

1. Steamforged
 Steamforged Games Ltd
 Unit 1
 Kestrel Road
 Trafford Park
 Manchester
 M17 1SF
 United Kingdom



COMMERCIAL TRADE AGREEMENT TERM SHEET

(May 2017 Edition)

Contact: (Director)
 day telephone:
 email address:

2. Retailer/Place of business:	registered company number: VAT registration number: day telephone: email address: Contact: (Position)
3. Price List Category [UK/EU/ROW]	4. Contract Currency: [Sterling/Euro]
5. Additional Terms:	
<p>The agreement between Steamforged and the Retailer comprises this term sheet, the attached commercial trade agreement standard terms and the schedules to those terms ("Agreement"). Before signing, you are advised to read this Agreement carefully. By signing this Agreement you agree to be bound by the terms and conditions of this Agreement, including the Intellectual Property Licence. This Agreement may be executed in any number of counterparts, which together have the same effect as if each party had signed the same document. Transmission of the executed Term Sheet by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement.</p>	
Signature (Steamforged) For and on behalf of STEAMFORGED GAMES LIMITED dated:	Signature (Retailer) For and on behalf of dated:

COMMERCIAL TRADE AGREEMENT STANDARD TERMS

1. Background

- 1.1 The Retailer wishes to open a trade account with Steamforged and has completed and returned to Steamforged an Account Application Form.
- 1.2 Steamforged has considered and approved the Retailer's Account Application Form and, in reliance on the warranties and representations set out in clause 8.1, is prepared to open a trade account for the Retailer on the terms of this Agreement.

2. Interpretation

- 2.1 In this Agreement, unless the context otherwise requires, the words and expressions defined in Schedule 1 (Part I) shall have the meanings attributed to them in that Schedule.
- 2.2 Schedule 1 (Part II) sets out additional rules of interpretation which apply to this Agreement.

3. Commencement and duration

- 3.1 This Agreement shall commence on the Commencement Date and shall continue unless terminated earlier in accordance with its terms, for an initial term of one (1) year from the Commencement Date ("**Initial Period**"). Thereafter, this Agreement shall be automatically renewed for successive periods equal to twelve (12) months (each a "**Renewal Period**"), unless either Party notifies the other Party of termination, in writing, at least six (6) calendar months before the end of the Initial Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the Initial Period or the relevant Renewal Period (as applicable).
- 3.2 For the avoidance of doubt, where the Term Sheet has not been signed by either (or both) of the Retailer or Steamforged, this Agreement will nevertheless apply to any Order provided that the Retailer has had prior notice of this Agreement (regardless of whether the Retailer has indicated its acceptance in writing). By placing an Order the Retailer indicates its acceptance of this Agreement.

4. General Obligations and Product Orders

- 4.1 This Agreement governs the overall relationship of the Parties in relation to the sale of Products by the Retailer, and sets out:
- (a) in this clause 4, the procedure for the Retailer to place Orders for:
 - (i) Products;
 - (ii) Point of Sale Materials;in each case, from Steamforged under separate Purchase Contracts;
 - (b) in Schedule 2, the Applicable Terms that are deemed to be incorporated into each Purchase Contract;
 - (c) in Schedule 3, the template form of purchase order to be submitted to Steamforged by the Retailer which constitutes an offer by the Retailer to purchase Products in accordance with the terms of this Agreement;
 - (d) in Schedule 4, the Intellectual Property Licence which must be observed by the Retailer; and
 - (e) the Mandatory Policies that must be observed by the Retailer when any of the same are notified by Steamforged to the Retailer in writing from time to time.
- 4.2 The Retailer shall comply with the Mandatory Policies.
- 4.3 The Retailer shall be entitled from time to time to place orders for Products from Steamforged by submitting to Steamforged a purchase order:

- (a) in writing (including email); or
- (b) online through Steamforged's dedicated webpages for retailers; or
- (c) by submitting an order orally (in person or over telephone), provided that oral orders shall be confirmed by a purchase order (bearing the additional words "confirmation of oral order") within two (2) Business Days.

Any such order shall contain the information referred to in the template purchase order annexed at Schedule 3.

- 4.4 The Order constitutes an offer by the Retailer to purchase the Products in accordance with these Applicable Terms. The Retailer is responsible for ensuring that the terms of the Order are complete and accurate.
- 4.5 No representative or agent of Steamforged has authority to agree any terms or make any representations inconsistent with this Agreement or to enter into any contract except on the basis of them. Any such term, representation or contract will bind Steamforged only if in writing and signed by a director of Steamforged.
- 4.6 Each Order shall be deemed to be a separate offer by the Retailer to buy Products and /or Point of Sale Materials on the terms of this Agreement, which Steamforged shall be free to accept or decline at its absolute discretion. No Order shall be deemed to be accepted by Steamforged (and a contract for the sale and purchase of the relevant Products and/or Points of Sale Materials formed) until it issues an Order Confirmation or (if earlier) Steamforged or one of its Affiliates delivers the Order to the Retailer. Each such contract:
 - (a) shall be entered into by the Retailer and Steamforged;
 - (b) forms a separate contract; and
 - (c) shall incorporate the Applicable Terms; and
 - (d) is subject to clause 4.7.

No additional or alternative terms and conditions may be imposed by Retailers and the Applicable Terms shall override any alternative terms and conditions presented or referenced on any documents provided by the Retailer including on any purchase order.

- 4.7 Steamforged reserves the right to correct any clerical or typographical error made by its employees at any time.
- 4.8 Any amendments to this Agreement agreed by the Retailer and Steamforged in accordance with clause 15 shall be deemed to apply to all future Purchase Contracts entered into after the date of such amendment, provided, however, that amendments made pursuant to clause 15.1(b) shall not require the Retailer's agreement or consent.
- 4.9 If a Retailer has not placed an Order within twelve (12) months of its last Order then (at Steamforged's discretion):
 - (a) the provisions of clause 12.2(d) shall apply; and/or
 - (b) the Retailer shall be required to demonstrate to Steamforged that it meets Steamforged's current minimum standards with respect to the Mandatory Policies, financial standing and quality assurance before it shall be entitled to place any further Orders.

5. **Product prices and payment**

- 5.1 The prices to be paid by the Retailer to Steamforged for the Products are to be Steamforged's list prices set out in the Price List, less any applicable discounts set out in clause 5.2. The prices to be paid by the Retailer to Steamforged for the Point of Sale Materials are to be Steamforged's list prices set out in the Price List.

