

BANDAI NAMCO AMUSEMENT AMERICA INC.

Terms and Conditions of Sale

Bandai Namco Amusement America Inc.'s ("Seller") sale of any goods and services (collectively, "Goods") to Buyer ("Buyer") are subject to the following exclusive terms and conditions ("these Terms"), which are hereby incorporated as part of any sale of the Goods to Buyer. Any and all additional, inconsistent or contrary terms set forth in any requests for quotes or proposals, purchase orders, releases or any other documents issued by Buyer are hereby rejected.

- 1. Purchase Orders.** All purchase orders of Buyer must, unless otherwise agreed in writing by Seller, be in writing and set forth the desired quantity of the Goods, the model number or type of Goods, the desired delivery date, the price, and all additional relevant information necessary to effectuate Seller's shipment of the Goods. All purchases and purchase orders are conditioned upon and subject to Buyer's acceptance of these Terms. All orders are subject to acceptance or rejection by Seller at its sole discretion. The purchase price shall be paid in U.S. dollars only, and all payments shall be made only to Seller at its headquarters in Schaumburg, Illinois.
- 2. Cancellation/Changes.** Buyer may not amend, cancel or delay delivery of any purchase order or any part of any purchase order except with a signed and written agreement between Buyer and Seller.
- 3. Taxes.** All prices are exclusive of federal, state, local and other excise, sales, use, property, transportation, occupational and other taxes relating to the sale, together with penalties and expenses, all of which shall be paid by the Buyer. Buyer shall be responsible for paying any and all such taxes whether or not they are stated in any invoice for Goods shipped. Buyer shall indemnify and hold Seller harmless from and against the imposition and payment of such taxes. Seller, at its option, may at any time separately bill Buyer for any taxes not included in Seller's invoice, and Buyer shall pay said taxes, or in lieu thereof, shall provide Seller with a tax exemption certificate acceptable to the taxing authorities.
- 4. Shipments and Risk of Loss.** All shipment dates are approximate and conditioned on the prompt receipt of all necessary information from Buyer. Unless otherwise agreed in writing by Seller, all shipments shall be FOB (under the Uniform Commercial Code) Seller's factory, Seller's facility or other shipping location. The buyer shall be responsible for all transportation charges. All shipments shall be made in Seller's standard packages. Unless otherwise agreed in writing by Seller, Seller shall use Seller's standard shipping methods and procedures for commercial shipments within the United States. Title and risk of loss to the Goods shall pass to Buyer upon delivery of the Goods to a common carrier at Seller's facility or other shipping location. If there is any loss of or damage to Goods following delivery to the carrier, upon Buyer's request Seller shall cooperate with Buyer in connection with Buyer's claims to the carrier and/or Buyer's insurer.

5. **Security Interest.** In order to secure Buyer's obligations to Seller, Buyer hereby grants to Seller a continuing security interest in all Goods previously or hereafter delivered to or controlled by Buyer, including but not limited to all parts, components, replacements or proceeds of such Goods (collectively, "Collateral"). Buyer hereby appoints Seller as its attorney in fact, and authorizes Seller to: (a) sign/authenticate on behalf of Buyer such additional documents/records as may be required from time to time to create, amend, extend, continue, maintain or perfect the security interest described herein or otherwise granted to or retained by Seller; (b) make/undertake any filings or registrations with governmental officials or offices; and (c) take such other actions as Seller deems appropriate to perfect, amend, continue and maintain the perfection of the security interest described herein or otherwise granted to or retained by Seller. Seller reserves all rights to utilize all secured creditor remedies available to Seller under applicable law. The aforementioned security interests shall act as security for any and all indebtedness, liability and obligations of Buyer to Seller, whether absolute, contingent, direct, indirect, liquidated or unliquidated, regardless of whether secured by property or rights in addition to the Collateral.
6. **Limited Warranty; Limitation of Liability; Exclusion of Damages.**
- a) **Limited Warranty. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS, WHICH VARY FROM STATE TO STATE.** Seller warrants that the Goods shall be free from defects in workmanship and materials at the time the Goods are shipped by Seller (the "Limited Warranty") for the Warranty Period as defined below. This Limited Warranty starts on the date of Buyer's purchase of Goods and lasts for 90 days to one year (depending on item). The Warranty Period is not extended if Seller repairs or replaces the Goods.
- b) **Warranty Remedies; Warranty Service Procedure.** If the Goods were defective at the time of shipment by Seller or during the Warranty Period, as solely determined by Seller, Seller may, at its option, either (i) repair or replace the Goods or any defective part thereof; or (ii) refund the purchase price of the Goods, if the Buyer has paid for them. Seller shall have the option of requiring Buyer to return the defective Goods to Seller, transportation prepaid, to establish any warranty claim. Seller and Buyer acknowledge that Seller's sole and exclusive obligation and Buyer's sole and exclusive remedy shall be for Seller to repair, replace or refund the purchase price of the Goods as provided herein. To obtain warranty service, Buyer must call [847 264-5614] or email our Seller's Customer Service Department at [service@bandainamco-am.com] during the Warranty Period to obtain a Return Merchandise Authorization ("RMA") number. No warranty service will be provided without a RMA number.
- c) **SELLER LIMITS THE DURATION AND REMEDIES OF ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE TO THE DURATION OF THIS EXPRESS LIMITED WARRANTY. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN**

IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO THE BUYER.

- d) **Exceptions to Limited Warranty.** Seller's Limited Warranty shall not apply to any Goods or portions thereof which have been subjected to abuse, misuse, improper storage, handling, installation, maintenance or operation, electrical failure or abnormal conditions, or to Goods which have been tampered with, altered, modified or repaired or otherwise reworked by anyone not approved in writing by Seller.
- e) **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SELLER, THE MANUFACTURER OF THE GOODS, OR THEIR SUBSIDIARIES AND AFFILIATED COMPANIES, BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO DOWNTIME, LOSS OF PROFITS OR REVENUE, RELATING TO THE GOODS OR THE PURCHASE, SALE OR USE OF GOODS HEREUNDER, WHETHER OR NOT SUCH LOSS OR DAMAGE IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE OR OTHERWISE, REGARDLESS OF WHETHER: (A) SUCH DAMAGES WERE FORESEEABLE; (B) SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (C) THE EXCLUSIVE REMEDIES PROVIDED IN THESE TERMS HAVE FAILED OF THEIR ESSENTIAL PURPOSE. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO BUYER.**
- f) No agent, employee or representative of Seller (or any distributor, dealer or sales representative of Seller) has the authority to bind Seller to any additional affirmation, representation or warranty not stated in these Terms. Any such additional affirmation, representation or warranty will not be included as part of these Terms shall in no way be binding upon Seller or enforceable by the Buyer.
- g) **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL AGGREGATE LIABILITY OF SELLER, MANUFACTURER, OR THEIR SUBSIDIARY AND AFFILIATED COMPANIES SHALL NOT EXCEED, UNDER ANY CIRCUMSTANCES, THE AMOUNT ACTUALLY PAID TO SELLER WITH RESPECT TO THE GOODS WHICH GIVES RISE TO THE CLAIM, LOSS OR DAMAGE, REGARDLESS OF THE NATURE OF THE DAMAGES OR LOSSES OR THE LEGAL THEORY OR BASIS FOR SELLER'S LIABILITY.**

7. Patent Infringement.

- a) Subject to the conditions, exclusions and limitations contained in Section 6 above and this Section, and provided that Buyer is in full compliance with all these Terms, Seller's (and manufacturer's) liability for patent infringement is limited to Seller's defense of any third-party suit or proceeding brought against Buyer based on a claim that the Goods sold hereunder, when employed in the manner intended by Seller, infringe a valid United States patent; provided that: (1) Buyer shall give Seller prompt notice thereof and reasonable cooperation, information and assistance in connection

therewith; and (2) Seller shall have sole control and authority with respect to the defense, settlement or compromise of any such claim. If Buyer's use of any Goods is finally enjoined, or in Seller's opinion is likely to become finally enjoined, Seller may, at its option, either procure for Buyer the rights to continue using such Goods; replace or modify the Goods so that they become non-infringing; or refund to Buyer the purchase price actually paid by Buyer for such Goods.

b) Seller shall not be liable to Buyer under any provision of this Section or otherwise if any infringement or claim thereof is: (1) based solely on the use of the Goods in any manufacturing or other process or in combination with any products, machines or devices not made or sold or approved by Seller; (2) based on the use of Goods in a manner for which the Goods are not intended by Seller; (3) for any Goods which are produced according to any plans, instructions, specification or design suggested or required by Buyer; (4) for Goods that have been modified by anyone other than Seller; or (5) made with respect to any patent in which Buyer or any affiliate or customer of Buyer has an interest or license.

