceptance

- 3.1 **Placing your order.** Please follow the onscreen prompts to place an order for Netball Tots. You may only submit an order using the method set out on the Website. Each order is an offer by you to buy the Pack selected by you on the Website.
- 3.2 **Correcting input errors.** Our order process allows you to check and amend any errors before submitting your order to us. Please check the order carefully before confirming it. You are responsible for ensuring that your order is complete and accurate.
- 3.3 **Acknowledging receipt of your order.** After you place your order, you will receive an email from us acknowledging that we have received it, but please note that this does not mean that your order has been accepted. Our acceptance of your order will take place as described in clause 3.4.
- 3.4 **Accepting your order.** Following receipt of your order we will contact you to confirm certain specifics such as Key Persons, Permitted Use, Competent Person and Designated Person (all as defined in the Schedule) to be included in the Order Confirmation. Our acceptance of your order takes place when we send an email to you to accept it (**Order Confirmation**), at which point and on which date (**Commencement Date**) the Contract between you and us will come into existence. The Contract will relate only to those Packs confirmed in the Order Confirmation.
- 3.5 **If we cannot or unwilling accept your order.** If we cannot or unwilling to supply you with the Materials for any reason, we will inform you of this by email and we will not process your order. If you have already paid for Netball Tots, we will refund you the full amount.

4. Our services

- 4.1 **Descriptions and illustrations.** Any descriptions or illustrations on the Website are published for the sole purpose of giving an approximate idea of Netball Tots. They will not form part of the Contract or have any contractual force.
- 4.2 **Compliance with specification.** Subject to our right to amend the specification (see clause 4.3) we will supply Netball Tots to you in accordance with the specification appearing on Website at the date of your order in all material respects.
- 4.3 **Changes to specification.** We reserve the right to amend the Netball Tots specification and we will notify you in advance of any such event.
- 4.4 **Reasonable care and skill.** We warrant to you that the Netball Tots will be provided using reasonable care and skill.
- 4.5 **Time for performance.** We will use all reasonable endeavours to meet any performance dates specified in the Order Confirmation, but any such dates are

estimates only and failure to provide the Materials by such dates will not give you the right to terminate the Contract.

5. Grant of Licence

- 5.1 Subject to the terms and conditions of the Contract and in consideration of you paying the Fee, we grant to you, during the Term, a non-exclusive, non-transferable and non-sub-licensable licence to implement Netball Tots for the Permitted Use in the Territory.
- 5.2 You shall not use Netball Tots or the Materials for any purpose other than the Permitted Use and if you wish to use them in any other way you must be authorised to do so in a separate contract.
- 5.3 We reserve the right to use and to license others to use the Materials in the Territory without recourse or notice to you.
- 5.4 We shall deliver the Materials to you in such format as we shall determine.

6. Your obligations

- 6.1 You shall:-
 - 6.1.1 Ensure that the terms of your order are complete and accurate;
 - 6.1.2 ensure that the Materials are used to the standard and quality and in line with any other requirements notified by us to you from time to time and in particular adapt the Materials so that they are suitable for the relevant audience and promptly notify us of all Adaptations;
 - 6.1.3 supply to us such information in relation to its use of the Materials or otherwise relating to the Contract as we may reasonably require and ensure that such information is complete and accurate;
 - 6.1.4 conduct all publicity and promotion relating to Netball Tots professionally and responsibly and in a manner that is not detrimental to our interests, including on social media;
 - 6.1.5 immediately notify us in writing, setting out full details of any infringement or potential infringement of the Intellectual Property Rights in the Materials of which you have notice;
 - 6.1.6 give us any assistance as we may reasonably require in prosecuting any infringement of the Intellectual Property Rights in the Materials.
 - 6.1.7 obtain and maintain all licences, consents and approvals required for the operation of the Materials and the delivery of Netball Tots;
 - 6.1.8 not make any misleading warranty or representation in respect of Netball Tots in implementing it;