- 5.2 The Retailer shall be entitled to Steamforged's standard retailer discount on Products of fifty percent (50%) off the list prices set out in the Price List.
- 5.3 Steamforged shall give the Retailer not less than twenty eight (28) calendar days' notice of any rises in the Price List, provided that any Orders placed before the effective date of any rise in price shall be at the price in force at the time the Retailer placed the Order.
- 5.4 The Retailer is prohibited from placing orders for Products from the distributors or other retailers of Steamforged on a category of price list other than the Price List. Any breach of this clause shall be a material breach incapable of remedy.
- 5.5 All sums payable under this Agreement and any Purchase Contracts, or otherwise payable by any party to any other party under this Agreement or a Purchase Contract are exclusive of any VAT chargeable on the supplies for which such sums (or any part of them) are the whole or part of the consideration for VAT purposes.
- 5.6 Where, under this Agreement or under a Purchase Contract, any party makes a supply to any other party ("**Recipient**") for VAT purposes and VAT is or becomes chargeable on that supply for which the supplying party is required to account to the relevant tax authority, the Recipient shall, subject to the receipt of a valid VAT invoice, pay the supplying party (in addition to, and at the same time as, any other consideration for that supply) the amount of such VAT.
- 5.7 Where any party is required by this Agreement to reimburse or indemnify any other party for any cost or expense, that first party shall reimburse or indemnify the other party for the full amount of the cost or expense, including any VAT on that amount, except to the extent that the other party is entitled to credit or repayment for that VAT from any relevant tax authority.
- 5.8 All taxes, charges, levies, assessments and other fees of any kind imposed on the purchase or import of the Products shall be the responsibility of, and for the account of, the Retailer.
6. **Sale of products to consumers**
- 6.1 Subject to clause 6.2, whilst Steamforged publishes MRSP's, these are not binding, and Retailers are be free to select their own retail prices. Steamforged has no right, power, authority or control over the retail prices of Retailers.
- 6.2 Steamforged may, in its discretion, require the Retailer to participate in co-ordinated short term price campaigns for new release Products which may include a requirement to observe minimum retail pricing for the period of that short term price campaign. It is agreed and acknowledged by the Retailer that such measures are to incentivise and increase promotional efforts of Steamforged's retailer network as a whole and expand overall demand for the new release Product to make market entry a success.
- 6.3 New release Products are subject to Pre-Order Dates and Worldwide Release Dates. Retailers shall not:
- (a) disseminate or otherwise make available to any third party (including to any Affiliates of the Retailer) any information in respect of new release Products prior to any Pre-Order Date in respect of such Products;
 - (b) make new release Products available for Order prior to the Pre-Order Date (and the specified time on such date) for such Products;
 - (c) display or show any actual Products (including packaging and/or contents) or copies of the same to any person prior to the Worldwide Release Date for such Products; or
 - (d) release any new release Products prior to the Worldwide Release Date for such Products.
- 6.4 Retailers shall sell the Products only as provided by Steamforged to the Retailer. Retailers shall not alter, divide or break down the Products into their component parts, and shall not

sell, distribute or otherwise transfer the Products to any person or entity (including to any Affiliates of the Retailer) where the Retailer knows or reasonably suspects, or Steamforged reasonably suspects (and notifies to the Retailer), that such person or entity intends to alter, divide or break down the Products into their component parts for the purpose of resale.

- 6.5 Retailers shall be responsible for complying with all Local Regulations in connection with the purchase, storage and sale of Products. This includes, but is not limited to, selling Products in accordance with the age requirements specified on the Products and packaging or otherwise required by law.

7. **Conflict**

In the case of a conflict or ambiguity between (i) the Term Sheet (ii) these Standard Terms and (iii) Purchase Contract and (iii) the Applicable Terms, then a term contained in a document higher in the foregoing list shall have priority over one contained in a document lower in the list.

8. **Warranties and Indemnity**

- 8.1 The Retailer hereby warrants, represents and undertakes to Steamforged that:

- (a) this Agreement is validly executed by its duly authorised representative;
- (b) it has, and shall maintain throughout the Term, the full capacity and authority and all necessary regulatory licences and approvals to enter into and perform its obligations contained in this Agreement;
- (c) the information (including without limitation the Account Application Form) supplied by or on behalf of the Retailer in connection with this Agreement is true, accurate, complete and not misleading;
- (d) throughout the Term, it will not do or cause or permit anything which shall or may cause detriment to the good standing and reputation of Steamforged or any of Steamforged's Affiliates;
- (e) at all times during the Term, it shall not do or cause or permit anything which in the opinion of Steamforged is offensive, immoral, pornographic or likely to offend the rights of individuals or any political, religious, racial or minority group;
- (f) it shall comply with the Mandatory Policies and the Intellectual Property Licence at all times during the Term;
- (g) it shall not at any time during the Term describe or represent itself as an agent or a representative of Steamforged or make any representation (apart from using the designation) about a connection with Steamforged;
- (h) it shall not at any time pledge the credit of, or purport to bind, Steamforged;
- (i) during the Term, it shall promptly advise Steamforged of any material change in the ownership or controlling interest or the financial position of the Retailer;
- (j) it shall promptly advise Steamforged of any material matter which comes to the attention of the Retailer at any time during the Term and which may have a detrimental effect on this Agreement;
- (k) at all times during the Term, it shall promptly answer any reasonable request for information made by Steamforged at any time in respect of this Agreement (including, without limitation, if required by Steamforged, by producing written submissions to Steamforged and, attending meetings and/or participating in telephone conversations (all as required by Steamforged));
- (l) it shall ensure the Retailer's contact specified in the Term Sheet (or such replacement as may be approved by Steamforged from time to time) shall be available for telephone contact by Steamforged at any and all times during the Term;

- (m) it is not a party to any pending or threatened litigation or arbitration proceeding with Steamforged or Steamforged's Affiliates;
- (n) it shall not knowingly at any time during the Term take any action that would or could impose upon Steamforged any obligation or liability to a third party; and
- (o) it shall at all times during the Term, promptly notify Steamforged or its nominee of the details of any complaint received by the Retailer regarding any aspect of the Product and act promptly to respond to and satisfactorily resolve the complaint in accordance with procedures agreed by Steamforged.

8.2 The Retailer undertakes to defend and indemnify Steamforged against and hold it harmless from any third party claims, actions, and proceedings, and all losses, damages, expenses and costs (including without limitation legal costs) associated therewith, where any of the same arise out of or in connection with the purchase, storage and sale of Products pursuant to this Agreement, or any breach by the Retailer of any warranty, undertaking or other terms or conditions of this Agreement, unless, and to the extent that, the same arise from any breach of any of Steamforged's obligations under this Agreement.

9. **Audit**

Steamforged and its authorised representatives ("**Permitted Persons**") shall have the right to inspect, interview and audit the staff, facilities, data, documentation, systems, records and internal policies of the Retailer applicable to the activities relating to this Agreement for the purpose of reviewing the Retailer's sales of Products (including sale channels), compliance and ability to comply with this Agreement (including to audit any breaches or suspected breaches of the Retailer's compliance with its confidentiality obligations) and to assist in Steamforged's knowledge of the activities of the Retailer in connection with this Agreement. The Retailer shall co-operate with the Permitted Persons and give all information and explanations to Steamforged and the Permitted Persons in relation to the activities in connection with this Agreement as Steamforged or any such person shall reasonably request.

10. **Use of licensed rights**

10.1 The Retailer shall use the Licensed Rights only for the purpose of selling the Products and always in accordance with the Intellectual Property Licence and any further instructions given by Steamforged from time to time.

10.2 Other than expressly provided for elsewhere in this Agreement, the Retailer shall not use, and shall not authorise any third party to use, the Licensed Rights or any other Intellectual Property Rights of Steamforged (of any nature) whether to imply endorsement or other association of any nature with Steamforged or otherwise and further shall not describe or represent for any purpose that it or any of the Property has been 'selected', 'approved', 'warranted', 'preferred' or similar by Steamforged.

