

RESELLER TERMS AND CONDITIONS

1. Applicability. These terms and conditions of sale (these “**Reseller Terms**”), in addition to the terms and conditions set forth in any Program & Policies (“**Sales Program**”, and together with these Reseller Terms, the “**Terms**”) delivered by Great American Merchandise & Events, LLC (“**GAME**”), to the reseller, distributor or such other third party (each, a “**Reseller**”), are the only terms which govern the sale of products (“**Products**”) by GAME to Reseller, unless a written contract between GAME and Reseller covering the sale of the Products is in existence at the time of Reseller’s purchase, in which case the terms and conditions of such written contract shall prevail to the extent they are inconsistent with these Terms.

2. Order Procedure.

(a) From time to time, Reseller may issue a purchase order or a similar request for purchase to GAME (collectively a “**Purchase Order**”). Reseller may submit the Purchase Order in written form via email to orders@game-group.com. The Purchase Order shall include (i) the list of Products Reseller would like to purchase, including the applicable make and model number, UPC or SKU code or other Product identifier, (ii) the quantities desired, (iii) the requested delivery date, and (iv) the desired delivery location. GAME may, in its sole discretion, accept or reject any Purchase Order. GAME may accept a PO only by issuing a confirmation of sale to Reseller (the “**Sales Confirmation**”). If GAME does not issue a Sales Confirmation within 10 business days of GAME’s receipt of a Purchase Order, such Purchase Order will lapse, and GAME will be deemed to have rejected such Purchase Order.

(b) If GAME accepts a Purchase Order by issuing a Sales Confirmation, GAME shall include in such Sales Confirmation (i) the list of Products to be purchased by Reseller, including the applicable make and model number, UPC or SKU code or other Product identifier, (ii) the quantities ordered, (iii) the approximate ship date, and (iv) the Delivery Point (defined below). Except as contemplated in Section 1, with respect to Products purchased by Reseller, the applicable Sales Confirmation and these Terms (collectively referred to as, the “**Agreement**”) comprise the entire agreement between GAME and Reseller with respect to the purchase of such Products, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Reseller’s general terms and conditions of purchase regardless whether or when Reseller has submitted its Purchase Order, and whether such terms and conditions are included in a Purchase Order or in some other document of, or provided by, Reseller. Fulfillment of Reseller’s order does not constitute acceptance of any of Reseller’s terms and conditions and does not serve to modify or amend these Terms.

(c) Cancellation of Purchase Orders. GAME may, in its sole discretion, without liability or penalty, cancel any Purchase Order placed by Reseller and accepted by GAME by its issuance of a Sales Confirmation, in whole or in part: (i) if GAME discontinues its sale of Products or reduces or allocates its inventory of Products; or (ii) for any other reason for which GAME is permitted to cancel the Agreement under Section 16(a).

3. Appointment as Reseller; Reseller Obligations and Prohibited Acts.

(a) Non-Exclusive Appointment. Subject to the terms and conditions of these Terms, GAME hereby appoints Reseller, and Reseller accepts the appointment, to act as a non-exclusive reseller of Products to purchasers of the Products, including (i) final purchasers that have acquired the Products from Reseller for their own internal use and not for resale, remarketing, or distribution (“**End Users**”) and (ii) distributors, retailers and other resellers (“**Other Purchasers**”). GAME may in its sole discretion sell the Products to any other Person, including distributors, retailers, other resellers and End Users.