- 6.1.9 not use the Materials in a way, or do anything or allow anything to be done, which does or may bring us into disrepute;
 - 6.1.10 comply with:-
 - 6.1.10.1 all laws, regulations and requirements of competent bodies concerning in particular data protection, health and safety, applicable to the implementation of the Materials;
 - 6.1.10.2 our reasonable requirements from time to time;
 - 6.1.11 not hold yourself out as our agent or pledge our credit;
 - 6.1.12 otherwise make clear in all dealings that you act on your own account;
 - 6.1.13 employ in the implementation of Netball Tots the Key Person(s), Competent Person, Designated Person and such other persons who have successfully completed such training as we require from time to time, and who are otherwise sufficiently competent for the performance of their duties;
 - 6.1.14 release personnel for training as specified in the Materials or otherwise required by us and pay all costs thereof (including employees' salaries, travel and subsistence);
 - 6.1.15 participate in any quality control, customer satisfaction, sales, promotional or other scheme which we may run from time to time;
 - 6.1.16 allow our representatives to enter the premises where Netball Tots is being delivered and observe sessions without advance notice;
 - 6.1.17 keep us fully informed in advance of the location and times of all Netball Tots sessions;
 - 6.1.18 provide us with such information regarding participation in Netball Tots sessions as we may request;
 - 6.1.19 authorise us to use your name and logo/trademarks and publish your participation in Netball Tots on our website and elsewhere; and
 - 6.1.20 within six (6) months of payment of the Fee procure that the Key Person(s) or other suitably qualified representatives attend one of the orientation training sessions around Wales which we intend, but do not undertake, to provide within the Fee. Details of courses will be available at www.welshnetball.com/tots.
- 6.2 You shall use the Materials:-
- 6.2.1 at your sole risk and expense;
 - 6.2.2 in accordance with the Contract and any guidance contained in the Materials, each as amended from time to time;
 - 6.2.3 to the highest standards;
 - 6.2.4 in accordance with good business practice; and
 - 6.2.5 generally in a manner reasonably satisfactory to us.

6.3 Insurance

Unless otherwise agreed by us in writing, you shall:-

- 6.3.1 insure: (i) with a major reputable insurance company; (ii) at a level of cover appropriate for the Territory or as otherwise agreed by us; (iii) against all normal and reasonably foreseeable risks; (iv) relating to the implementation of Netball Tots;
- 6.3.2 the insurance set out in clause 6.3.1 will include, without limitation; (i) public liability & professional indemnity of at least £5,000,000.00 per incident; (ii) product liability; (iii) employers' liability; (iv) any other insurance required in the Territory; (vi) all for the full Term and for such period thereof that we may reasonably require;
- 6.3.3 on request provide to us proof that premiums have been paid and copies of cover notes and policies;
- 6.3.4 ensure that our interest is noted on the policy and that we are to receive not less than thirty (30) days' notice of termination; and
- 6.3.5 not do, or omit to do, anything to vitiate either in whole or in part any of the insurance cover that it is obliged to have and maintain under this clause.

6.4 Claims:

You will:-

- 6.4.1 notify us in writing, as soon and as fully as possible, of any claim in relation to the Materials or the Intellectual Property Rights in the Materials or their implementation;
- 6.4.2 not make any statement, admission or payment in relation to any claim without our prior written agreement;
- 6.4.3 allow us sole control of any claim.

6.5 Intellectual Property

You will:-

- 6.5.1 not take or authorise any action whereby the Trademarks (or our goodwill or reputation therein) or other Intellectual Property might be jeopardised or invalidated;
- 6.5.2 not deal or purport to deal with the Trademarks or other Intellectual Property in the Materials other than under the Contract (and in particular, not pledge them as security);
- 6.5.3 at our request and expense, assist us in applying to protect or maintain the validity and enforceability of the Trademarks and other Intellectual Property in the Materials.
- 6.5.4 execute, at your expense, such documentation as we may require in relation to your use of the Trademarks;