10.3 The Retailer shall not develop or use, nor authorise any third party to develop or use, any name, symbol, logo, design, identification, picture, likeness, trade mark or other mark or designation that includes, is confusingly similar to, is a simulation or colourable imitation of or competes with the Licensed Rights or any other Intellectual Property Rights of Steamforged or otherwise refers to Steamforged or any competitions or events run by Steamforged.

11. **Limitation of liability**

11.1 Nothing in this Agreement shall limit or exclude Steamforged's or the Retailer's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

11.2 Subject to clause 11.1:

- (a) in no event will either Party to this Agreement shall have any liability to the other Party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of reputation, loss of business, or any special, exemplary, indirect, special or consequential losses or damages arising under or in connection with this Agreement or under or in connection with any Purchase Contract;
- (b) the total liability of Steamforged, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no event exceed:
 - (i) for any liabilities arising under or in connection with an individual Purchase Contract, the liability limit set out in clause 10.2(b) of the Applicable Terms; and
 - (ii) for any liabilities arising under or in connection with this Agreement, the sums actually paid to Steamforged under this Agreement (including any Purchase Contracts (as applicable)) in the period of three (3) months prior to the first event giving rise to the claim or in the first three (3) months of the Agreement if the event giving rise to the claim occurs in the first three (3) months of the Agreement.

12. **Suspension and Termination**

12.1 Without affecting any other right or remedy available to it, either Party may give notice in writing to the other terminating this Agreement and any Purchase Contracts (if any) immediately:

- (a) if the defaulting Party suffers an Insolvency Event; or
- (b) the Retailer does not accept any amendment to this Standard Terms or the Applicable Terms pursuant to clause 15.1(a); or
- (c) if the other Party commits a breach of any material term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) calendar days' of being notified in writing to do so.

12.2 Without affecting any other right or remedy available to it, Steamforged may give notice in writing to the Retailer terminating this Agreement and any Purchase Contracts (if any) immediately if:

- (a) the Retailer fails to pay any amount due under this Agreement or any Purchase Contract on the due date for payment and remains in default not less than ten (10) Business Days after being notified in writing to make such payment; or
- (b) the Retailer commits a repeated breach of the Retailer's obligations under this Agreement. A repeated breach shall be defined as two (2) or more breaches of the same, or any three breaches of different, obligations of the Retailer under this Agreement within a twelve (12) month period where each of those breaches have been notified in writing by Steamforged to the Retailer; or
- (c) there is a change of control of the Retailer (within the meaning of section 1124 of the Corporation Tax Act 2010); or
- (d) the Retailer fails to place an Order within twelve (12) months of placing its last Order; or
- (e) the Retailer commits any act or omission which could or might in the sole opinion of Steamforged bring Steamforged or the Products (or any of them) into disrepute or damage the reputation of Steamforged; or
- (f) in the opinion of Steamforged, the Retailer reorganises its business operations in such a way as to render it less effective in carrying out its duties under this Agreement; or

- (g) the Retailer breaches clauses 4.2, 5.4, 6.3, 6.4, 6.5, 8.1, 10, 14, 20.2, the terms of the Intellectual Property Licence or otherwise challenges the Intellectual Property Rights of Steamforged.
- 12.3 Without affecting any other right or remedy available to it, Steamforged may terminate this Agreement on giving not less than thirty (30) calendar day's written notice to the Retailer.
- 12.4 Without limiting its other rights or remedies, Steamforged may suspend performance of all or any part all or any part of its obligations under this Agreement or any other Purchase Contract between the Retailer and Steamforged if the Retailer becomes subject to any of the events listed in clauses 12.1 or 12.2(a) to 12.2(g) (inclusive) or Steamforged reasonably believes that the Retailer is about to become subject to any of them or if the Retailer fails to pay any amount due under this Agreement or any Purchase Contract on the due date for payment.
- 13. Consequences of termination**
- 13.1 On termination (or expiry) of this Agreement, howsoever arising, each Purchase Contract then in force at the date of such termination shall continue in full force and effect for the remainder of the term of such Purchase Contract, unless terminated earlier in accordance with the terms of such Purchase Contract or in accordance with the terms of this Agreement.
- 13.2 The termination of any Purchase Contract shall not affect any other Purchase Contracts or this Agreement.
- 13.3 On termination of the Agreement:
- (a) the following clauses shall continue in force: clause 2 (Interpretation), clause 8.2 (warranties and indemnity), clause 11 (Limitation of liability), clause 13 (Consequences of termination), clause 14 (Confidentiality) clause 24 (Governing law) and clause 25 (Jurisdiction):
 - (b) Steamforged shall have the option to buy from the Retailer any stocks of the Products at a price equal to the price such Products were originally sold by Steamforged to the Retailer. To exercise the option, Steamforged must give notice to the Retailer within twenty (20) Business Days of termination, stating the quantities of Products it wishes to buy. The Retailer shall deliver such Products to Steamforged within ten (10) Business Days of receiving Steamforged's notice, and Steamforged shall pay for the Products in full within twenty (20) Business Days of their delivery. Steamforged shall be responsible for the costs of packaging, insurance and carriage of the Products;
 - (c) if Steamforged chooses not to exercise its option to buy back the Products under clause 13.3(b), or purchases only part of the Retailer's stocks of Products, then, at Steamforged's direction, on giving notice to the Retailer within ten (10) Business Days of termination the Retailer may for a period of one (1) month (or such longer period as Steamforged may, in its discretion, grant to the Retailer) following termination of this Agreement, sell any stocks of the Products that it may have in store or under its control at the time provided that any such sales shall be made strictly in accordance with the terms of this Agreement. At the end of this period the Retailer shall (at its own expense and without the requirement for any form of payment by Steamforged) promptly return all remaining stocks of the Products to Steamforged at the expense of the Retailer, or dispose of the stocks as Steamforged directs;
 - (d) all licenses granted to the Retailer, including the Intellectual Property Licence, shall cease and determine with effect from:
 - (i) when Steamforged serves notice to buy back the Products under clause 13.3(b); or
 - (ii) when the sell-off period under clause 13.3(c) expires; and

