

## WAREHOUSING AND LOGISTICS TERMS AND CONDITIONS OF SERVICE

THESE WAREHOUSING AND LOGISTICS TERMS AND CONDITIONS OF SERVICE ("Service Terms"), along with the Agreement for Warehousing and Logistics Services (the "Services Agreement"), contain the terms and conditions under which Gamerati LLC ("Gamerati"), directly and/or through certain of its affiliates (together with Gamerati, collectively, "Provider"), will provide certain warehousing and logistics services identified in the Services Agreement (the "Services") to Customer (as defined below). Gamerati reserves the right to modify, amend, supplement or change these Service Terms at any time without prior notice. The most current and the controlling version of these Service Terms is published electronically at <http://gamerati.biz/>. By tendering Goods (as defined below) for Services, Customer agrees to the Service Terms in effect at the time of such Services.

**1. Definitions.** The following capitalized terms have the following meanings:

"Charges" means all amounts of any nature at any time due or claimed to be due to Provider with respect to the Goods, whether liquidated or unliquidated, including loans, disbursements, expenses, advances, storage, handling and transportation charges (including demurrage, detention and terminal charges), charges and expenses incurred in the preservation and sale of the Goods pursuant to law, charges incurred for Services as provided herein, interest charges and all other charges and expenses of every nature, present and future, incurred by or for the account of Customer or with respect to any Goods.

"Customer" means the person, firm, corporation or other entity for whom the Goods are stored and that has entered into the Services Agreement as a party thereto.

"Goods" means Customer's goods, packages or property for which the Services are provided.

"Lot" or "Lots" means a unit or units of Goods for which a separate account is kept by Provider.

**2. Service Providers.** Each of the various Services available to Customer pursuant to the Services Agreement and these Service Terms may be provided by Gamerati or one or more of its affiliates, however, such affiliates shall have no obligation to Customer under the Services Agreement or these Service Terms and is not liable for the acts or omissions of Gamerati.

**3. Tender of Goods.**

(a) All Goods tendered for storage or handling shall be delivered at Provider's warehouse location indicated in the Services Agreement, properly marked and packed for handling as reasonably determined by Provider. Provider shall store and deliver Goods in the packages in which they were originally received.

(b) Customer shall furnish, at or prior to tender of the Goods, a manifest showing marks, brands or sizes to be kept and accounted for separately and, if to be stored, the class of storage desired. If such information is not specifically indicated in such manifest, Provider may

commingle and store the Goods in bulk or assorted Lots and in a class of storage at the discretion of Provider and charges for such storage will be made at then applicable rates as set forth in the Services Agreement.

(c) Provider shall not be responsible for segregating Goods by production code, date or otherwise, unless specifically agreed to in writing.

(d) Customer warrants that the Goods tendered for storage or handling are not infested with pests, bacteria or any other contaminants whatsoever and that the Goods do not now and will not in the future present or constitute a danger to Provider, its affiliates or its employees, to other products or to the warehouse. Customer hereby agrees to hold Provider and its affiliates, and the directors, employees, officers, agents, subcontractors, and suppliers of each of them (collectively, the “Indemnitees”) harmless from and indemnify Provider and the Indemnitees against any and all liabilities, losses, damages, costs or expenses, including reasonable attorneys' fees, whether suit is instituted or not, and if instituted, whether incurred at any trial or appellate level or post judgment (collectively, “Losses”), arising from or attributable to a breach of the aforesaid warranty.

#### **4. Termination of Storage.**

(a) Provider may, upon written notice to Customer, require the removal of the Goods, or any portion thereof, from the warehouse at the termination of the period of storage, if any, fixed by the Services Agreement or after the expiration of thirty (30) days from such notice, whichever is earlier. If, in the opinion of Provider, Goods are about to deteriorate or decline in value to less than the amount of Provider’s warehouseman’s lien, or there is a threat of damage to the Goods, to other property, to the warehouse, or to persons, Provider may specify in the notice a shorter period for removal. All Charges relating to the Goods to be removed shall be paid prior to removal. If such Goods are not so removed and said Charges paid, Provider may sell the Goods as provided by applicable law and shall be entitled to exercise any other rights it has under applicable law with respect to such Goods.

(b) If, in the opinion of Provider, Goods may constitute a hazard to other property or to the warehouse or to persons, Provider may remove such Goods and sell or dispose of them as permitted by applicable law without liability of Provider to Customer. All Charges related to such removal, sale and disposition shall be paid by Customer.

#### **5. Storage Location.**

(a) Any Goods stored pursuant to the Services Agreement shall be stored at Provider’s discretion in any one or more buildings at the warehouse complexes identified in the Services Agreement. The identification of any specific location within the warehouse complexes does not constitute a representation that the Goods shall be stored there.

(b) Subject to any contrary written instructions given by Customer, Provider may, at any time, at its expense and without notice to Customer, remove any Goods from any room or area of the warehouse complexes to any other room or area thereof.