(b) General Reseller Performance Obligations. Reseller shall, in good faith and at its own expense:

(i) market, advertise, promote and resell the Products to End Users and Other Purchasers consistent with good business practice, in each case using its commercially reasonable efforts to maximize the sales volume of the Products;

(ii) only resell or offer to resell the Products that Reseller currently has in inventory or that have been ordered from GAME and for which GAME has issued Reseller a Sales Confirmation;

(iii) observe all reasonable directions and instructions given to Reseller by GAME in relation to the marketing, advertising and promotion of the Products (including GAME’s sales, marketing and merchandising policies in effect from time to time), whether contained in the Agreement or other documentation provided by GAME to Reseller;

(iv) in any and all contracts between Reseller and any End User or Other Purchaser, Reseller must identify to the End User or Other Purchaser, as applicable, Reseller’s full legal name and/or trade name;

(v) market advertise, promote and resell Products and conduct business in a manner that reflects favorably at all times on the Products and the good name, goodwill and reputation of GAME;

(vi) market, advertise, promote and resell the Products in the same packaging in which Reseller receives the Products from GAME;

(vii) promptly notify GAME of any complaint or adverse claim about any Product or its use of which Reseller becomes aware;

(viii) obtain and maintain all required certifications, credentials, licenses and permits necessary to conduct business in accordance with the Agreement; and

(ix) if Reseller sells any Products to a person that is not an End User (including Other Purchasers), Reseller shall, prior to selling any Products to such

person, (A) cause such person to agree to be bound by the terms and conditions of these Reseller Terms that set forth Reseller's obligations and duties to GAME, as if such person is the "Reseller" (as such term is used herein), and (B) provide evidence to GAME, reasonably satisfactory to GAME, of such person's acceptance and agreement. For avoidance of doubt, this clause does not provide, and shall not be interpreted to provide, any person that is not an End User (including Other Purchasers) with any rights set forth in, or the ability to seek or enforce any rights against GAME under, these Reseller Terms. Furthermore, nothing in this clause requires GAME to perform any actions, duties or obligations with respect to such other person.

(c) Prohibited Acts. Notwithstanding anything to the contrary in these Terms, Reseller shall not:

(i) use any material in the advertising, marketing, or promotion of Products except in accordance with Section 9(f) below;

(ii) sell or offer to sell any Product through retail and online trade channels that are not directly owned and controlled by Reseller (including but not limited to any domain owned by a person or entity other than Reseller, such as Amazon.com, Walmart.com, Hayneedle.com, Ebay.com, Jet.com, Zulily.com, or Alibaba.com or other similar platforms) (retail and online trade channels through which Reseller is not prohibited from selling or offering to sale any Products by these Terms, are referred to herein as "**Authorized Trade Channels**");

(iii) resell Products to any governmental authority or its respective agencies without express written approval of GAME;

(iv) make any representations, warranties, guarantees, indemnities, similar claims, or other commitments:

(A) actually, apparently or ostensibly on behalf of GAME; or

(B) to any End User or other Purchasers regarding the Products, which representations, warranties, guarantees, indemnities, similar claims, or other commitments are additional to, or inconsistent with, any then-existing representations, warranties, guarantees, indemnities, similar claims or other commitments provided by GAME to End User;

(v) service, repair, modify, alter, reverse engineer or otherwise change the Products it sells to End Users or Other Purchasers;

(vi) engage in any unfair, competitive, misleading, or deceptive practices respecting GAME, GAME's Intellectual Property Rights or the Products, including any product disparagement or "bait-and-switch" practices;

(vii) sell or offer to sell any of the Products or other GAME-branded products, other than the Products purchased by Reseller from GAME;

(viii) relabel, re-sku or alter in any manner the Product and/or the packaging in which Reseller receives the Products from GAME;

(ix) sell or offer to sell any products of a third party “bundled” with, or sold or offered for sale in the same grouping as, the Products or any other GAME-branded product; or

(x) manufacture, promote, market, sell or distribute Products using promotional information and material not provided by GAME to Reseller or previously approved by GAME pursuant to Section 9(f).

4. Shipment and Delivery.

(a) Unless expressly agreed to by GAME and Reseller in writing (including any Sales Program), GAME will select the method of shipment of, and the carrier for, the Products. GAME may, in its sole discretion, without liability or penalty, make partial shipments of Products to Reseller. Special handling charges may be charged by GAME pursuant to applicable Sales Program in effect between GAME and Reseller.