- (e) if Steamforged chooses to buy back the Products under clause 13.3(b) or when the period under clause 13.3(c) expires, the Retailer shall, at its cost but at Steamforged's option, destroy and/or deliver up to Steamforged:
 - (i) any Point of Sale Materials;
 - (ii) all documents, materials and other media recordings containing any Confidential Information and all copies thereof; and
 - (iii) all other documents relating to the rights granted pursuant to this Agreement and their use, in the possession or control of the Retailer or its Affiliates, employees, agents, consultants or subcontractors, and (if Steamforged requires any/all of the same to be destroyed) provide official destruction certificates which are acceptable to Steamforged.
- 13.4 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breaches of the agreement which existed at or before the date of termination.
- 14. Confidentiality**
- 14.1 Each Party undertakes that it shall not at any time during this Agreement, and for a period of five (5) years after termination or expiry of this Agreement, disclose to any person any Confidential Information concerning the business, affairs, customers, clients, or supplier of the other Party or any member of the group of companies to which the other Party belongs, except as permitted by clause 14.2.
- 14.2 Each Party may disclose the other Party's Confidential Information:
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with this Agreement. Before making any disclosure, each Party shall ensure that its employees, consultants and advisors have entered into an obligation of confidentiality owed to the disclosing Party in terms no less stringent than this clause 14 (and the receiving Party shall ensure in any event that such parties comply with all such obligations); and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 14.3 No Party shall use any other Party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.
- 15. Variation**
- 15.1 Steamforged shall be permitted to, and the Retailer agrees that Steamforged may;
- (a) amend the terms of these Standard Terms or the Applicable Terms. Steamforged shall give the Retailer at least thirty (30) calendar days' notice in writing of any change to these Standard Terms or its Applicable Terms. Any such revised Standard Terms and/or Applicable Terms shall be effective as the Standard Terms/Applicable Terms from the date of expiry of such notice. The Retailer shall provide written notice to Steamforged during this thirty (30) calendar day period, informing Steamforged that the Retailer does not accept the amendments;
 - (b) notwithstanding any contrary provisions of clause 15.1(a), vary:
 - (i) on twenty eight (28) calendar days written notice to the Retailer, the Price Lists or the categorisation of Price Lists; or
 - (ii) on (30) calendar days written notice to the Retailer, the Products; or
 - (iii) at any time without notice to the Retailer, the Contract Currency; or

- (iv) at any time without notice to the Retailer, the Mandatory Policies; or
- (v) at any time without notice to the Retailer, the Intellectual Property Licence.

15.2 Subject to clause 15.1, no variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

16. Waiver

16.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

16.2 A failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

16.3 A Party that waives a right or remedy provided under this Agreement or by law in relation to one Party, or takes or fails to take any action against that Party, does not affect its rights in relation to any other Party.

17. Rights and remedies

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

18. Severance

18.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

18.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

19. Entire agreement

19.1 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

19.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

20. Assignment and other dealings

20.1 Steamforged may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under this Agreement. Steamforged may subcontract or delegate in any manner any or all of its obligations under this Agreement to any third party or agent. Without prejudice to the generality of this clause 20.1, Steamforged may subcontract its obligations to supply Products to one of its Affiliates.

20.2 The Retailer shall not, without the prior written consent of Steamforged, assign, transfer, charge or deal in any other similar manner with this Agreement or its rights or any part of

them under this Agreement, sub-contract or delegate any or all of its obligations under this Agreement, or purport to do any of the same.

21. No partnership or agency

21.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.

21.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

22. Third party rights

A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

23. Notices

23.1 Any notice or other communication given to a Party under or in connection with this Agreement shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post, registered mail or airmail or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the address specified in the Term Sheet.

23.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post, airmail, registered mail or other next working day delivery service, at 9.00 am on the second Business Day after posting (fifth Business Day after posting for airmail) or at the time recorded by the delivery service; or
- (c) if sent by email, on the earlier of (i) the time a return receipt is generated automatically by the recipient's email server or (ii) the time the recipient acknowledges receipt or (iii) twenty four (24) hours after transmission unless the sender receives notification that the email has not been successfully delivered, except that if deemed receipt would occur before 9.00 am GMT on a Business Day, it shall instead be deemed to occur at 9.00 am on that day and if deemed receipt would occur after 5.00 pm GMT on a Business Day, or on a day which is not a Business Day, it shall instead be deemed to occur at 9.00 am GMT on the next Business Day.

23.3 Clauses 23.1(b) and 23.2(c) do not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

24. Governing law

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

25. Jurisdiction

25.1 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

25.2 Subject to clause 25.2, each Party submits to the non-exclusive jurisdiction of the courts of England and Wales for the purposes of:

- (a) enforcing any judgment or award made by the courts of England and Wales; or
- (b) seeking emergency injunctive relief in any territory where the other Party has disclosed or threatens or is likely to disclose any Confidential Information in breach of this Agreement, in order to prevent, restrain or curtail such disclosure, or to prevent, restrain or curtail the infringement or unauthorised use of any of its Intellectual Property Rights.

Schedule 1

Part I: Definitions

In this Agreement, unless the context otherwise requires:

"Account Application Form" means the application form to be completed by any Retailer before opening a trade account, as provided by Steamforged to the Retailer prior to the date of this Agreement;

"Affiliate" means in relation to any entity (the 'first entity') any entity which, directly or indirectly, is in control of, or is controlled by, or is under common control with, the first entity. For the purposes of this definition, 'control' exists if an entity possesses, directly or indirectly, power either to direct or cause the direction of the management and policies of another entity whether by contract or otherwise, including without limitation, where an entity holds directly or indirectly, legally or beneficially, fifty percent (50%) or more of the voting shares of another entity;

"Applicable Terms" means the terms and conditions which apply to each Purchase Contract being the General Terms and Conditions of Sale of Steamforged in force from time to time (subject to clause 15.1). The Applicable Terms that apply at the Commencement Date are contained in Schedule 2;

"Business Days" means any day which is not a Saturday, Sunday or public holiday in the UK;

"Commencement Date" means the date on which the Term Sheet was signed by both Parties subject to clause 3.2;

"Confidential Information" all confidential information (however recorded or preserved) that is disclosed or made available (in any form or by any method) by a disclosing Party (or any of its representatives) to the receiving Party (or any of its representatives) whether before or after the date of this Agreement, in connection with the transactions contemplated by this Agreement, including:

- (a) the existence of this Agreement and its terms;
- (b) all confidential or proprietary information relating to the business or affairs, financial or trading position, assets, intellectual property rights, customers, clients, suppliers, employees, plans, operations, processes, products, intentions or market opportunities of Steamforged or any of its Affiliates;
- (c) the know-how, designs, trade secrets, technical information or software of Steamforged or any of its Affiliates; and
- (d) any other information that is identified as being of a confidential or proprietary nature or which may reasonably be considered by a business person to be confidential or commercially sensitive;

"Contract Currency" has the meaning given in the Term Sheet;

"Insolvency Event" means that a person:

- (a) is unable to pay its debts or becomes insolvent or bankrupt or ceases to trade;
- (b) is the subject of an order made or a resolution passed for the administration, winding-up or dissolution (otherwise than for the purpose of a solvent amalgamation or reconstruction, which does not materially reduce that entity's assets);
- (c) has an administrative or other receiver, manager, trustee, liquidator, administrator, or similar officer appointed over all or any substantial part of its assets;
- (d) enters into or proposes any composition or arrangement with its creditors generally (otherwise than for the purpose of a financing or solvent amalgamation or reconstruction, which does not materially reduce the entities' assets); or
- (e) is the subject of any events or circumstances analogous to any of the foregoing in any applicable jurisdiction;

"Intellectual Property Licence" means the terms and conditions on which Steamforged licences the Licensed Rights to Retailers set out in Schedule 4 (as may be varied by Steamforged from time to time);

"Intellectual Property Rights" means patents, rights to inventions, rights to use and preserve the confidentiality of information (including know-how and trade secrets), registered designs, copyrights, topography rights, all rights in computer programs, firmware, 'apps' and other computer software and data, database rights, rights in designs, rights in get-up, rights affording equivalent protection to copyright, database rights, design rights, trade marks, rights in service marks, logos, domain names, business names, trade names and domain names, and moral rights, in each case howsoever arising and in whatever media, whether registered or unregistered and including all applications (or rights to apply) for and to be granted, renewals or extensions of, and rights to claim priority from, such rights, which subsist or will subsist now or in the future in any part of the world;