## 6. Title to Goods; Transfer of Title; Delivery

(a) Unless otherwise expressly specified in the Services Agreement, title to Goods will remain with Customer. Notwithstanding anything herein or in the Services Agreement to the contrary, nothing in the Services Agreement or these Service Terms shall be deemed to waive or otherwise limit any lien rights that Provider may have under applicable law with respect to the Goods.

(b) Instructions by Customer to transfer Goods to the account of another person are not effective until the written instructions are delivered to and accepted by Provider and the proposed transferee and all Charges relating to such Goods have been paid. A charge will be made for each such transfer and for any rehandling of Goods deemed by Provider to be required thereby. Provider reserves the right not to deliver or transfer Goods to or for the account of any person except upon receipt of written instructions properly signed by Customer.

(c) Customer may furnish written instructions authorizing Provider to accept orders for delivery. In such case, (i) Provider may require that each order be confirmed by Customer in writing within 24 hours, and (ii) accuracy of any order shall be at the risk of Customer. Provider and its affiliates shall not be liable for any loss resulting from a delivery made pursuant to an order, whether or not so authorized, unless Provider failed to exercise reasonable care as customary for similarly situated warehousemen involving similar Goods.

(d) Provider shall have a reasonable time to make delivery after Goods are ordered out and shall have a minimum of thirty (30) business days after receipt of a delivery order in which to locate any misplaced Goods.

(e) If Provider has exercised reasonable care and is unable, due to causes beyond its reasonable control, to affect delivery before expiration of the current storage period, the Goods shall be subject to storage charges for each succeeding storage period until delivery is affected.

(f) All instructions and requests for delivery of Goods or transfer of title are received subject to satisfaction of all Charges and all liens and security interests of Provider and its affiliates.

(g) Customer shall hold Provider and the Indemnitees harmless from and indemnify them for claims of others asserting a superior right to Customer to ownership or possession of the Goods. Nothing herein shall preclude Provider or its affiliates from exercising any other remedy available to them under applicable law. All Losses incurred by Provider relating in any way to any such claim shall be charged to Customer, shall become part of Charges, and shall be secured by the lien created by these Service Terms.

(h) On outbound shipments, Customer may furnish a checker to verify load and count; otherwise, Provider's record of load and count shall be conclusive.

(i) If Customer requests Provider to arrange for transportation of Goods but does not specify a particular carrier, Provider may select any carrier in its sole discretion. **CUSTOMER SHALL BE RESPONSIBLE FOR ALL CHARGES OF ANY CARRIER AND FOR ANY LOSS RESULTING FROM DELAY IN DELIVERY. ALL CLAIMS BY CUSTOMER OF DAMAGE, SHORTAGES AND LOSS DURING TRANSPORT OR OTHER CLAIMS**

**WHICH ARISE DURING TRANSPORT ARE NOT PROVIDER'S RESPONSIBILITY AND CUSTOMER AGREES TO PURSUE ALL SUCH CLAIMS DIRECTLY AGAINST THE CARRIER AND SHALL HOLD PROVIDER AND ITS AFFILIATES HARMLESS FROM AND AGAINST ANY AND ALL SUCH CLAIMS.**

**7. Storage Charges**

(a) Charges for storage, handling and other services shall be billed in advance in the manner indicated herein and are due upon receipt of the invoice.

(b) **ALL GOODS ARE STORED ON A MONTH-TO-MONTH BASIS**, unless otherwise agreed in writing.

(c) Unless otherwise agreed in writing, all Goods stored at any facility owned or leased by Provider or its affiliates will be stored on either a split month basis or anniversary date basis in accordance with the custom and practice at such facility. If stored on a split month basis, a full month's storage charge will apply on all Goods received between the first and 15th, inclusive, of a calendar month, one-half month's storage charge will apply on all Goods received between the 16th and the last day, inclusive, of a calendar month, and a full month's storage charge will apply to all Goods in storage on the first day of the next and succeeding calendar months. If stored on an anniversary date basis, a full month's storage charge will apply for each storage month during which any Goods of a Lot are in storage. A storage month and the storage charge shall begin on the date the first unit of a Lot is received and shall extend to, but not include, the same date in the next and all succeeding calendar months. Any other storage charge arrangements will be as agreed in writing between Provider and Customer.

(d) Rates quoted by weight will, unless otherwise specified, be computed on gross weight, and 2,000 pounds shall constitute a ton.

**8. Handling Charges**

(a) Handling charges cover only the ordinary labor and duties incidental to receiving and delivering unitized Goods at the warehouse dock during normal warehouse hours but do not include loading and unloading unless otherwise specified or agreed in the Services Agreement or otherwise in writing by Provider.

(b) A charge in addition to the regular handling charges will be made for any work performed by Provider other than as specified in Section 8(a) above.

(c) When Goods are ordered out in quantities less than that in which received, Provider may make an additional charge for each order or each item of an order.