- 6.5.5 comply with our reasonable requirements from time to time in relation to the use and presentation of the Trademarks;
 - 6.5.6 not: (i) register or apply to register; or (ii) use, any trademark, company, business or domain name which contains, or is the same as or colourably similar to, the Trademarks;
 - 6.5.7 on discovering any actual or threatened infringement of the Trademarks, notify us in writing as soon and as fully as possible;
 - 6.5.8 take (at our expense such expense to be subject to our prior written approval) such action against the infringer as we may request (but no other action);
- 6.6 You acknowledge that any additional goodwill you may generate in the Trademarks will belong to us.
- 6.7 You shall not do or allow anything which would or might prejudice our rights in the Materials or which might suggest that you have any title or interest in the Materials, other than the licence granted under the Contract.
- 6.8 You shall not, and shall not permit or allow others to, use, edit, adapt, modify, alter or make additions to the Materials in any way which is or could be deemed to infringe third party rights or be obscene, defamatory or otherwise unlawful.
- 6.9 In consideration of the rights granted to you in the Contract and other good and valuable consideration you assign to us with full title guarantee the Intellectual Property Rights throughout the world in all Adaptations. You acknowledge that Adaptations shall form part of the Materials and that we may licence them to third parties.

7. Credit

You will credit us with being the owner of the Materials on all copies of the Materials as follows:-

“This work is owned by and published under licence from Welsh Netball of Sophia Gardens, Cardiff CF11 9SW.”

8. Fees and payment

- 8.1 In consideration of us granting the licence to you under clause 5, you shall pay us the Fee. The Fee is the price quoted on our Website at the time you submit your order.
- 8.2 All payments by you under the Contract shall be made in pounds sterling or such other currency as we may specify from time to time.
- 8.3 All payments referred to in the Contract are exclusive of VAT and any other sales or similar taxes, customs duties or similar charges which shall also be payable by you.

9. Warranties

All warranties and representations, whether statutory or implied on the part of us, are hereby expressly excluded to the fullest extent permitted by law, and without limitation to this, nothing in the Contract shall be construed as a representation or warranty that:

- 9.1 the Intellectual Property Rights in the Materials or the Trademarks or any of them are valid or subsisting;
- 9.2 the Intellectual Property Rights in the Materials or the Trademarks do not infringe any Intellectual Property Rights of any third party;
- 9.3 the Materials will be of satisfactory quality or fit for the purpose for which you intended.

10. Infringement and indemnities

10.1 If any claim is made or, in our opinion is likely to be made, that the Materials infringe the rights of any third party, we may at our sole option:

- 10.1.1 modify the Materials so that they cease to be infringing; or
- 10.1.2 terminate your use of the Materials under the Contract.

10.2 Subject to clause 11, this clause 10 states our entire liability with respect to infringement or alleged infringement by the Materials (or any part thereof) of any third party rights.

10.3 You shall indemnify us and keep us indemnified from and against any losses, damages, costs or expenses suffered by us and arising as a result of or in connection with any modification, alteration, addition made to the Materials or use of the Materials by you outside of the scope of or not in accordance with the Contract.

10.4 You will indemnify us against all loss, damage or liability suffered by us as a result of the conduct of your business, your implementation of Netball Tots or breach of the Contract. Such indemnity will extend, but not be limited to:

- 10.4.1 costs, claims, damages, losses, fines and other penalties (including in relation to any breach of statutory duty); and
- 10.4.2 reasonable liabilities and expenses (including legal and other fees and disbursements on an indemnity basis) of investigating and defending any claim;

and in particular (without limitation) those arising out of: (i) your use of the Method or the Trademarks other than in accordance with the Contract; (ii) failure to comply with the Contract, the Method or the Materials; or (iii) failure to comply with any law, regulation, permission, code of conduct or other requirement.

- 10.5 You will, in relation to any claim the subject of an indemnity under clause 10.4:-
- 10.5.1 make no admission or compromise as to, or settlement of, any such claim without our prior written agreement;
 - 10.5.2 allow us sole conduct and control of negotiations and defence of, and otherwise in relation to, such claim;
 - 10.5.3 afford us (at our expense) all assistance requested in dealing with such claim.
- 11. Limitation of liability - NB: YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 11.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract, indemnity or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 11.
- 11.2 Subject to clauses 11.3 and 11.5, our total liability (whether in contract, tort (including negligence), or otherwise) in respect of all claims, losses and damages arising under the Contract shall not exceed the Fee.
- 11.3 Subject to clause 11.5, we shall not be liable to you in contract, tort (including negligence), misrepresentation (whether innocent or negligent), breach of statutory duty or otherwise arising out of or in connection with the Contract for any of the following (whether direct or indirect):
- 11.3.1 loss of profit;
 - 11.3.2 loss of anticipated profit;
 - 11.3.3 loss of revenue;
 - 11.3.4 loss of business;
 - 11.3.5 loss of opportunity;
 - 11.3.6 harm to reputation or loss of goodwill.
- 11.4 The parties agree that the limitations on liability in the Contract are reasonable given their respective commercial positions and ability to purchase relevant insurance in respect of risks under the Contract.
- 11.5 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 11.5.1 death or personal injury caused by negligence;
 - 11.5.2 fraud or fraudulent misrepresentation;
 - 11.5.3 any other losses which cannot be excluded or limited by applicable law;