"Licensed Rights" means the text, imagery and trade marks made available to the Retailer by Steamforged for the purpose of assisting it to market, promote and sell the Products, whether set out in the Point of Sale Materials or otherwise;

"Local Regulations" means laws and regulations applicable to the Products in the countries or territories in which the Retailer will sell the Products;

"Mandatory Policies" means Steamforged's mandatory policies and procedures as shall be notified by Steamforged to the Retailer in writing from time to time (and which shall include any relevant quality standards);

"MRSP" means the manufacturer's recommended retail sale prices provided to the Retailer by Steamforged from time to time;

"Order" means an order for Products and/or Point of Sale Materials submitted by the Retailer in accordance with clause 4.3;

"Order Confirmation" means an order confirmation email or other document, sent by Steamforged to the Retailer, agreeing to fulfil an Order;

"Parties" means Steamforged and the Retailer, and **"Party"** shall be construed accordingly;

"Point of Sale Materials" means any point of sale materials provided to the Retailer by Steamforged pursuant to clause 4;

"Pre-Order Dates" means the pre-order date assigned to any particular Product by Steamforged, and notified to Retailers, being the earliest date Retailers are permitted to make that Product available for pre-order;

"Price Lists" means Steamforged's list prices for Products and Point of Sale Materials for the Retailer's territory, as notified to the Retailer by Steamforged from time to time. The category of price list applicable for the Retailer's territory as is specified in the Term Sheet and the price list applicable as at the Commencement Date are set out in Schedule 5;

"Product" means any product that Steamforged manufactures or distributes and which it agrees in writing to supply to the Retailer from time to time;

"Purchase Contract" means a contract for supply of Products and Point of Sale Materials by Steamforged to the Retailer, concluded in accordance with clause 4.6;

"Retailer" has the meaning set out in the Term Sheet;

"Retailer Prices" has the meaning given in clause 5.1;

"Standard Terms" means this document, including the Schedules;

"Steamforged" has the meaning set out in the Term Sheet;

"Term" means the period described in clause 3;

"Term Sheet" means the attached Commercial Trade Agreement Term Sheet agreed between the Parties;

"VAT" means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax;

"VAT Group" means a group for the purposes of sections 43 to 43D (inclusive) of the Value Added Tax Act 1994 and the Value Added Tax (Groups: eligibility) Order 2004 (*SI 2004/1931*); and

"Worldwide Release Dates" means the worldwide release date assigned to any particular Product by Steamforged and notified by them to the Retailer, which is the earliest date that the Retailer is permitted to release that Product and make that Product available for sale.

Part II: Interpretation

1. In this Agreement, unless the context otherwise requires:
 - (a) terms defined in the Term Sheet shall have the same meanings ascribed to them in these Standard Terms;
 - (b) references to **"clauses"** and **"Schedules"** are to clauses of, and Schedules to, these Standard Terms;
 - (c) references in a Schedule to a **"paragraph"** are to a paragraph of that Schedule;
 - (d) references to the singular include the plural and vice versa and references to one gender include all genders;
 - (e) references to a **"person"** include any natural person, company, partnership or unincorporated association (whether or not having separate legal personality) and references to a **"company"** include any company, corporation or other body corporate (wherever and however incorporated or established);
 - (f) references to a statute or statutory provision include:
 - (i) that statute or statutory provision as modified, re-enacted or consolidated from time to time (whether before or after the date of this Agreement);
 - (ii) any past statute or statutory provision (as modified, re-enacted or consolidated from time to time) which that statute or statutory provision has directly or indirectly replaced; and
 - (iii) any subordinate legislation made from time to time under that statute or statutory provision;
 - (g) references to **"writing"** or **"written"** shall include emails (but not faxes), provided that if a notice is required to be given under this Agreement is served by email it must also be confirmed by post;
 - (h) the words **"include(s)"** and **"including"** are to be construed as if followed by the words **"without limitation"**; and
 - (i) references to a **"month"** are to a calendar month.
2. The headings in this Agreement are included for convenience only and shall be ignored in interpreting this Agreement.
3. Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.

Schedule 2 Applicable Terms

1 INTRODUCTION

The definitions and rules of interpretation set out in Schedule 1 shall apply in these Applicable Terms. The additional definitions contained in paragraph 14 apply in these Applicable Terms.

2 CONTRACT TERMS, VARIATIONS AND REPRESENTATIONS

- 2.1 Unless otherwise agreed in writing by Steamforged, the Purchase Contract constitutes the entire agreement between the parties and the Retailer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Steamforged which is not set out in the Purchase Contract.
- 2.2 Any samples, drawings, descriptive matter, or advertising produced by Steamforged and any descriptions or illustrations contained in Steamforged's catalogues or brochures or on Steamforged's website are produced for the sole purpose of giving an approximate idea of the goods described in them. They shall not form part of the Purchase Contract or have any contractual force.

3 RETAILER'S REPRESENTATIONS

- 3.1 The Retailer warrants that it is acting wholly in the course of its trade, business or profession and consequently, as a trader (rather than as a consumer) for the purposes of the Consumer Rights Act 2015.
- 3.2 The Retailer shall store the Products in clean, dry, well-ventilated conditions and shall maintain and use the Products in accordance with any recommendations made by Steamforged or instructions supplied by Steamforged or otherwise in accordance with best industry practice.
- 3.3 Where the Retailer sells on the Products, it shall:
- comply with all Applicable Laws, including where applicable the Consumer Rights Act 2015, the Consumer Contracts (Information, Cancellation and Additional Charges Regulations 2013 and the Electronic Commerce (EC Directive) Regulations 2002;
 - ensure that the Sale Terms observe the mandatory requirements of the Applicable Law; and
 - not make any representation or warranty on Steamforged's behalf.

4 QUOTATIONS AND PRICES

- 4.1 Unless otherwise agreed in writing, Steamforged shall be entitled to increase its prices at any time to take account of any increase in the cost to Steamforged of purchasing manufacturing, working on or supplying any Products. This shall include any delay caused by any instructions of the Retailer or failure of the Retailer to give Steamforged adequate or accurate information or instructions or any change in labour costs, taxes, customs duties, freight charges, insurance premiums or foreign exchange rates and such increased prices ruling at the date of dispatch by Steamforged shall be substituted for the previous contract price. In particular, but without prejudice to the generality of the foregoing, if the contract price is specified or payable in the Euro or in a currency other than pounds sterling (**the Payment Currency**), Steamforged shall be entitled to increase the contract price to take account of any change in the exchange rates between pounds sterling and the Payment Currency (as evidenced by the exchange rates quoted by Santander UK plc) which is to the detriment of Steamforged and which occurs between the acceptance of the order and the actual payment of the contract price.
- 4.2 All prices are quoted as exclusive of VAT and the Retailer shall pay any and all taxes, duties and other governmental charges payable in respect of the Products.
- 4.3 The price of the Products is exclusive of the costs and charges of inspection, packaging, insurance and transport of the Products, which shall be invoiced to the Retailer.
- 4.4 Where the Purchase Contract relates to Products with a retail value:
- equal to or in excess of £150/ €200, the prices of the Products (less any applicable discounts the Retailer may be eligible to receive) are inclusive of the costs of packaging, insurance and carriage of the Products; or

- less than £150/ €200, the price of the Products (less any applicable discounts the Retailer may be eligible to receive) are exclusive of the costs of packaging, insurance and carriage of the Products, which shall be paid by the Retailer at a rate of £20/€30 per Order.

