

KONG Authorised Reseller Addendum

IMPORTANT: Please read the terms of this Addendum carefully, as it sets out your legal rights and obligations with respect to your authorisation to sell KONG products. Note that this Addendum supersedes any prior agreement (including any authorisations) you may have entered into with and/or received from KONG regarding the sale of the Products offline and/or online. Accordingly, all resellers are required to seek new authorisation under the terms of this Addendum.

WHEREAS:

- a. KONG manufactures the Products and distributes them in Europe (as further defined below) through Authorised Distributors and Authorised Resellers (as further defined below), which is essential to maintaining the viability and promoting the objectives of the KONG European Partner Programme; and
- b. KONG wishes to appoint the Reseller as a non-exclusive Authorised Reseller for the promotion and sale of the Products to End-Users, other Authorised Resellers and Authorised Distributors in Europe, and the Reseller wishes to promote and sell the Products on the terms and conditions of this Addendum;

The parties hereby agree as follows:

1. Definitions

- 1.1 “**Authorisation Date**” has the meaning given in Clause 11 of this Addendum.
- 1.2 “**Authorisation Term**” has the meaning given in Clause 11 of this Addendum.
- 1.3 “**Authorised Distributor**” means a wholesale distributor within Europe which has entered into an Authorised Distributor Addendum with KONG and received KONG’s prior written confirmation that it is authorised to sell KONG products to Authorised Resellers or Authorised Distributors in Europe due to its compliance with the Distributor Authorisation Criteria.
- 1.4 “**Authorised Physical Location**” shall mean a physical address retail store operated by the Reseller which KONG has pre-authorised in writing for the offline sale of the Products by the Reseller, due to the physical address’s compliance with the Reseller Authorisation Criteria for offline sales.
- 1.5 “**Authorised Reseller**” means a retailer within Europe which has entered into an Authorised Reseller Addendum with KONG and received KONG’s prior written confirmation that it is authorised to sell KONG products offline and/or online (as applicable) to End-Users, Authorised Resellers or Authorised Distributors in Europe due to its compliance with the relevant Reseller Authorisation Criteria.
- 1.6 “**Authorised Web Shop**” shall mean a web shop operated by the Reseller which KONG has pre-authorised in writing for the online sale of the Products by the Reseller, due to the web shop’s compliance with the Reseller Authorisation Criteria for online sales.
- 1.7 “**Distributor Authorisation Criteria**” means the authorisation criteria for the sales of the Products by Authorised Distributors, which KONG may update from time to time by giving notice.
- 1.8 “**End-User**” shall mean any purchaser of the Product(s) who is the ultimate consumer for whom the Product is designed and who does not intend to resell the Product to a third party.
- 1.9 “**Europe**” means the European Economic Area, Switzerland and the United Kingdom.
- 1.10 “**Licensed IP**” means the trade marks, trade names, product images, marketing banners and/or any other intellectual property provided by KONG in writing, in the approved image or form provided by KONG.
- 1.11 “**KONG European Partner Programme**” means the selective distribution system under which KONG undertakes to sell the contract goods, whether directly or indirectly, only to Authorised Distributors or Authorised Resellers selected on the basis of their compliance with the Distributor Authorisation Criteria or Reseller Authorisation Criteria respectively, and where such Authorised Distributors and Authorised Resellers undertake not to sell such goods to any unauthorised distributors or unauthorised resellers.
- 1.12 “**Reseller Authorisation Criteria**” means the authorisation criteria for the sales of the Products by Authorised Resellers offline (“the Bricks Criteria”) or online (the “Clicks Criteria”), which KONG may update from time to time by giving notice.

2. Appointment

- 2.1 KONG appoints the Reseller as a non-exclusive Authorised Reseller and hereby grants the Reseller (pursuant to such appointment) a licence and right, during the Authorisation Term, to market, distribute and sell the Products under the Licensed IP to End-Users, Authorised Resellers and Authorised Distributors in Europe from the Reseller’s Authorised Physical Location(s) and/or Authorised Web shop(s) (as applicable), on the terms of this Addendum.
- 2.2 The Reseller shall not make any sales of the Products to any customers before the Authorisation Date.
- 2.3 This Addendum supersedes any prior authorisation granted by KONG to the Reseller to sell the Products offline and/or online.

3. Offline Sales of the Products

- 3.1 If the Reseller has been expressly authorised by KONG to sell the Products offline, the Products shall only be offered for sale from the Reseller’s Authorised Physical Location(s) and the Authorised Physical Location(s) shall comply at all times with the terms of the Reseller Authorisation Criteria for offline sales. The Reseller is expressly prohibited from selling the Products from any physical store or premises that has not been expressly authorised in writing by KONG as an Authorised Physical Location.