c) **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, SELLER'S AGGREGATE LIABILITY UNDER THIS SECTION, INCLUDING ANY LEGAL OR DEFENSE FEES, SHALL NOT EXCEED THE PURCHASE PRICE ACTUALLY PAID BY BUYER FOR GOODS FOUND OR CLAIMED TO BE INFRINGING, AND SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITVE OR EXEMPLARY DAMAGES AWARDED AGAINST BUYER. THIS SECTION STATES BUYER'S EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY WITH RESPECT TO ANY ALLEGED INFRINGEMENT OR VIOLATION OF ANY PATENT AS A RESULT OF THE SALE OR USE OF THE GOODS.**

8. **Indemnification.** To the fullest extent permitted by applicable law, Buyer shall indemnify, defend and hold harmless Seller, the manufacturer of the Goods and their subsidiaries and affiliated companies from and against all third-party claims, demands, damages, liabilities, losses, costs and expenses, including, without limitation, attorney's fees and costs, resulting from or arising in connection with: (a) Buyer's breach of these Terms; (b) Buyer's use, misuse, improper maintenance, operation or handling of the Goods; (c) electrical failure or abnormal conditions; (d) Goods that have been tampered with, altered, modified, repaired or otherwise reworked by anyone not approved in writing by Seller; (e) unauthorized use or disposition of patents, confidential information, trademarks, design or other intellectual property of Seller and/or manufacturer; (f) use of the Goods in combination with any other third-party products, machines or devices not made or sold or approved by Seller; (g) any property damage or physical injury (including death) that occurs during Buyer's use or operation of the Goods; (h) Buyer's negligence or willful misconduct; or (i) Buyer's violation of any applicable laws.

9. **Packaging and Shipping.**

- a) All Goods will be prepared and packaged for shipment by Seller in a commercially reasonable manner. Seller may charge Buyer nominal charges for odd lot size boxing, packaging, or handling, which will be included on Seller's invoice as shipping and handling charges.
- b) Seller reserves the right to make partial shipments, but will attempt to minimize such partial shipments as commercially reasonable as possible.
- c) Seller reserves the right to withhold shipments or require prepayment of any orders where, in Seller's opinion, Buyer's payment record or financial conditions provide grounds for insecurity regarding Buyer's ability to pay Seller for Goods. Such action shall not constitute a breach or cancellation of these Terms.

10. Invoices and Payments. Individual invoices will be issued for each shipment under a purchase order. For terms customers, all invoice amounts are due thirty (30) days from the date of the invoice unless otherwise agreed in writing by Buyer and Seller. Purchase orders may be accepted subject to any credit terms requested by Seller, including, but not limited to, cash on delivery or due upon receipt. Seller reserves the right to charge interest at the rate of 1.5% per month or the maximum percentage permitted by applicable law, whichever is less, on all balances not paid by Buyer within the designated net terms. Buyer may not set off or deduct any invoice amounts for any reason, unless agreed in writing by Buyer and Seller.

11. Credits and Returns. Buyer may return Goods to Seller for a full refund or exchange within thirty (30) days of delivery only after obtaining a return authorization number from Seller. Goods must be returned in their original condition and packaging. Buyer shall be responsible for return shipping costs. Special order and custom Goods are non-returnable and non-refundable. Any returned Goods that have been opened, used, or are not in the original packaging shall result in a 20% restocking fee, to be deducted from Buyer's refund. Seller may, at its sole discretion, credit Buyer's account for Goods returned in accordance with this section and that are free of all liens and encumbrances of any nature.

12. Drawings, Specifications and Technical Information. Drawings, specifications, designs, and other technical information furnished to Buyer by Seller shall remain confidential and the proprietary property of Seller and shall be held in strict confidence by Buyer. Buyer may not reproduce, use or disclose such information to any third-parties without Seller's written consent. Copyright in all materials made available by Seller shall remain in Seller at all times.