5 PAYMENT

- 5.1 Subject to paragraph 5.2, payment to Steamforged shall be made by the Retailer in full in the Contract Currency before any products shall be issued or dispatched or services rendered. Once payment has been received in full, Steamforged shall (by sending an email to the email address provided by the Retailer) provide an estimated delivery date for dispatch of the products. The parties hereby agree that Steamforged's obligations under these Conditions are wholly conditional upon such payment being made. All such payments may at Steamforged's option be appropriated to any contract between Steamforged and the Retailer.
- 5.2 Steamforged may, in its sole discretion, designate to the Retailer approved credit terms and in any such case, unless otherwise specified in writing by Steamforged, payment shall be made by Steamforged in the Contract Currency not later than thirty (30) calendar days after the relevant date notwithstanding that property in the Goods has not passed to the Retailer. For the purposes of this paragraph 5.2:
- 'the Goods' shall mean the whole or any instalment of the Products which Steamforged has agreed to supply;
 - the 'relevant date' shall mean the date on which
 - the invoice is dated; or
 - Steamforged despatches the Goods; or
 - the Retailer takes delivery of the Goods; or
 - the Retailer defaults fails to provide an address for delivery as required by the Purchase Contract or (if it is agreed that the Retailer will take delivery at Steamforged's premises) he fails to take delivery in accordance with such agreement; whichever shall first occur;
- 5.3 Steamforged's preferred payment method is via "tradegecko" in the Contract Currency (or by such other payment method or currency as Steamforged shall specify in writing from time to time) ("**Preferred Payment Method**") In the event that the Retailer makes payment to Steamforged in any manner other than the Preferred Payment Method, then the Retailer shall:
- pay to Steamforged a handling charge equal to two and a half percent (2.5%) of the amount paid other than by the Preferred Payment Method; and
 - indemnify Steamforged in respect of all costs and expenses payable by Steamforged to third parties (including, but not limited to, commission payable to a bank or other financial institution) in respect of the conversion of the amount paid into the Contract Currency.
- 5.4 Without prejudice to any other rights it may have Steamforged reserves the right to charge interest at the rate of four percent (4%) per annum above Santander UK plc base rate from time to time or at the rate specified from time to time under the provisions of Late Payment of Commercial Debts (Interest) Act 1988 (whichever is the higher) on all overdue amounts. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Retailer shall pay the interest together with the overdue amount. Payment of the full purchase price pursuant to paragraph 6.2 and paragraph 8.2 shall include interest payable in accordance with this paragraph 5.4.
- 5.5 The Retailer shall pay all amounts due under the Purchase Contract in full without any deduction or withholding except as required by law and the Retailer shall not be entitled to assert any credit, set-off or counterclaim against Steamforged in order to justify withholding payment of any such amount in whole or in part. Steamforged may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Retailer against any amount payable by Steamforged to the Retailer.
- 5.6 The Retailer shall pay to Steamforged on demand an amount equal to any costs and expenses incurred (on a full indemnity basis) by Steamforged in recovering from the Retailer any monies due and payable by the Retailer to

Steamforged. Payment of the full purchase price pursuant to paragraph 6.2 and paragraph 8.2 shall include any sums payable by the Retailer in accordance with this paragraph 5.6.

6 FAILURE TO PAY, CANCELLATION OR DEFERMENT

- 6.1 For the purposes of this paragraph 6, an “**Intervening Event**” shall be any of the following:
- (a) failure by the Retailer to make any payment when it becomes due;
 - (b) breach by the Retailer of any of the terms or conditions of the Purchase Contract; or
 - (c) the Retailer suffering an Insolvency Event.
- 6.2 If an Intervening Event occurs, Steamforged may within a reasonable time thereafter, defer or cancel any further deliveries, stop any Products in transit and treat the Purchase Contract as terminated but without prejudice to its rights to the full purchase price for Products delivered (which shall become immediately due) and damages for any loss suffered in consequence of such termination.
- 6.3 Cancellation by the Retailer will only be accepted at the discretion of Steamforged and in any case on condition that any costs or expenses incurred by Steamforged up to the date of cancellation and all loss or damage resulting in Steamforged by reason of such cancellation will be paid by the Retailer to Steamforged immediately on demand. Acceptance of such cancellation will only be binding on Steamforged if in writing and signed by a director of Steamforged (or other signatory with delegated responsibility of the board).
- 6.4 Any costs or expenses incurred by Steamforged due to suspension or deferment of delivery of any Products by the Retailer or in the event that the Retailer defaults in collecting, or giving instructions for the delivery of any Products will be payable by the Retailer immediately on demand.

7 DELIVERY

- 7.1 For all Purchase Contracts other than International Supply Contracts and unless otherwise specified in writing by Steamforged, Steamforged shall deliver the Products or shall procure that a Steamforged Affiliate shall deliver to the location set out in the Order or to such other location as the Parties may agree at any time after Steamforged notifies the Retailer that the Products are ready.
- 7.2 If the Purchase Contract requires the Retailer to take delivery of the Products at Steamforged's premises or such other location as may be specified by Steamforged then:
- (a) for the purposes of this sub-paragraph ‘the Products’ shall mean the whole or any instalment of the Products and ‘the collection date’ shall mean the date on which the Products are or will be ready for delivery; and
 - (b) Steamforged shall notify the Retailer of the collection date and the Retailer shall take delivery of the Products within five (5) calendar days of the collection date.
- 7.3 If the Retailer shall for any reason fail to take or accept delivery of the Products on the agreed date or dates, delays in doing so or fails to provide a delivery address pursuant to an Order then, except where such failure or delay is caused by a Force Majeure Event or Steamforged's failure to comply with its obligations under the Purchase Contract, without prejudice to any other rights of Steamforged (whether under these Applicable Terms or otherwise):
- (a) delivery of the Products shall be deemed to have been completed at 9.00 am on the third (3rd) Business Day after the day on which Steamforged notified the Retailer that the Products were ready; and
 - (b) Steamforged shall be entitled to make an additional charge in respect of any delay caused by such failure and for any costs incurred as a result of repeated delivery necessitated by such failure.
- 7.4 If the Purchase Contract is an International Supply Contract and the parties have expressly agreed in writing to adopt Incoterms for delivery, it shall be deemed to incorporate the latest edition of Incoterms current at the date of the Purchase Contract save that in the event of any inconsistency between the Incoterms and any express term of the Purchase Contract (including these Applicable Terms) the latter shall prevail.
- 7.5 While Steamforged will use its reasonable endeavours to deliver the Products by any date or within any period agreed

upon, such dates and periods are estimates only, given in good faith, and Steamforged will not be liable for any failure to deliver by or within such a period nor shall delays in the delivery of an Order entitle the Retailer to refuse to take delivery of an Order. Time for delivery shall not be of the essence of the Purchase Contract. Steamforged shall be entitled to defer delivery until any monies due from the Retailer have been received.