4. Online Sales of the Products

- 4.1 If the Reseller has been expressly authorised by KONG to sell the Products online, the Products shall only be offered for sale on the Reseller’s Authorised Web shop(s) and the Authorised Web shop(s) shall comply at all times with the terms of the Reseller Authorisation Criteria for online sales.
- 4.2 Unless specifically authorised by KONG in writing under the KONG Reseller Authorisation Criteria, the Reseller is not permitted to sell Products via any third party online marketplace or platform.

5. Sales to authorised members of KONG European Partner Programme only

- 5.1 The Reseller agrees that it shall not sell or transfer any Products to any person or entity for resale that is not an Authorised Reseller or Authorised Distributor. At the time of sale, if a customer is attempting to purchase more than 5 units of the Products, the Reseller shall verify whether the customer is an Authorised Reseller or Authorised Distributor (KONG acknowledges that checking whether the customer appears on a recent list of Non Authorised Resellers provided by KONG will be sufficient for these purposes).
- 5.2 The Reseller shall not sell or offer for sale any product bearing a trade mark, copyright, patent, or name associated with KONG, which the Reseller purchased or obtained from a source other than KONG, an Authorised Distributor or an Authorised Reseller.

6. Geographic Sales Boundary

- 6.1 The Reseller may only sell and advertise for sale the Products within Europe. The Reseller is hereby expressly prohibited from soliciting or consummating sales outside of Europe, unless it has obtained KONG’s express written consent.

7. Intellectual Property

- 7.1 During the Authorisation Term and so long as the Reseller's appointment has not been terminated by either party, the Reseller is granted a limited, non-sublicenseable, non-exclusive, non-transferable, revocable license to use the Licensed IP for the sole purpose of advertising and promoting the sale of Products within Europe. This license will cease immediately upon termination of the Reseller's status as an Authorised Reseller.
- 7.2 The Reseller acknowledges and agrees that KONG owns all proprietary rights in and to the KONG brand, name, logo, trade marks, service marks, trade dress, copyrights, and other intellectual property related to the Products and the Licensed IP. The Reseller shall have no right, title, or interest in the Licensed IP. All use of the Licensed IP and the goodwill associated therewith shall inure to the benefit of KONG.
- 7.3 The Reseller shall ensure that the Licensed IP is:
- used in conjunction with the ® or TM designations as directed by KONG;
 - not modified in any manner without the prior written consent of KONG;
 - used alone without any other terms, marks, or designs which may detract from the Licensed IP; and
 - used and displayed according to any branding or intellectual property specifications or conditions which KONG may provide or amend from time to time, including but not limited to KONG's brand voice and brand visual guidelines.
- 7.4 The Reseller shall not do anything inconsistent with KONG's ownership of the Licensed IP, including, but not limited to, using, causing or permitting another party to use the Licensed IP as any part of a uniform resource locator ("URL") or metadata tag, or as a keyword or search engine term without KONG's prior written consent. This does not include the use through Google's and Yahoo's Adword programs and/or other web service providers' similar adwords programs.
- 7.5 The Reseller shall not, at any time during or after termination of this Reseller Addendum, in connection with any business similar to that of KONG, adopt, use or register without the prior written consent of KONG a word or symbol or a combination of the two which is (in KONG's sole discretion) the same as or confusingly similar to the Licensed IP.
- 7.6 The Reseller undertakes not to copy the Products or to manufacture its own versions of the Products nor shall the Reseller authorise any third party so to do. Additionally, the Reseller shall not sell any Product for the purposes of incorporation into the Reseller's own products to any customer who would use them to manufacture the same type of goods as those produced by KONG.
- 7.7 The Reseller shall not, during the Authorisation Term or thereafter, challenge KONG's title to or rights in the Licensed IP. If the Reseller challenges the validity of the Licensed IP or KONG's title to or rights in the Licensed IP, KONG shall be entitled to immediately terminate this Addendum and any supply agreement or accepted purchase orders it has in place with the Reseller.
- 7.8 KONG alone is responsible for the registration and maintenance of any marks or designs that relate to the Products. The Reseller shall not obtain or try to obtain or register for itself anywhere in the world any trade marks or trade names, or other intellectual property that is the same as or similar to the Licensed IP.
- 7.9 The Reseller shall promptly give notice in writing to KONG if it becomes aware of:
- any infringement or suspected infringement of the Licensed IP or any other intellectual property rights relating to the Products within Europe; or
 - any claim that any Product or the manufacture, use, sale or other disposal of any Product within Europe, whether or not under the Licensed IP, infringes the rights of any third party.
- 7.10 In respect of any matter that falls within Clause 7.9:
- KONG shall in its absolute discretion, decide what action to take in respect of the matter (if any);
 - KONG shall conduct and have sole control over any consequent action that it deems necessary and the Reseller shall on being so requested by KONG and at KONG's cost assist in taking all steps to defend the rights of KONG including the institution at KONG's cost of any actions which it may deem necessary to commence for the protection of any of its rights;
 - KONG shall pay all costs in relation to that action and shall be entitled to all damages and other sums that may be paid or awarded as a result of that action; and
 - the Reseller shall, at the request and expense of KONG, provide any reasonable assistance to KONG (including the use of its name in, or being joined as a party to, proceedings) with any action to be taken by KONG under this Clause 6.1, provided that the Reseller is given such indemnity as it may reasonably require against any losses, costs and expenses it may incur as a result of or in connection with providing such assistance.