(b) The Products will be shipped within a reasonable time of the approximate shipping date set forth on the Sales Confirmation. GAME shall not be liable for any delays, loss or damage in transit.

(c) Unless expressly agreed to by GAME and Reseller in writing (including any Sales Program), GAME shall deliver the Products to the location specified on the face of the Sales Confirmation (the “**Delivery Point**”) using GAME’s or the manufacturer’s standard methods for packaging and shipping such Products. Reseller shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Products at the Delivery Point.

(d) If for any reason Reseller fails to accept delivery of any of the Products on the date upon which the Products have been delivered at the Delivery Point, or if GAME is unable to deliver the Products at the Delivery Point on such date because Reseller has not provided appropriate instructions, documents, licenses or authorizations: (i) the Products shall be deemed to have been delivered; and (ii) GAME, at its option, may store the Products until Reseller picks them up, whereupon Reseller shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

(e) The quantity of any installment of Products as recorded by GAME on dispatch from GAME’s place of business is conclusive evidence of the quantity received by Reseller on delivery unless Reseller can provide conclusive evidence proving the contrary.

5. Title and Risk of Loss. Title and risk of loss to Products shipped under any Sales Confirmation passes to Reseller on GAME’s delivery of such Products to the carrier, whether at any of GAME’s or its manufacturers’ locations, as applicable. As collateral security for the payment of the purchase price of the Products, Reseller hereby grants to GAME a lien on and security interest in and to all

of the right, title and interest of Reseller in, to and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Arizona Uniform Commercial Code. GAME may file a financing statement for the security interest and Reseller shall execute any statements or other documentation necessary to perfect GAME's security interest in such collateral. Reseller also authorizes GAME to execute, on Reseller's behalf, statements or other documentation necessary to perfect GAME's security interest in such collateral. GAME is entitled to all applicable rights and remedies of a secured party under applicable law.

6. Inspection and Rejection of Nonconforming Products.

(a) Reseller shall inspect the Products within five (5) business days of delivery ("**Inspection Period**") of the Products. For purposes of this Section 6 and for avoidance of doubt, reference to the Products means the actual Products and not the cartons or other packaging in which the Products are shipped by GAME to Reseller, which Reseller acknowledges that such cartons and other packaging may evidence some damage in connection with the shipment of the Products. Reseller will be deemed to have accepted the Products unless it notifies GAME in writing of any Nonconforming Products during the Inspection Period and furnishes written evidence and other documentation as required by GAME. "**Nonconforming Products**" means only the following: (i) other than the amount, the Products shipped are different than identified in the Sales Confirmation; or (ii) the Products' labels or packaging incorrectly identify their contents.

(b) If Reseller timely notifies GAME of any Nonconforming Products, GAME shall determine, in its sole discretion, whether the Products are Nonconforming Products. If GAME determines that the Products are Nonconforming Products, it shall either, in its sole discretion (i) replace such Nonconforming Products with conforming Products, or (ii) credit or refund the Price for such Nonconforming Products, together with any reasonable shipping and handling expenses incurred by Reseller in connection therewith. Reseller shall ship, at its expense and risk of loss, the Nonconforming Products to GAME's facility located at 1441 Highway 20 West, McDonough, Georgia 30253. If GAME exercises its option to replace Nonconforming Products, GAME shall, after receiving Reseller's shipment of Nonconforming Products, ship to Reseller, at Reseller's expense and risk of loss, the replaced Products to the Delivery Point.

(c) Reseller acknowledges and agrees that the remedies set forth in Section 6(b) are Reseller's exclusive remedies for the delivery of Nonconforming Products. Except as provided under Section 6(b), all sales of Products to Reseller are made on a one-way basis and Reseller has no right to return Products purchased under the Agreement to GAME.