(d) Delivery by Provider of less than all units of any Lot or of less than all the fungible Goods owned by Customer shall be made without subsequent sorting except by special arrangement and subject to an additional charge.

**9. Other Services, Charges and Payment Terms**

(a) Other services rendered in the interest of Customer or the Goods are chargeable to Customer. Such services may include: furnishing of special warehouse space or material; repairing, re-couping, sampling, weighing, repiling or inspecting the Goods; compiling statements; reporting or recording marked weights or numbers; handling railroad expense bills; handling shipments and transportation brokerage.

(b) Provider shall bill all Charges in U. S. dollars, and Customer shall pay all invoiced amounts in U. S. dollars.

(c) All Charges are due and payable upon receipt of the invoice therefor without any deduction or offset whatsoever, including no deduction or offset shall be made for any claims based on disputed invoices or in the event of destruction of the Goods, or any portion thereof, or damage necessitating disposal of the Goods, or any portion thereof.

**(d) ALL CHARGES (INCLUDING STORAGE AND HANDLING CHARGES) NOT PAID WITHIN FIFTEEN (15) DAYS FROM THE DATE OF BILLING ARE SUBJECT TO AN INTEREST CHARGE FROM SUCH DATE UNTIL PAID AT THE LESSER OF ONE AND ONE HALF PERCENT (1½%) PER MONTH OR THE HIGHEST RATE PERMITTED BY LAW.**

(e) Rates invoiced to Customer do not include any sales, use, personal property or other taxes, tariffs, duties, assessments or similar charges, including any penalties, fines or interest thereon (collectively, "Taxes"), that are imposed upon the Goods while in the possession of Provider, all of which shall be the sole responsibility and expense of Customer. Customer shall hold Provider and its affiliates harmless from and indemnify them for any liability arising from such Taxes, including liability arising from Customer's failure to pay. All Losses incurred by Provider relating in any way to such Taxes shall be charged to Customer, shall become part of Charges and shall be secured by the lien created by these Service Terms.

(f) Customer may, subject to insurance regulations and reasonable limitations imposed by Provider, inspect any Goods stored in the warehouse under the Services Agreement when accompanied by an employee of Provider whose time is chargeable to Customer.

(g) If there is damage to the Goods, or any portion thereof, or if, in the opinion of Provider, there is a threat of damage to the Goods, to other property, to the warehouse, or to persons, Customer shall pay all costs incurred by Provider in its sole discretion for the protection of the threatened party or property, and for transportation, handling, clean-up and disposal of the Goods. When such costs are attributable to more than one Customer, such costs shall be apportioned among all such Customers on a pro rata basis as determined by Provider in its reasonable discretion.

(h) Provider shall supply dunnage bracing and fastenings where it deems it appropriate on outbound shipments and the cost thereof is chargeable to Customer.

(i) Any additional costs incurred by Provider in unloading, storing and handling damaged Goods are chargeable to Customer.

(j) A charge in addition to regular storage and handling rates will be made for bonded storage.

(k) All storage, handling and other services may be subject to minimum charges.

(l) All Charges hereunder shall constitute commercial accounts.

(m) Customer acknowledges and agrees that Gamerati calculated the fees for the Services set forth in the Services Agreement based on and in reliance upon certain key assumptions or criteria agreed to by the parties and set forth in the Services Agreement (“Operating Parameters”). In the event a change in any Operating Parameter (i.e., a change that is encountered over the course of time and is anticipated to be ongoing) or a “Changed Condition” (as defined below) occurs, which (i) increases the obligations or costs of Provider or adversely affects the ability of Provider to perform the Services, or (ii) decreases the fees to which Provider would otherwise be entitled under the Services Agreement had the change not occurred, Gamerati shall provide written notice of the same to Customer. Gamerati shall specify in its notice in reasonable detail the impact of the change in Operating Parameters or the Changed Condition on the Services and the corresponding change to the then current fees (the “Notification”). For purposes of this Section 9(m), “Changed Condition” means (x) the enactment or promulgation of any new law, regulation or charge or any change to any existing law, regulation or charge occurring after the date on which the Services Agreement was executed by the parties thereto, or (y) a change to any permit, license, lease agreement, consent or approval required to perform the Services in accordance with the terms of the Services Agreement and occurring after the date on which the Services Agreement was executed by the parties thereto. In the event Customer objects to any changes to Provider’s proposed fees pursuant to this Section 9(m), Customer shall provide written notice of such objection to Gamerati within ten (10) days of the Notification. If Customer does not provide such written notice, then the parties shall amend the applicable Services Agreement accordingly to reflect such change in fees in accordance with Section 20(e) below. If Customer objects in writing to any changes in proposed fees, the parties shall use their good faith efforts to negotiate and reach agreement regarding the proposed fees within ten business days after receipt of Customer’s written notice of objection to the proposed fees. Notwithstanding anything to the contrary contained in the Services Agreement, if the Parties are unable to reach agreement within the ten (10) day period described in the preceding sentence, then Provider may terminate the impacted Services Agreement upon written notice to Customer, and Customer shall pay all Charges due and outstanding through the date of termination. Provider shall not be liable for the failure to meet performance commitments due to a Changed Condition or a change in an Operating Parameter, unless Provider specifically agrees in writing to the contrary.