- 7.6 The Retailer acknowledges that Products for delivery outside of the United Kingdom may be subject to United Kingdom export controls as well as import controls at their destination. The Retailer will be responsible for ensuring that all necessary clearances and licences are obtained prior to the dispatch dates for the Products to be supplied and for obtaining all necessary documentation and lodging the same with Steamforged prior to despatch of the Products.

8 RISK & TITLE

- 8.1 Save in the case of any circumstances where the parties expressly agree in writing to adopt Incoterms in an International Supply Contract, and subject to any agreement in writing by Steamforged, the risk in Products shall pass to the Retailer on the relevant Delivery Date.
- 8.2 The following provisions shall, subject to paragraph 8.3, apply to all Purchase Contracts and to all Products which under the Purchase Contract Steamforged agrees to supply to the Retailer. No failure by Steamforged to enforce strict compliances by the Retailer with such provisions shall constitute a waiver thereof and no termination of the Purchase Contract shall prejudice limit or extinguish Steamforged's rights under this paragraph.
- (a) Upon delivery of the Products the Retailer shall hold the Products solely as bailee for Steamforged and the Products shall remain the property of Steamforged until such time as the Retailer shall have paid to Steamforged and Steamforged shall have cleared funds for the full purchase price of all Products, whether under the Purchase Contract or otherwise. Until this time Steamforged shall be entitled to recover the Products or any part thereof and, for the purpose of exercising such rights, the Retailer hereby grants a licence to Steamforged, its employees and agents (together with appropriate transport) to enter upon the Retailer's premises and any other location where the Products are situated and remove the Products.
 - (b) The Retailer is hereby licensed to agree to sell on the Products on condition that the Retailer shall inform its customer of the provisions of sub-paragraph 8.2(a). The Retailer acts as Steamforged's bailee in respect of any such sale and shall immediately upon receipt of the proceeds of sale, and whether or not payment has become due under paragraph 5 remit to Steamforged the full purchase price of the Products sold less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent for Steamforged.
 - (c) The Retailer shall maintain appropriate insurance in respect of the Products from the date or dates on which the risk therein passes to the Retailer. In the event of any loss or damage occurring while the Products remain the property of Steamforged, the Retailer shall immediately on receipt of the insurance monies, remit to Steamforged the full purchase price of the Products lost or damaged less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent for Steamforged.
 - (d) The licences granted under this paragraph 8.2 shall be terminable forthwith at any time upon notice by Steamforged to the Retailer.
- 8.3 Where the parties expressly agree in writing to adopt Incoterms for an International Supply Contract, property in the Products shall pass to the Retailer in accordance with the provision of the relevant Incoterm.

9 QUALITY

- 9.1 Steamforged warrants that on delivery and for a period of twelve (12) months consecutive months thereafter, the Products shall:
- (a) conform in all material respects with their description; and

- (b) be free from all material defects in design, material and workmanship.
- 9.2 Subject to paragraph 9.3, if:
- (a) the Retailer gives notice in writing to Steamforged within:
 - (i) Forty eight (48) hours of delivery where the non-conformity or defect is apparent upon reasonable inspection); or
 - (ii) Seven (7) days after discovery of the non-conformity or defect where the non-conformity or defect is not apparent on reasonable inspection, that some or all of the Products do not comply with the warranty set out in paragraph 9.1;
 - (b) Steamforged is given a reasonable opportunity of examining such Products; and
 - (c) the Retailer (if asked to do so by Steamforged) promptly returns such Products to Steamforged's place of business,
- Steamforged shall, at its option, as Steamforged's entire liability and the Retailer's sole and exclusive remedy, repair or replace any Products which it considers (acting reasonably) not to comply with the warranty at paragraph 9.1, or refund the price of such Products.
- 9.3 Steamforged shall not be liable for the Product's failure to comply with the warranty set out in paragraph 9.1 in any of the following events:
- (a) the Retailer makes any further use of such Products after giving notice under paragraph 9.2;
 - (b) the Retailer alters or repairs such Products without the written consent of Steamforged;
 - (c) the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal storage;
 - (d) the Products differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; or
 - (e) the defect arises because the Retailer failed to follow Steamforged's oral or written instructions as to the storage, use and maintenance of the Products or good trade practice regarding the same.
- 9.4 Except as provided in this paragraph 9, Steamforged shall have no liability to the Retailer in respect of the Products' failure to comply with the warranty set out in paragraph 9.1.
- 9.5 All other conditions, warranties and other terms, express or implied, statutory or otherwise (including those terms implied by sections 13 to 15 of the Sale of Goods Act 1979), are, to the fullest extent permitted by law, excluded from the Purchase Contract.
- 9.6 These Applicable Terms shall apply to any repaired or replacement Product supplied by Steamforged.

10 LIMITATION OF LIABILITY

- 10.1 Nothing in these Applicable Terms shall limit or exclude Steamforged's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - (d) any matter in respect of which it would be unlawful for Steamforged to exclude or limit liability.
- 10.2 Subject to paragraph 10.1:
- (a) Steamforged shall under no circumstances whatsoever be liable to the Retailer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Purchase Contract; and
 - (b) Steamforged's total liability to the Retailer in respect of all other losses arising out of or in connection with the Purchase Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed one hundred and twenty five percent (125%) of the price actually paid by the Retailer in respect of the relevant Products.
- 10.3 Notwithstanding the generality of the foregoing, Steamforged shall have no liability for damage in transit, shortage of delivery or loss of Products unless:
- (a) the damage in transit, shortage of delivery or loss of Products is directly attributable to any negligence or wilful default on the part of Steamforged, its employees, agents of sub-contractors; and

- (b) the Retailer shall have given to Steamforged written notice of such damage, shortage of loss (together with reasonable particulars thereof) within three (3) calendar days of receipt of the Products or (in the case of total loss) the receipt of the invoice or other notification of dispatch.

10.4 The provisions of this paragraph 10 shall survive termination of the Purchase Contract (howsoever caused).

11 INTELLECTUAL PROPERTY RIGHTS

- 11.1 Unless otherwise agreed in writing by Steamforged all Intellectual Property Rights in the Products (and any improvements and modifications made to the Products) and otherwise associated with Steamforged shall vest in and remain vested in Steamforged and the Retailer agrees to execute any documents Steamforged deems necessary to give effect to this paragraph 11.1.
- 11.2 Paragraph 11.1 shall survive termination of the Purchase Contract (howsoever caused).

12 FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Purchase Contract to the extent that such failure or delay is caused by a Force Majeure Event.

13 GENERAL

13.1 Notices

- (a) Any notice given to a party under or in connection with a Purchase Contract shall be in writing, in English and shall be:
- (i) delivered by pre-paid airmail, first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email to the address specified in the Order.
- (b) Any notice shall be deemed to have been received:
- (i) if sent by pre-paid airmail at 9am on the fifth (5th) Business Day after posting or at the time recorded by the delivery service;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9am on the second (2nd) Business Day after posting or at the time recorded by the delivery services; and
 - (iii) if sent by email, at 9am on the next Business Day after transmission.
- (c) For the purposes of paragraph 13.1(b) and calculating deemed receipt, all references to time are to local time in the place of deemed receipt.