7. Price.

(a) Reseller shall purchase the Products from GAME at the prices (the "**Prices**") set forth in GAME's published price list in force as of the date of the Sales Confirmation, or such other pricing otherwise agreed upon in writing by GAME and Reseller (including any Sales Program in effect from time to time between GAME and Reseller).

(b) Unless expressly agreed to by GAME and Reseller in writing (including any Sales Program), Reseller shall be responsible for and pay for all shipping charges and insurance costs related thereto. All Prices are exclusive of all sales, use and excise taxes, and any other similar

taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Reseller. Reseller shall be responsible for all such charges, costs and taxes; provided, that, Reseller shall not be responsible for any taxes imposed on, or with respect to, GAME's income, revenues, gross receipts, personnel or real or personal property or other assets.

8. Payment Terms.

(a) Unless expressly agreed to by GAME and Reseller in writing (including any Sales Program), (i) GAME will issue periodic invoices to Reseller for Products ordered, and (ii) Reseller shall pay all invoiced amounts due to GAME with thirty (30) days from the date of GAME's invoice. Reseller shall make all payments hereunder by wire transfer of immediately available funds or in such other manner acceptable to GAME in its sole and absolute discretion, and in US dollars.

(b) Reseller shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Reseller shall reimburse GAME for all costs incurred in collecting any late payments, including without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which GAME does not waive by the exercise of any rights hereunder), GAME shall be entitled to suspend the delivery of any Products if Reseller fails to pay any amounts when due hereunder.

(c) Reseller shall perform its obligations under the Agreement without setoff, deduction (other than any expressly set forth in an Sales Program), recoupment or withholding of any kind for amounts owed or payable by GAME whether under the Agreement, applicable law, or otherwise, and whether relating to GAME's breach, bankruptcy or otherwise, and whether under these Terms, any Sales Confirmation or any other agreement between Reseller or any of its affiliates, and GAME or any of its affiliates.

9. Intellectual Property.

(a) Definitions.

(i) **"Intellectual Property Rights"** means all rights in and to US and foreign (A) patents, patent disclosures and inventions (whether patentable or not), (B) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, and other similar designations of source or origin, together with the goodwill symbolized by any of the foregoing (**"Trademarks"**), (C) copyrights and copyrightable works (including computer programs) and rights in data and databases, (D) trade secrets, know-how and other confidential information, and (E) all other intellectual property rights, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

(ii) **"GAME's Intellectual Property Rights"** means all Intellectual Property Rights owned by or licensed to GAME.

(iii) “**GAME’s Trademarks**” means all Trademarks owned by or licensed to GAME.

(b) Ownership. Subject to the express rights and licenses granted by GAME in these Terms, Reseller acknowledges and agrees that:

(i) any and all GAME’s Intellectual Property Rights are the sole and exclusive property of GAME or its licensors;

(ii) Reseller shall not acquire any ownership interest in any of GAME’s Intellectual Property Rights under these Terms;

(iii) any goodwill derived from the use by Reseller of GAME’s Intellectual Property Rights inures to the benefit of GAME or its licensors, as the case may be;

(iv) if Reseller acquires any Intellectual Property Rights in or relating to any product (including any Product) purchased under these Terms (including any rights in any Trademarks, derivative works or patent improvements relating thereto), by operation of law, or otherwise, these rights are deemed and are hereby irrevocably assigned to GAME or its licensors, as the case may be, without further action by either party; and

(v) Reseller shall use GAME’s Intellectual Property Rights solely for the purposes of performing its obligations under these Terms and only in accordance with these Terms and the instructions of GAME.

(c) License Grant. GAME hereby grants to Reseller a non-exclusive, non-transferable, and non-sublicensable license to use GAME’s Trademarks and GAME’s marketing materials relating to the Products as identified in writing by GAME to Reseller solely on or in connection with the promotion, advertising, and resale of the Products in accordance with these Terms. Reseller will promptly discontinue the display or use of any Trademark to change the manner in which a Trademark is displayed or used with regard to the Products when requested by GAME. Other than the express licenses granted by these Terms, GAME grants no right or license to Reseller, by implication, estoppel, or otherwise, to the Products or any of GAME’s Intellectual Property Rights.