13. Limitation of Buyer's Time to Make Claims. ANY CLAIMS FOR SHORTAGES MUST BE MADE BY BUYER WITHIN FIVE (5) DAYS OF BUYER'S RECEIPT OF THE GOODS, OR ELSE SUCH CLAIMS SHALL BE BARRED. BUYER HAS A MAXIMUM OF ONE (1) YEAR FROM THE DATE A CLAIM ACCRUED TO FILE A LAWSUIT AGAINST SELLER FOR ANY CLAIMS ARISING

OUT OF OR IN CONNECTION WITH ANY ACTUAL OR ALLEGED BREACH OF THESE TERMS, OR OTHERWISE RELATING TO THE PURCHASE, SALE OR USE OF GOODS OR THE RELATIONSHIP OF THE PARTIES. IF BUYER HAS NOT FILED A LAWSUIT WITHIN ONE (1) YEAR AFTER SUCH CLAIM OR CAUSE OF ACTION HAS ACCRUED, THE CLAIM SHALL BE FOREVER BARRED.

14. Governing Law, Jurisdiction and Venue. All claims and issues relating to the sale, purchase, or use of Goods, including but not limited to the interpretation, validity, and enforcement of these Terms, shall be governed by the internal laws of the State of Illinois, without reference to its conflicts of laws provisions. Buyer and Seller hereby agree that the U.N. Convention on Contracts for the International Sale of Goods shall not apply to these Terms, the purchase, sale or use of the Goods, or any other transaction between them. **Buyer consents to the exclusive jurisdiction of the state or federal courts located in Cook County, Illinois for all disputes arising out of or related to these Terms, the purchase, sale or use of Goods or otherwise relating to the relationship of the parties. Buyer agrees not to file any lawsuit or claim in any other court, jurisdiction or forum.** Seller reserves the right to initiate and maintain legal actions in Illinois or in any other forum where Goods or the Seller may be located for purpose of replevying or repossessing Goods.

15. Waiver of Jury Trial. BUYER AND SELLER HEREBY IRREVOCABLY AND KNOWINGLY WAIVE ANY RIGHTS TO TRIAL BY JURY WHICH EITHER MIGHT HAVE FOR ANY CLAIM RELATING TO OR ARISING OUT OF THESE TERMS OR THE PURCHASE, SALE OR USE OF THE GOODS OR OTHERWISE RELATING TO THE RELATIONSHIP OF THE PARTIES.

16. Force Majeure. Seller will not be liable for delays in production or delivery due to causes beyond its control, including, but not limited to, acts of God, acts of Buyer, acts of military authorities, fires, strikes, floods, epidemics, acts of governmental or public authorities (including quarantine restrictions), war, delays in transportation, and inability to obtain necessary labor, materials or manufacturing facilities (“Force Majeure Event”). In no event will Seller be liable to Buyer for any damages whatsoever, including loss of income, use or profits, or any collateral, incidental, special or consequential damages resulting from delays or Seller’s inability or failure to deliver Goods due to a Force Majeure Event.

17. Miscellaneous.

- a) Except as set forth on the reverse side of this document or otherwise attached to these Terms and signed by Seller and Buyer, there are no other agreements between Seller and Buyer with respect to the Goods.
- b) If any part of these Terms is held invalid, the remaining terms and conditions hereof shall not be affected thereby.

- c) These Terms may be modified, canceled or rescinded only by a written agreement signed by both parties.
- d) All rights available to Seller under the Uniform Commercial Code as enacted in the State of Illinois (even though not specifically enumerated), are expressly reserved to Seller as remedies available to it in case of Buyer's breach.
- e) These Terms and any rights or obligations hereunder may not be transferred or assigned by Buyer without the prior written consent of Seller. Any unauthorized transfer or assignment shall be null and void.
- f) Any failure by either party to enforce at any time any term or condition hereof shall not be considered a waiver of such party's right thereafter to enforce the same or any other term or condition.
- g) These Terms shall be binding upon the successors and legal representatives of Buyer and Seller.
- h) These Terms are intended solely for the benefit of the parties hereto and are not intended to confer any third-party beneficiary rights upon any other person or entity.
- i) Seller shall be entitled to recover from Buyer all attorneys' fees, court costs and other expenses incurred by Seller in enforcing any obligation of Buyer under these Terms.
- j) Seller is selling the Goods to Buyer for resale or use within the United States. If Buyer chooses to export any Goods (or any technology related to the Goods), Buyer shall be responsible for complying with the United States Export Administration Act ("Act") and any regulations under such Act, and with all other applicable export laws and regulations of the United States. Buyer shall indemnify, defend and hold Seller harmless from all liabilities, damages, costs and expenses arising from or connected to any breach by Buyer of its obligations under this section.