**10. Indemnification.** Customer shall indemnify, defend and hold harmless Provider and the Indemnitees from and against any and all Losses arising out of or related to the Services, including Losses for personal injury, damage to or loss of improvements to real property or tangible property, or Losses arising out of or in connection with the design, manufacture, packaging, distribution, marketing, use or sale of the Goods or Customer's instructions regarding such Goods, or lost, damaged or undelivered Goods, or Goods not delivered on time, in each case unless arising directly and exclusively from the negligence or willful misconduct of Provider.

**11. Liability and Limitation of Damages.**

(a) **PROVIDER AND ITS AFFILIATES SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE FOR ANY LOSS OR DESTRUCTION OF OR DAMAGE TO THE GOODS, HOWEVER CAUSED, UNLESS SUCH LOSS, DAMAGE OR DESTRUCTION ARISES DIRECTLY AND EXCLUSIVELY FROM PROVIDER'S FAILURE TO EXERCISE SUCH CARE IN REGARD TO THE GOODS AS A REASONABLY CAREFUL PERSON WOULD EXERCISE UNDER LIKE CIRCUMSTANCES. PROVIDER AND ITS AFFILIATES SHALL NOT BE LIABLE FOR ANY LOSS OR DESTRUCTION OF OR DAMAGE TO GOODS THAT COULD NOT HAVE BEEN AVOIDED BY THE EXERCISE OF SUCH CARE.** Without limiting the foregoing, Provider will have no liability for lost or damaged Goods (i) caused by any defects in the packaging or manufacture of such Goods, (ii) attributable to carriers (contract or otherwise), (iii) delivered to Provider in a damaged condition, (iv) attributable to concealed damage or data entry errors, (v) as a result of the negligence or intentional misconduct of Customer or any of its employees, agents or subcontractors (other than Provider) or (vii) caused by a Force Majeure Event (as defined below). All overages during any physical inventory shall be netted against shortages in said physical inventory across product lines and all net overages as a result of any physical inventory shall be carried forward and/or backward to offset prior and/or future net physical inventory shortages.

(b) Provider and Customer agree that the duty of care referred to in Section 11(a) above does not require Provider to provide or maintain a sprinkler system at any warehouse.

(c) Unless specifically agreed to in writing, Provider shall not be required to store Goods in a humidity-controlled environment or be responsible for tempering Goods.

(d) **PROVIDER SHALL NOT BE RESPONSIBLE FOR DETENTION OR DEMURRAGE OR DELAYS IN LOADING OR UNLOADING TRAILERS OR CARS OR DELAYS IN OBTAINING CARS FOR OUTBOUND SHIPMENT UNLESS SUCH DETENTION, DEMURRAGE OR DELAY WAS CAUSED DIRECTLY AND EXCLUSIVELY BY PROVIDER'S FAILURE TO EXERCISE REASONABLE CARE.**

(e) **IN THE EVENT OF LOSS OR DESTRUCTION OF OR DAMAGE TO GOODS FOR WHICH PROVIDER AND/OR ANY OF ITS AFFILIATES ARE LEGALLY LIABLE, CUSTOMER DECLARES THAT PROVIDER'S AND ITS AFFILIATES' TOTAL, INDIVIDUAL AND COLLECTIVE LIABILITY FOR DAMAGES SHALL BE LIMITED TO THE LESSER OF THE FOLLOWING: (i) THE ACTUAL COST TO CUSTOMER OF REPLACING, OR REPRODUCING THE LOST, DAMAGED, AND/OR DESTROYED GOODS TOGETHER WITH THE ACTUAL COSTS REASONABLY AND NECESSARILY INCURRED BY THE CUSTOMER TO TRANSPORT THE GOODS TO THE WAREHOUSE (TO THE EXTENT THAT THOSE HAVE BEEN INCURRED AT COMMERCIALY REASONABLE MARKET RATES), (ii) THE FAIR MARKET VALUE OF THE LOST, DAMAGED, AND/OR DESTROYED GOODS ON THE DATE CUSTOMER IS NOTIFIED OF THE LOSS, DAMAGE AND/OR DESTRUCTION; OR (iii) \$0.50 PER POUND FOR SAID LOST, DAMAGED, AND/OR DESTROYED GOODS.**

(f) Customer and Provider agree that they have negotiated a reasonable limit of liability based on the value of the Goods and the parties' respective business interests and rates charged. Customer waives all rights of subrogation on behalf of its insurers for any loss or damage in excess of the liability limits set forth herein, or if applicable, such different limits of liability specified in the Services Agreement.