12. Force majeure

Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from any event beyond the reasonable control of that party. The party affected by such an event shall promptly notify the other party in writing when such an event causes a delay or failure in performance and when it ceases to do so. If such an event continues for a continuous period of more than one (1) month, the party not affected may terminate the Contract by written notice to the other party.

13. Confidential Information

- 13.1 The receiving party shall maintain the confidentiality of the disclosing party's Confidential Information and shall not without the prior written consent of the disclosing party use, disclose, copy or modify the disclosing party's Confidential Information (or permit others to do so) other than as necessary for the performance of its rights and obligations under the Contract.
- 13.2 The receiving party may disclose the disclosing party's Confidential Information to those of its employees, officers, advisers, agents or representatives who need to know the disclosing party's Confidential Information in order to perform the receiving party's rights and obligations under the Contract, provided that the receiving party shall ensure that each of its employees, officers, advisers, agents or representatives to whom Confidential Information is disclosed is aware of its confidential nature and complies with this clause 13 as if it were a party to the Contract.
- 13.3 Each party shall give notice to the other of any unauthorised misuse, disclosure, theft or loss of the other's Confidential Information immediately upon becoming aware of the same.
- 13.4 The provisions of this clause shall not apply to information which:
- 13.4.1 is or comes into the public domain through no fault of the receiving party, its officers, employees, agents or contractors;
 - 13.4.2 is lawfully received by the receiving party from a third party free of any obligation of confidence at the time of its disclosure;
 - 13.4.3 is independently developed by the receiving party, without access to or use of such information; or
 - 13.4.4 is required by law, by court or governmental or regulatory order to be disclosed provided that the relevant party, where possible, notifies the other party at the earliest opportunity before making any disclosure.
- 13.5 The obligations under this clause shall survive the variation, expiry or termination of the Contract.

14. Term and termination

- 14.1 The Contract may be terminated by us giving a minimum of one (1) month's notice in writing to you.
- 14.2 We may also terminate the Contract at any time on written notice to you if:
- 14.2.1 you commit a material breach of the Contract and such breach is not remediable;
 - 14.2.2 you commit a material breach of the Contract which is not remedied within fourteen (14) days of receiving written notice of such breach;
 - 14.2.3 you have failed to pay any amount due under the Contract on the due date;
 - 14.2.4 you take any step or action in connection with you entering administration, provisional liquidation or any composition or arrangement with your 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 your assets or ceasing to carry on business; or
 - 14.2.5 you suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of your business;
- 14.3 On expiry or termination of the Contract you must return all of the Materials and delete all electronic and other copies of them. Until they have been returned, you will be solely responsible for their safe keeping and must not use them for any purpose.
- 14.4 Termination of the Contract will not affect your or our rights and remedies that have accrued as at termination.
- 14.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination will remain in full force and effect.

15. Data protection

All personal data processed by you in connection with Netball Tots shall be processed in accordance with all Data Protection Legislation. You shall be the data controller (as defined in the Data Protection Legislation) and secure the consent of all relevant individuals to the processing of their personal data for the purpose of Netball Tots including the lawful transfer of Personal Data (as defined in the Data Protection Legislation) for the purposes set out in the Contract.

16. Children and other vulnerable persons

- 16.1 In implementing Netball Tots you will comply with our Safeguarding Policy [www.welshnetball.com/governance], and with all relevant legislation and regulations from time to time necessary for securing the welfare of children and vulnerable people.

16.2 You warrant that the Designated Person shall be available at all times to and shall assess and advise on the risks to the welfare of children or vulnerable adults involved in the Project and that the Designated Person has received appropriate safeguarding training.