8. Data Protection

- 8.1 The Reseller shall at all times:
- be in compliance with all applicable privacy, accessibility, and data security laws, regulations, and industry standards, including, but not limited to, the General Data Protection Regulation;
 - maintain detailed privacy policies and be in compliance with its privacy policies and the requirements of any contract to which the Reseller is a party; and
 - have implemented and maintain written information security guidelines, which include physical, administrative and technological controls designed to prevent the unauthorised access to, disclosure, destruction, or loss of personally identifying information.

9. Auditing / reporting

- 9.1 KONG reserves the right to request from the Reseller reports of inventories, sales and other pertinent information regarding its handling of the Products, as KONG may from time to time reasonably request. KONG shall grant the Reseller at least thirty (30) days within which to comply with any such request, except that KONG is permitted to require an immediate response to a notice requesting information required to verify the Reseller's compliance with this Agreement.
- 9.2 KONG reserves the right to audit and/or monitor the Reseller's activities for compliance with this Agreement, including, but not limited to, inspection of the Reseller's facilities and records concerning the Products.

10. No agency

- 10.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person. The Reseller shall not (a) act as, or represent itself as, an agent of KONG for any purpose; (b) pledge KONG's credit; (c) give any condition or warranty on KONG's behalf; (d) make any representation on KONG's behalf; or (e) attempt to commit KONG to any sales contracts or any other legally binding agreement.

11. Authorisation Term and Termination

- 11.1 The term of this Addendum shall begin on the date that KONG provides the Reseller with KONG's express written confirmation that the Reseller is authorised as an Authorised Reseller (the "Authorisation Date"), and shall continue in full force and effect for one (1) year from the Authorisation Date (the "Initial Authorisation Term"). This Addendum will automatically renew for consecutive one (1) year terms ("Renewal Authorisation Term(s)", and together with the Initial Authorisation Term, the "Authorisation Term").
- 11.2 This Addendum may be terminated as follows:
- by KONG, immediately upon written notice to the Reseller in the event of a breach by the Reseller of Clauses 2, 3, 4, 5, 6 or 7 of this Addendum; or
 - by KONG, immediately upon written notice to the Reseller if any Contract (as defined in the Terms and Conditions of Supply between the Parties, if applicable) is terminated as a result of a breach or default by the Reseller;
 - by either party immediately by giving written notice to the other party if:

- (i) the other party: (i) is dissolved; (ii) ceases to conduct all (or substantially all) of its business; (iii) is or becomes unable to pay its debts as they fall due; (iv) is or becomes insolvent or is declared insolvent; or (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (ii) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- (iii) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Addendum);
- (iv) (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

11.3 If this Addendum is terminated for any reason:

- (a) any Contract (as defined in the Terms and Conditions of Supply between the Parties, if applicable) between KONG and the Reseller shall immediately terminate;
- (b) the Reseller shall immediately cease:
 - (i) selling the Products;
 - (ii) selling the Products or acting in any manner that may reasonably give the impression that the Reseller is an Authorised Reseller or has any affiliation whatsoever with KONG; and
 - (iii) using the Licensed IP.

11.4 The following provisions in this Addendum shall survive termination: 11.

12. General

12.1 No breach of any provision of this Addendum will be waived except with the express written consent of the party not in breach.

12.2 If any provision of this Addendum is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of the Addendum will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).

12.3 KONG may freely assign its rights and obligations under this Addendum without the Reseller's consent. Save as expressly provided in this Clause, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in any rights or obligations under this Addendum.

12.4 This Addendum is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Addendum are not subject to the consent of any third party.

12.5 This Addendum will be governed by and construed in accordance with the laws of England and Wales; and the courts of England will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Addendum.

For information on how we may use your data, please see <https://www.kongcompany.com/eu-gdpr-privacy-policy>