(g) The liability referred to in Section 11(e) above shall be Customer's exclusive remedy against Provider and its affiliates for any claim or cause of action whatsoever relating to loss or destruction of or damage to Goods and shall apply to all claims including inventory shortage and mysterious disappearance claims unless Customer proves by affirmative evidence that Provider or its affiliates converted the Goods to its or their own use. Customer waives any rights to rely upon any presumption of conversion imposed by law.

(h) Customer shall hold Provider and the Indemnitees harmless from and indemnify them against all claims, regardless of how or by whom such a claim is raised, asserting liability for loss, damage, or destruction of Goods in an amount above the limitations of damages set forth in this Section 11. All Losses incurred by Provider or its affiliates relating in any way to any such claim shall be charged to Customer, shall become part of Charges, and shall be secured by the lien created by these Service Terms.

(i) **IN NO EVENT WILL PROVIDER BE LIABLE TO CUSTOMER FOR ANY PURELY ECONOMIC LOSSES, INCLUDING LOSS OF PROFITS, USE, INCOME, BUSINESS OPPORTUNITIES, COSTS OF ALTERNATIVE MEANS OF TRANSPORT, MERCHANTABILITY, OR CUSTOMER GOODWILL, OR FOR ANY SPECIAL, PUNITIVE, CONSEQUENTIAL OR INDIRECT DAMAGES, IN CONNECTION WITH THESE SERVICE TERMS, THE SERVICES AGREEMENT OR THE SERVICES PROVIDED THEREUNDER, WHETHER OR NOT A PROVIDER HAS BEEN ADVISED OF SUCH LOSSES OR DAMAGES OR WHETHER PLED UNDER TORT, CONTRACT OR ANY OTHER LEGAL THEORY.**

**12. Filing of Claims.**

(a) **NEITHER PROVIDER NOR ITS AFFILIATES SHALL BE LIABLE FOR ANY CLAIM OF ANY TYPE WITH RESPECT TO GOODS UNLESS SUCH CLAIM IS PRESENTED IN WRITING WITHIN A REASONABLE TIME, WHICH SHALL IN NO EVENT EXCEED SIXTY (60) DAYS FROM THE EARLIER OF: (i) THE DATE PROVIDER DELIVERED THE GOODS TO CUSTOMER OR ITS REPRESENTATIVE, DESIGNEE OR AGENT; OR (ii) THE DATE WHEN CUSTOMER LEARNED, OR IN THE EXERCISE OF REASONABLE CARE SHOULD HAVE LEARNED, OF THE LOSS, DAMAGE, DESTRUCTION OR OTHER EVENT OR CONDITION GIVING RISE TO THE CLAIM.**

(b) As a condition to making any claim and as a condition precedent to filing any suit, Customer shall provide Provider with a reasonable opportunity to inspect the Goods which are the basis of Customer's claim.



(c) **NO LAWSUIT OR OTHER ACTION MAY BE MAINTAINED BY CUSTOMER OR OTHERS AGAINST PROVIDER OR ITS AFFILIATES WITH RESPECT TO THE GOODS UNLESS (i) A WRITTEN CLAIM HAS BEEN MADE WITHIN THE TIME PERIOD SET FORTH IN SECTION 12(a) ABOVE, (ii) CUSTOMER HAS PROVIDED PROVIDER WITH A REASONABLE OPPORTUNITY TO INSPECT GOODS AS PROVIDED IN SECTION 12(b) ABOVE AND (iii) SUCH ACTION IS COMMENCED WITHIN NINE (9) MONTHS AFTER THE EARLIER OF (1) THE DATE PROVIDER DELIVERED THE GOODS TO CUSTOMER OR ITS REPRESENTATIVE, DESIGNEE OR AGENT, OR (2) THE DATE WHEN CUSTOMER LEARNED, OR IN THE EXERCISE OF REASONABLE CARE SHOULD HAVE LEARNED, OF THE LOSS, DAMAGE, DESTRUCTION OR OTHER EVENT OR CONDITION GIVING RISE TO THE CLAIM.**

(d) Customer shall hold Provider and the Indemnitees harmless from and indemnify them against any claim whatsoever filed outside of the limitation period. All Losses incurred by Provider or its affiliates relating in any way to any such claim shall be charged to Customer, shall become part of Charges, and shall be secured by the lien created by these Service Terms.

**13. Insurance.** The Goods are not insured and the rates charged by Provider do not include insurance unless Provider has agreed in the Services Agreement to obtain such insurance for the benefit of Customer. Customer hereby instructs Provider not to obtain insurance on the Goods stored hereunder.

**14. Lien and Security Interest.**

(a) **CUSTOMER GRANTS TO PROVIDER A FIRST PRIORITY GENERAL WAREHOUSE LIEN UPON AND SECURITY INTEREST IN THE GOODS** and on the proceeds thereof for all Charges, including all charges for storage, handling, transportation (including demurrage and terminal charges), insurance, labor and other charges present or future with respect to the Goods, advances or loans by Provider in relation to the Goods and for expenses necessary for preservation of the Goods or reasonably incurred in their sale pursuant to applicable law. Customer further grants Provider a lien on the Goods for all such charges, advances and expenses in respect of any other property stored by Customer in any warehouse owned or operated by Provider or its affiliates wherever located and whenever deposited and without regard to whether or not said other property is still in storage.