(d) Prohibited Acts. Reseller shall not:

(i) take any action that may interfere with any of GAME’s rights in or to GAME’s Intellectual Property Rights, including GAME’s ownership or exercise thereof;

(ii) challenge any right, title, or interest of GAME in or to GAME’s Intellectual Property Rights;

(iii) make any claim or take any action adverse to GAME's ownership of GAME's Intellectual Property Rights;

(iv) register or apply for registrations, anywhere in the world, for GAME's Trademarks or any other Trademark that is similar to GAME's Trademarks or that incorporates GAME's Trademarks in whole or in part;

(v) use any mark, anywhere, that is confusingly similar to GAME's Trademarks;

(vi) alter any of GAME's Trademarks or any other trademarks previously and expressly approved by GAME in writing;

(vii) use in any manner different than what was previously and expressly approved by GAME in writing, any of GAME's Trademarks or any other trademark;

(viii) engage in any action that tends to disparage, dilute the value of, or reflect negatively on the products purchased under these Terms (including Products) or any GAME Trademark;

(ix) misappropriate any of GAME's Trademarks for use as a domain name without prior written consent from GAME; and

(x) alter, obscure, or remove any of GAME's Trademarks or trademark or copyright notices or any other proprietary rights notices placed on the products purchased under these Terms (including Products), marketing materials, or other materials that GAME may provide.

(e) No Continuing Rights. On expiration or earlier termination of the Agreement:

(i) Reseller's rights under Section 9(c) cease immediately; and

(ii) Reseller shall immediately cease all display, advertising, promotion, and use of all of GAME's Intellectual Property Rights and shall not thereafter use, advertise, promote, or display any trademark, trade name, or product designation or any part thereof that is similar to or confusing with GAME's Trademarks or with any trademark, trade name, or product designation associated with GAME or any Product.

(f) Approval of Marketing and Advertising Materials. Reseller shall not use any material in the advertising, marketing, or promotion of Products that has not been approved by GAME, in its sole and absolute discretion. Any time at GAME's reasonable request, and prior to any use of GAME's Trademarks or any other of GAME's Intellectual Property Rights that has not been previously approved in writing by GAME, Reseller shall, at its own expense, send to GAME for its prior written approval, which may be given, withheld, or revoked in GAME's sole and

absolute discretion, the text and layout of all proposed advertisements and marketing and promotional material relating to the Products. In the absence of a written notice of approval or disapproval within 10 days of receipt of such materials, the materials will be deemed to have been disapproved by GAME.

10. Annual Rebate.

(a) No later than January 31 of the then-current calendar year, Reseller may provide written notice to GAME, in a form reasonably acceptable to GAME, attesting to Reseller's compliance with these Terms during the prior calendar year, and including a list of persons other than End Users (e.g., Other Persons) to whom Reseller sold Products during the prior calendar year, a summary of sales of Products to such other persons, the medium through which such sales were made (e.g., through Reseller's domain), and such other information reasonably requested by GAME in its reasonable discretion ("Rebate Affidavit").

(b) Unless GAME, in its sole but reasonable discretion, disputes the Rebate Affidavit, GAME will grant a rebate as expressly agreed to by GAME and Reseller in writing (including through any Sales Program).

(c) The rebate contemplated by this Section 10 will be in the form of one or more credit rebates, which Reseller will have the right to apply towards the purchase price of future products purchased by Reseller from GAME (including Products). Each credit rebate will be valid for a one (1)-year period beginning on the date that GAME grants Reseller such credit rebate. For avoidance of doubt, if Reseller does not use all or any portion of a credit rebate within the applicable one (1)-year period, such rebate shall be void and of no further or effect.