17. Health and safety

17.1 You warrant that you shall comply and shall ensure that all personnel shall comply with all relevant health and safety rules, regulations and legislation from time to time in force.

17.2 You warrant that the Competent Person shall be available at all times to and shall assess and advise on the risks to health and safety of all persons who could be affected in the implementation of Netball Tots.

17.3 You shall follow the advice of the Competent Person and ensure that the Competent Person assesses all the risks of all aspects and stages of the implementation of Netball Tots and devises systems and procedures and otherwise advises you on how to eliminate or minimise the possible dangers as far as possible.

17.4 You are responsible for the safety of everyone associated with the Netball Tots. Health and safety and child protection legislation places this responsibility on you. Our policy(ies) does not replace these statutory responsibilities.

18. Notices

18.1 Notices under the Contract shall be in writing and sent to the registered address noted above in our case and to the address given by you when you place your order in your case. Notices may be given, and shall be deemed received:

18.1.1 by first-class post: two days after posting;

18.1.2 by hand: on delivery;

18.1.3 by email: at 9.00 am the next working day after transmission.

18.2 This clause does not apply to notices given in legal proceedings or arbitration.

19. Variation

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and is duly signed or executed by, or on behalf of, each party.

20. Transfer of rights

You may not licence, assign, subcontract or encumber any right or obligation under the Contract without our prior written consent.

21. Severance

If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

22. Waiver

No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right or remedy. No single or partial exercise of any right, power or remedy provided by law or under the Contract shall prevent any future exercise of it or the exercise of any other right, power or remedy.

23. Third party rights

No one other than a party to the Contract, their successors and permitted assignees shall have any right to enforce any of its provisions.

24. Governing law

The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

25. Jurisdiction

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1
DEFINITIONS AND INTERPRETATION

1. In these terms the following words have the following meanings:-

Adaptations	all adaptations to the Materials made by you or your representatives, staff or freelance contractors;
Competent Person	the person(s) specified in the Order Confirmation for the purposes of health and safety;
Confidential Information	information disclosed by or on behalf of a party (the Disclosing Party) to the other party (the Receiving Party) under or in connection with the Contract which is marked as confidential, or which the Disclosing Party has indicated to the Receiving Party is confidential, or which would be regarded as confidential by a reasonable business person;
Data Protection Legislation	the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy;
Designated Person	the person(s) specified in the Order Confirmation for the purposes of safeguarding;
Fee	the price quoted on our Website at the time you place your order for your chosen Pack;
Intellectual Property Rights	copyright, rights in inventions, patents, know-how, trade secrets, trademarks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, the right to sue for infringement and passing off, utility models, domain names and all similar rights and, in each case: <ul style="list-style-type: none">(a) whether registered or not;(b) including any applications to protect or register such rights;(c) including all renewals and extensions of such rights or applications;(d) whether vested, contingent or future; and(e) wherever existing;

Key Person[s]	the persons specified in the Order Confirmation who will supervise the implementation of Netball Tots;
Materials	all materials, documents and information (including the Packs) now or in future existing in relation to the Netball Tots Programme;
Method	the methods and procedures devised by Welsh Netball in respect of Netball Tots and set out in the Materials;
Netball Tots	a programme devised by us to provide entry level opportunities for girls and boys between the ages of 3 to 6 in netball;
Order Confirmation	the order confirmation referred to in clause 3.4;
Pack	the pack relating to Netball Tots which has been ordered by you via the Website;
Permitted Use	the purpose for which you have been licensed to use Netball Tots, as specified in the Order Confirmation;
Term	unless otherwise specified in the Order Confirmation the duration of the term is twelve (12) months;
Territory	unless otherwise specified in the Order Confirmation within the regions of Wales;
Trademarks	means all trademarks and logos of Welsh Netball;
UK Data Protection Legislation	any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation;
VAT	means United Kingdom value added tax, any other tax imposed in substitution for it and any equivalent or similar tax imposed outside the United Kingdom; and
Website	our website at www.welshnetball.com/tots .

2. Words in the singular include the plural and vice versa.
3. Any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words.

4. The background section and any clause, schedule or other headings in these terms are included for convenience only and shall have no effect on the interpretation of the Contract.
5. A reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time.