(b) Upon the nonpayment of any Charges when due, Provider may obtain satisfaction of its lien by sale of the Goods on which the lien and security interest is held, by judicial proceeding, or as otherwise provided by applicable law. In the event of a sale of the Goods, Provider will notify Customer of the amount due, as well as the time, place, and nature of the proposed sale. In all instances the lien may in Provider's discretion be deemed to have been acquired in the city or county in which the Goods are stored at the time the lien is enforced, and any sale may be held in such city or county. All proceeds from a sale of Goods shall be used to cover the Charges due to Provider, as well as any costs incurred by Provider as a result of the sale. Any proceeds above those required to cover such amounts shall be credited to the account of Customer. Should the sale fail to generate sufficient proceeds to cover such costs, Provider retains the right to pursue other remedies to recover the full amount due.

**15. Force Majeure.** If and to the extent that either Provider or Customer may be precluded or delayed from performance hereunder by (a) acts of war, acts of public enemies, terrorist attacks, insurrections, third party theft, riots, sabotage, earthquakes, floods, acts of God, embargoes, authority of laws, labor disputes (including strikes, lockouts job actions, or boycotts) or (b) fires, air conditions, explosives, failure of electrical power, heat, light, air conditioning or communications equipment (provided that the events described in clause (b) are not due to such party's fault or negligence of the party claiming relief under this Section 15) or (c) other events beyond its control (each a "Force Majeure Event"), such performance will be excused to the extent and for the time necessitated by such Force Majeure Event. This provision does not apply to monetary amounts owed by either party to the other. Provider is not liable for any loss or damage to Goods caused by a Force Majeure Event, and Customer will have the risk of loss for such loss or damage and the responsibility to insure against the same. If Provider takes steps outside the ordinary course of business to protect Goods due to a Force Majeure Event, Customer shall pay the storage, handling or other similar charges associated with Provider's efforts.

**16. Subcontractors.** Provider may subcontract all or portions of the Services to its parent, affiliates or third party service providers. If Provider provides customs brokerage Services in connection with the Services Agreement, Customer hereby authorizes and appoints Gamerati (including its successors and assigns) to share records referenced in 19 C.F.R., Parts 111 and 163, including any documents, data or information pertaining to the business of Customer, with its parent and any or all of its affiliates.

**17. Hazardous Materials and Other Regulated Goods.** Unless Provider expressly agrees in the Services Agreement to handle Hazardous, Dangerous or Regulated Goods (as defined below), Provider will not handle, receive, accept, ship, carry, dispose of, transport, store, or arrange for the handling, disposal, storage or transportation of: (a) any type of hazardous materials, dangerous goods, or Goods containing hazardous materials or dangerous goods regulated under Title 49 of the Code of Federal Regulations ("49 CFR") or the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air, and the International Air Transport Association (IATA) Dangerous Goods Regulations, or (b) any type of Goods, which may be regulated by a governmental body, entity or agency, including those Goods which are regulated by the United States Food and Drug Administration, the United States Department of Agriculture, the United States Drug Enforcement Administration, the United States Bureau of Alcohol, Tobacco, Firearms and Explosives, and analogous regulatory agencies in countries in which the Services are provided (collectively, "Hazardous, Dangerous or Regulated Goods"). Customer covenants and warrants that it will not itself or through others offer, present or otherwise tender any Hazardous, Dangerous or Regulated Goods to Provider, its affiliates, assignees, agents or subcontractors under the Services Agreement, except as specifically provided therein. Customer further covenants and warrants that it will not itself or through others offer, present or otherwise tender any "Hazardous Waste", as defined under Title 40 of the Code of Federal Regulations, to Provider, its affiliates, assignees, agents or subcontractors under the Services Agreement, as Provider will not handle, receive, accept, ship, carry, dispose of, transport, store, or arrange for the handling, disposal, storage or transportation of Hazardous Waste. Notwithstanding the foregoing, Provider may take any reasonable action, which is not against any applicable law, that Provider, in its sole discretion, deems appropriate or necessary in relation to any actual or suspected Hazardous, Dangerous or Regulated Goods or Hazardous Waste. Customer hereby fully and completely releases and forever discharges Provider and the Indemnitees from and against all

Losses arising out of or caused by (x) Customer's failure to notify Provider in writing 60 days in advance of Customer or others offering, presenting or otherwise tendering to Provider Hazardous, Dangerous or Regulated Goods; or (y) Provider's reasonable actions, which are not against any applicable law, in connection with actual or suspected Hazardous, Dangerous or Regulated Goods or Hazardous Waste not addressed in the Services Agreement in connection with such Goods. Customer shall defend and indemnify Provider and the Indemnitees from and against all Losses related to or arising out of (1) any Provider action taken in relation to such actual or suspected Hazardous, Dangerous or Regulated Goods or Hazardous Waste, except to the extent that any such Losses result from Provider's gross negligence or willful misconduct, (2) Customer's noncompliance with applicable laws and regulations, or (3) the breach of any covenant of Customer contained in or made pursuant to this Section 17.