11. Inspection Rights. On reasonable request, GAME and/or its representatives may, from time to time, inspect and review Reseller's files relating to Reseller's sales and inventory of Products regarding transactions that took place during the term of the Agreement (including but not limited to, with respect to any Rebate Affidavit delivered by Reseller to GAME), and Reseller's compliance with these Terms. Such inspections and reviews may be conducted at any time during regular business so long as such inspections and reviews do not unreasonably interfere with Reseller's business operations. Such inspections and reviews under this Section 11 need not be physically conducted, but at the request of GAME, Reseller shall provide electronic copies of any documents requested by GAME in connection with any reviews and inspections conducted under this Section 11.

12. Limited Warranty.

(a) Subject to the other subsections of this Section 12, GAME will make certain limited warranties regarding the Products (collectively, "Limited Warranties", and each, a "Limited Warranty") solely to and for an End User's benefit, which will either be:

(i) included in a written warranty statement with the Product; or

(ii) GAME's standard limited warranty in force when the Product is delivered by Reseller to such End User.

No warranty is extended to Reseller under the Agreement. Reseller shall not, in the name or on behalf of GAME, provide any warranty regarding any Product other than GAME's warranty described in this Section 12(a). For avoidance of doubt, Reseller may offer additional or extended warranties to its customers other than the Limited Warranties ("Additional Warranties"). Notwithstanding the immediately preceding sentence, Reseller acknowledges and agrees that neither GAME nor any other GAME Indemnified Party shall have any obligation or duty under, or be liable for, any Additional Warranties.

(b) Limited Warranties do not apply where the Product:

(i) has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any instructions issued by GAME;

(ii) has been reconstructed, repaired, altered by persons other than GAME or its authorized representative; or

(iii) has been used with any third-party product, hardware, or part product that has not been previously approved in writing by GAME.

(c) During the warranty period set out in the written warranty statement provided by GAME to End Users as described in Section 12(a), and notwithstanding anything in the Agreement to the contrary:

(i) GAME's liability under any Limited Warranty is, subject to the other terms of this Section 12(c), discharged, in GAME's sole discretion and at its expense, by:

(A) repairing or replacing the Product that does not conform to the Limited Warranties ("**Defective Product**"); or

(B) subject to the terms and conditions of any allowance program in effect between Reseller and GAME, crediting or refunding the purchase price of the Defective Product to Reseller or the End User, as applicable, in each case less any applicable discounts, rebates or credits.

(ii) If an End User or Other Purchaser returns a Defective Product to Reseller that is then subject to the Limited Warranties, Reseller shall replace the Defective Product.

(iii) If Reseller replaces a Defective Product pursuant to Section 12(c)(ii), then such replacement and any reimbursement by GAME to Reseller shall be made in accordance with the terms and conditions of any allowance program in effect between Reseller and GAME. If there is no allowance program in effect between Reseller and GAME, then Reseller may submit a credit request to GAME for such Defective Product in accordance with GAME's standard processes and procedures.

(iv) Upon determination by GAME that a Defective Product is actually defective, and that Reseller has replaced the Defective Product, in each case such determination being made in GAME's good faith but in its sole and absolute discretion, GAME will issue a credit to Reseller for use towards either (A) the purchase of a replacement Product or (B) a future order of Products.

(v) At the request of GAME, Reseller shall provide evidence, satisfactory to GAME, of the defectiveness of a Defective Product, which may at the request of GAME, include the return of the Defective Product. Reseller is responsible for all costs and risk of loss associated with the delivery of the Defective Products or any requested evidence to GAME.

All claims for breach of Limited Warranties must be received by GAME or Reseller no later than ten (10) days after the expiration of the limited warranty period of the Product. Reseller shall not reconstruct, repair or alter any Product, in whole or in part, either itself or by or through any third party. For avoidance of doubt, GAME has no obligation to reimburse or credit any amounts to Reseller for Defective Products replaced by Reseller that are no longer subject to the Limited Warranties (including the timing requirements of this Section 12(c) and the exclusions set forth in Section 12(b).