**18. Import and Export Laws.**

(a) The Parties acknowledge and agree that all activities hereunder, including the export, re-export, import, transshipment, transfer, release, delivery, or pickup of all Goods, as well as any software and technology provided to Provider by Customer or on behalf of Customer ("Software and Technology"), are subject to all applicable U.S. and non-U.S. laws, including any statutes, executive orders, regulations, governmental agency decisions, judicial decisions, or any other written decrees that have the force and effect of law in the country in question (collectively defined as "Laws" for purposes of this Section 18) governing the import and export of Goods, Software, and Technology, including laws concerning exports and economic sanctions, and customs Laws, (collectively, "Import and Export Laws").

(b) Customer agrees:

(i) to act as the importer, exporter or other principal party (as the case may be) under all Import and Export Laws;

(ii) that Customer is responsible for complying with all Import and Export Laws applicable to the export, re-export, import, transshipment, transfer or release of any Goods, Software, and Technology from any country;

(iii) that Customer is solely responsible for (A) properly classifying under the Import and Export Laws all Goods, Software, and Technology; (B) obtaining any required licenses and other authorizations for export, re-export, import, transshipment, transfer, or release; (C) correctly completing and filing with any government, as appropriate, all documents required under the Import and Export Laws; and (D) ensuring that all export-related documents, including shipping and sales documents, generated in connection with the Services performed pursuant to the Services Agreement conform to and are maintained in accordance with the Import and Export Laws;

(iv) that Customer is solely responsible for providing accurate written instructions to Provider and the carrier in advance of any export, re-export, import, transshipment, transfer, release, delivery, pickup, or other activity in relation to any Goods, Software, and Technology, which instructions will be in compliance with all Import and Export Laws and will

set forth all information required for Provider to comply with those Laws in connection with that export, re-export, transshipment, transfer, release, delivery, pickup, or other activity; and

(v) that, notwithstanding any other provision in the Services Agreement or these Service Terms to the contrary, Customer shall indemnify, defend, and hold harmless Provider and the Indemnitees from and against all Losses or investigations arising out of or in connection with: (A) Customer's breach of this Section 18; (B) Provider's or the carrier's compliance with Customer's instructions in the export, re-export, import, transshipment, transfer, release, delivery, pickup, or other activity in relation to any Goods, Software, and Technology; or (C) error on the part of any government official, including any person employed by, representing, or acting on behalf of any government agency in the United States or any other country, in connection with the export, re-export, import, transshipment, transfer, release, delivery, pickup, or other activity in relation to any Goods, Software, and Technology.

**19. Warranties. ANY WARRANTIES OF THE PARTIES EXPRESSLY SET FORTH IN THE SERVICES AGREEMENT AND THESE SERVICE TERMS ARE THE SOLE WARRANTIES MADE BY THE PARTIES AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, OF TITLE OR NONINFRINGEMENT, OF FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE.**

**20. Transportation Brokerage.** It is acknowledged that Customer may utilize Provider to perform certain brokerage services (the "Brokerage Services") to arrange, as a broker, certain motor carriage services to be performed by third-party motor carriers (each, a "Carrier") to transport the freight of Customer and/or its customers from, to or between locations and points designated by Customer, pursuant to rates to be established in writing by the mutual agreement of the Customer and Provider. In such event, the amounts due and payable for such Brokerage Services shall be paid by the Customer in accordance with the Services Agreement and these Service Terms. With regard thereto, Customer may send an offer of cargo for transport delivered by Customer to Provider in writing, which may be sent by electronic method of delivery (each, a "Load Tender"). Following receipt of such Load Tender from Customer, Provider shall use commercially reasonable efforts to arrange for motor carriage services from a Carrier with respect to the freight identified in such Load Tender (the "Cargo") pursuant to the parameters set forth in such Load Tender. If and to the extent that Provider is able to make such arrangements, Provider shall confirm the terms thereof to Customer in writing, which may be sent by electronic method of delivery. Upon the date of Provider's issuance of such confirmation of a Load Tender to Customer, the terms of the Services Agreement, including these Service Terms, shall automatically become a part of such Load Tender to govern the terms thereof. Further, in the event that Provider does not receive an executed agreement or written Load Tender, the usage of a Carrier arranged by Provider for Customer will constitute Customer's acceptance of the rates, terms and conditions of the Services Agreement and these Services Terms. Each Carrier selected by Provider to transport Customer's freight shall be the entity liable for the actual loss of or damage to Customer's Goods tendered hereunder, and not Provider. Each such Carrier's liability shall commence upon loading of the Customer's Goods into the Carrier's trailer and the trailers having been sealed. By its delivery of a Load Tender to Provider, Customer agrees to the these Service Terms in effect at the time of the delivery of such Load Tender to Provider.

## **21. Miscellaneous.**

(a) Provider's failure to insist upon strict compliance with any provision of the Services Agreement and these Service Terms shall not constitute a waiver or estoppel to later demand strict compliance therewith and shall not constitute a waiver or estoppel to insist upon strict compliance with all other provisions of the Services Agreement and these Service Terms.

(b) In the event any section of the Services Agreement or these Service Terms or any part thereof shall be declared invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining sections and parts shall not, in any way, be affected or impaired thereby.

(c) Customer represents and warrants that it either (i) is the lawful owner of the Goods, which are not subject to any lien or security interest of others; or (ii) is the authorized agent of the lawful owner and of any holder of a lien or security interest (which lien or security interest is hereby subordinated to the lien and security interest of Provider) and has full power and authority to enter into the Services Agreement. Customer agrees to notify all parties acquiring any interest in the Goods of the terms and conditions of the Services Agreement (inclusive of these Service Terms) and to obtain, as a condition of granting such an interest, the agreement of such parties to be bound by the terms and conditions of the Services Agreement (inclusive of these Service Terms).

(d) All notices provided herein may be transmitted by any commercially reasonable means of communication and directed to Gamerati at 10109 S Tacoma Way Ste C2, Lakewood, Washington 98499, and to Customer at its last known address. Customer is presumed to have knowledge of the contents of all notices transmitted in accordance with this Section 20(d) upon receipt or three (3) days after transmittal, whichever first occurs. Unless a longer period is required by applicable law, ten (10) days' notice of any sale or disposition shall be deemed reasonable; provided that shorter notice may be given where the circumstances or nature of the Goods so require.

(e) The terms and conditions of the Services Agreement and these Service Terms shall be binding upon Customer, its heirs, devisees, personal representatives, successors and assigns, and may be amended only by a written instrument executed by the party to be bound thereby. Any such amendment to be binding on Provider must be signed by an officer of Gamerati to be effective.

(f) The following rules of construction and interpretation shall apply to the Services Agreement and these Service Terms: (i) all terms defined in the singular shall include the plural, as the context requires, and vice versa; (ii) except if expressly stated otherwise, all references and use of "days" shall mean calendar days, (iii) all captions and headings set forth in the Services Agreement or these Service Terms are solely for convenience of reference, and shall not be used to construe the meaning of the Services Agreement or these Service Terms or any portion thereof, (iv) the words "include" and "including" shall be interpreted to mean "include, without limitation" and "including, without limitation," respectively, and (v) the words "herein," "hereof," "hereunder" and "hereto" and other words of similar import refer to the Services Agreement

(including any exhibits thereto) and these Service Terms taken as a whole, as the same may be amended, modified or supplemented from time to time, and not to any particular section, subsection or clause contained in the Services Agreement or these Service Terms. Provider and Customer acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of the Services Agreement (inclusive of these Service Terms) has been a joint effort of both such parties. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one party than the other.

(g) The rights and obligations of Customer under the Services Agreement (inclusive of these Service Terms) may not be transferred or assigned to a third party without the prior written consent of Gamerati. Nothing in the Services Agreement or these Service Terms is intended to create any rights with respect to any party other than Customer or Provider, nor shall the Services Agreement or these Service Terms be construed as a third-party beneficiary contract.

(h) The Services Agreement and these Service Terms shall be governed by and construed in accordance with the laws of the State of Washington, without reference to principles of conflicts of law. **TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION THAT MAY ARISE HEREUNDER, EACH PARTY HEREBY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY SUCH LITIGATION.** In the event that any action, suit or other proceeding is instituted to remedy, prevent, or obtain relief in connection with the Services Agreement or these Service Terms (including any trial, appellate, bankruptcy, insolvency or administrative proceedings), the prevailing party shall recover all of such party's attorneys' fees and costs incurred in each and every such action, suit, or other proceeding as part of the judgment or award therein. Any disputes, differences, claims or counterclaims between Provider and Customer in any way related to these Service Terms, the Services Agreement or the Service provided thereunder shall be submitted to the court in Pierce County, Washington, having jurisdiction over the subject matter. In any such dispute, Customer agrees to out-of-state service in accordance with the applicable rules of civil procedure and state law, as applicable. The provisions hereof shall survive the expiration or termination of the Services Agreement.

(i) The Services Agreement (inclusive of these Service Terms) supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements, representations and undertakings between Provider and Customer with respect to the subject matter thereof. It is agreed between the parties that there are no oral agreements or representations between the parties hereto affecting the Services Agreement or these Service Terms. Without limiting the foregoing, except as set forth in these Service Terms, any terms and conditions printed on transportation documents such as bills of lading or delivery receipts including as may be issued by Customer, Provider, any carrier or other service provider will not change or supersede the terms of the Services Agreement (inclusive of these Service Terms), and such other documents will operate solely as receipts.