This Section 12(c) sets forth Reseller's sole remedy and GAME's entire liability for any breach of any warranty relating to the Products.

(d) EXCEPT FOR THE LIMITED EXPRESS WARRANTIES DESCRIBED IN SECTION 12(a), (I) NEITHER GAME NOR ANY PERSON ON GAME'S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, RELATING TO THE PRODUCTS OR OTHERWISE, INCLUDING ANY WARRANTIES OF: (A) MERCHANTABILITY, (B) FITNESS FOR A PARTICULAR PURPOSE, OR (C) NON-INFRINGEMENT, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED AND (II) RESELLER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY REPRESENTATION OR WARRANTY MADE BY GAME, OR ANY OTHER PERSON ON GAME'S BEHALF, EXCEPT AS SPECIFICALLY DESCRIBED IN SECTION 12(a).

(e) Reseller acknowledges and agrees that Products purchased by Reseller under the Agreement may contain, be contained in, incorporated into, attached to, or packaged together with products manufactured by a third party. Such third-party products are not covered by the Limited

Warranties. For the avoidance of doubt, GAME makes no representations or warranties regarding any such third-party products.

13. Limitation of Liability.

(a) **IN NO EVENT SHALL GAME BE LIABLE TO RESELLER OR ANY THIRD PARTY FOR ANY ADDITIONAL WARRANTIES OR LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT GAME HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

(b) **IN NO EVENT SHALL GAME'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS ACTUALLY PAID TO GAME FOR THE PRODUCTS SOLD HEREUNDER.**

14. Indemnification.

(a) Reseller General Indemnification. Subject to the terms and conditions of the Agreement, Reseller, for itself and on behalf of its affiliates and their respective equity holders, officers, directors, managers, employees, agents, affiliates, representatives, successors and permitted assigns (collectively, "**Reseller Indemnifying Party**") shall indemnify, hold harmless, and defend GAME and its affiliates and their respective equity holders, officers, directors, managers, employees, agents, affiliates, representatives, successors and permitted assigns (collectively, "**GAME Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, fees, and the costs of enforcing any right to indemnification under the Agreement and the cost of pursuing any insurance providers, incurred by GAME Indemnified Party (collectively, "**Losses**"), arising out of or relating to any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, whether civil, criminal, administrative, regulatory, or other, and whether at law, in equity, or otherwise (collectively, "**Claim**") of a third party:

(i) relating to a material breach or non-fulfillment of any material representation, warranty, or covenant under the Agreement by Reseller and any other Reseller Indemnifying Party;

(ii) alleging or relating to any negligent or more culpable act or omission of Reseller or any other Reseller Indemnifying Party (including any recklessness or willful misconduct) in connection with the performance of its obligations under the Agreement;

(iii) relating to a purchase of a Product by any person or entity purchasing directly or indirectly through Reseller or any other Reseller Indemnifying Party and not directly relating to a claim of Limited Warranty breach, including but not limited to, Additional Warranties;

(iv) relating to any failure by Reseller or any other Reseller Indemnifying Party to materially comply with any applicable laws; and

(v) alleging that Reseller or any other Reseller Indemnifying Party breached its agreement with a third party as a result of or in connection with Reseller entering into, performing under or terminating the Agreement.

(b) Exceptions and Limitations on General Indemnification. Notwithstanding anything to the contrary in the Agreement, Reseller Indemnifying Party is not obligated to indemnify or defend GAME Indemnified Party against any Claim of a third party if the Claim and corresponding Losses arise out of or result from, GAME Indemnified Party's:

(i) gross negligence or more culpable act or omission (including recklessness or willful misconduct); or

(ii) bad faith failure to materially comply with any of its material obligations set out in the Agreement.

15. Compliance with Law. Reseller shall comply with all applicable laws, regulations and ordinances. Reseller shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Agreement. Reseller shall comply with all export and import laws of all countries involved in the sale of the Products under the Agreement or any resale of the Products by Reseller. Reseller assumes all responsibility for shipments of Products requiring any government import clearance. GAME may terminate the Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Products.

16. Termination.

(a) GAME's Right to Terminate. GAME may revoke any of the rights granted to Reseller hereunder and/or terminate the Agreement by providing notice to Reseller:

(i) if Reseller fails to pay any amount when due under the Agreement;

(ii) if Reseller sells or offers to sell any Product outside the Authorized Trade Channels;

(iii) in connection with the termination right set forth in Section 15;

(iv) if Reseller breaches any provision of the Agreement (other than in connection with any of the termination rights set forth in clauses (i), (ii), (iii) and (v) of this Section 16, in which case such clauses, and not this clause (iv), shall control), and either the breach cannot be cured or, if the breach can be cured, it is

not cured by Reseller within 10 business days after Reseller's receipt of notice of such breach; or

(v) if Reseller becomes insolvent or files, or has filed against it, a petition for voluntary or involuntary bankruptcy or under any other insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver, or custodian for a substantial part of its property, or is generally unable to pay its debts as they become due.

(b) Effect of Termination. The expiration or termination of the Agreement does not affect any of the following rights or obligations, which shall survive such expiration or earlier termination: Sections 1, 3(c), 5 through 8, 9(a), 9(b), 9(d), 9(e), 10, and 11 through 28, as well as any other provision that, to give proper effect to its intent, must survive such expiration or termination.

17. Amendment and Modification. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of GAME and Reseller.

18. Waiver. No waiver by GAME of any of the provisions of the Agreement is effective unless explicitly set forth in writing and signed by GAME. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from the Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

19. Confidential Information. All non-public, confidential or proprietary information of GAME, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by GAME to Reseller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with the Agreement is confidential, solely for the use of performing the Agreement and may not be disclosed or copied unless authorized in advance by GAME in writing; provided however, that Reseller may disclose these Reseller Terms to any purchaser of the Products that is not an End User (including Other Purchasers) in connection with Reseller's obligations under Section 3(c)(ix). Upon GAME's request, Reseller shall promptly return all documents and other materials received from GAME. GAME shall be entitled to injunctive relief for any violation of this Section 19. This Section 19 does not apply to information that is: (a) in the public domain through no fault of Reseller or its affiliates; (b) known to Reseller at the time of disclosure; or (c) rightfully obtained by Reseller on a non-confidential basis from a third party.

20. Force Majeure. GAME shall not be liable or responsible to Reseller, nor be deemed to have defaulted or breached the Agreement, for any failure or delay in fulfilling or performing any term of the Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of GAME including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or

restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

21. Assignment. Reseller shall not assign the Agreement any of its rights or delegate any of its obligations under the Agreement without the prior written consent of GAME. Any purported assignment or delegation in violation of this Section 21 is null and void. No assignment or delegation relieves Reseller of any of its obligations under the Agreement.

22. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in the Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

23. No Third-Party Beneficiaries. The Agreement is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

24. Governing Law. All matters arising out of or relating to the Agreement is governed by and construed in accordance with the internal laws of the State of Arizona without giving effect to any choice or conflict of law provision or rule (whether of the State of Arizona or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Arizona.

25. Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or relating to the Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Arizona in each case located in the County of Maricopa, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

26. Waiver of Jury Trial. Each party acknowledges and agrees that any controversy that may arise under the Agreement is likely to involve complicated and difficult issues and, therefore, each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to the Agreement or the transactions contemplated hereby.

27. Notices. All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a “**Notice**”) shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), email (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in the Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section 27.

28. Severability. If any term or provision of the Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.