13.2 Assignment

- (a) Steamforged may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement. Without prejudice to the generality of this paragraph 13.2(a) Steamforged may subcontract its obligations to supply an Order to one of its Steamforged Affiliates.
- (b) The Retailer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

13.3 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13.4 **Severance.** If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this paragraph shall not affect the validity and enforceability of the rest of this agreement.

13.5 **Third Party Rights.** No one other than a party to a Purchase Contract and their permitted assignees shall have any right to enforce any of its terms.

14 ADDITIONAL DEFINITIONS

In these Applicable Terms, the following words and expressions have the meanings set out below:

- 14.1 **'Applicable Law'** means the law of England and Wales and the European Union and any other laws or regulations which apply to the sale of the Products under a Contract or any Sale Terms (as the case may be).
- 14.2 **'Delivery Date'** means in respect of any Product (either the whole of the Products or any instalment, as the context shall permit) which are ready for delivery:
- (a) the date such Products or instalment of Products are delivered; or
 - (b) the date such Products or instalment of Products are deemed to be delivered pursuant to paragraph 7.3(a); or
 - (c) where Products or an instalment of Products are ready for delivery and delivery is postponed at the Retailer's request, the date upon which such request for postponement is notified to Steamforged;
- 14.3 **'Force Majeure Event'** means an event, or a series of related events, that is outside the reasonable control of the party (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affected any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars).
- 14.4 **'International Supply Contract'** means such a contract as is described in section 26(3) of the Unfair Contract Terms Act 1977.
- 14.5 **'Intervening Event'** has the meaning given in paragraph 6.1.
- 14.6 **'Sale Terms'** means the terms governing the sale on of a Product by the Retailer to its own customer.

whichever shall first occur.

Schedule 3 [Template Purchase Order]

Schedule 4 Intellectual Property Licence

1. Interpretation

The additional definitions set out in paragraph 9 shall apply in this licence.

2. Licence

2.1 Subject to the Retailer complying with their obligations under the Agreement and this licence, Steamforged grants to the Retailer a limited, revocable, non-exclusive right to use the Licensed Rights for the Licensed Purposes during the term of the Agreement in the country (or countries) in which it carries on the sale of the Products. Other than the Licensed Purposes, the Licensed Rights shall not be used for any other purpose without prior written consent of Steamforged (such consent to be given or refused at the complete discretion of Steamforged)

2.2 This licence shall be personal to the Retailer, who shall have no right to assign or grant sub-licences of or from such licence.

2.3 No further right or licence is granted by Steamforged to the Retailer by this licence, save as expressly set out in paragraph 2.1 and the Retailer acknowledges that all rights in the Licensed Rights (including any and all goodwill) are reserved by Steamforged.

2.4 Nothing in this licence shall restrict or prevent Steamforged from using or licensing any of the Licensed rights (or any other Intellectual Property Rights of Steamforged) for any purpose whatsoever at any time.

2.5 If and to the extent that the Retailer develops, creates, devises, discovers, or otherwise acquires rights in:

- (a) the Licensed Rights; or
- (b) any Improvement,

then it is agreed between Steamforged and the Retailer that the Intellectual Property Rights in the Licensed Rights and/or the Improvements shall, on creation of the rights from time to time, vest in Steamforged. The Retailer assigns (by way of present and, where appropriate, future assignment) such right and title as it may have in such Intellectual Property Rights to Steamforged. If for any reason the Retailer is prevented or restricted at law from assigning such Intellectual Property Rights, or any other rights, title, interest or goodwill, the Retailer agrees to grant to Steamforged an exclusive, worldwide, unconditional, royalty free, irrevocable licence in perpetuity, for the purpose of enabling Steamforged to use such Intellectual Property Rights, rights, title, interest or goodwill for any purpose required by Steamforged at any time in the future.

2.6 The Retailer shall at the expense of Steamforged do and execute, or arrange for the doing and executing of, all reasonably necessary act, document and thing that Steamforged may consider reasonably necessary to perfect the right, title and interest of Steamforged in and to the Intellectual Property Rights in the Licensed Rights and/or the Improvements. The Retailer irrevocably appoints and authorises Steamforged to execute the same on its behalf as its authorised Agent if the Retailer fails to execute and deliver any such document or do any such act within seven (7) calendar days of any request in writing from Steamforged to do so.

2.7 The Retailer shall:

- (a) use reasonable endeavours to procure the irrevocable waiver of all moral rights in the Improvements, to the extent permitted by applicable law;
- (b) use reasonable endeavours to ensure that records are maintained that are sufficient to provide evidence of the process of independent creation of the Improvements; and

- (c) be responsible for ensuring that written agreements are entered into with, and adhered to by, employees and permitted subcontractors who use the Licensed Rights and that, unless otherwise agreed with Steamforged in writing in advance, the terms of engagement of such employees and subcontractors are consistent with, and enable the Retailer fully to comply with, the provisions of this paragraph 2.

3. **Term**

This licence shall come into effect on the date the Agreement commences, and shall, subject to earlier termination in accordance with paragraph 7, remain in effect until the Agreement terminates.

4. **Obligations and undertakings of the Retailer**

4.1 The Retailer warrants and undertakes:

- (a) not to use the Licensed Rights (or any Intellectual Property Rights of Steamforged) or anything confusingly similar as part of the name or trading name of the Retailer;
- (b) not to register or use any of the Licensed Rights (or any other Intellectual Property Rights of Steamforged) or anything confusingly similar, as part of any URL or domain name;
- (c) not to use any mark or name which is confusingly similar to any element of the Licensed Rights (or any other Intellectual Property Rights of Steamforged) in respect of any goods similar to the Products;
- (d) not to use any of the Licensed Rights (or any other Intellectual Property Rights of Steamforged) in combination with any third party Intellectual Property Rights without the prior written consent of Steamforged;
- (e) not to register, apply to register or authorise any third party to register any of the Licensed Rights (or any other Intellectual Property Rights of Steamforged) or any other rights which comprise, consist of, or are confusingly similar to the Licensed Rights (or any other Intellectual Property Rights of Steamforged), in any part of the world;
- (f) not to dispute or challenge the validity of, or the rights of Steamforged to any of, the Licensed Rights (or any other Intellectual Property Rights of Steamforged);
- (g) not to make any use (commercial or otherwise) of the Licensed Rights (or any other Intellectual Property Rights of Steamforged) other than expressly permitted by this licence, unless prior written consent has been obtained from Steamforged;
- (h) not to exploit the Licensed Rights in return for any payment or fees (over and above receipt of payment for the Products in the ordinary course of retail sales);
- (i) not to do, or omit to do, or permit there to be done any act which may jeopardise or render invalid any registration or application for registration, which may assist or give rise to an application to remove from any register, or which may prejudice the right or title of Steamforged, of or to, any Licensed Rights (or any other Intellectual Property Rights of Steamforged);
- (j) not to engage in any practices or behaviour which is prejudicial to the goodwill, reputation, image or prestige of Steamforged or the Licensed Rights (including, but not limited to, any use of the Licensed Rights in connection with any content which is obscene, defamatory, which discriminates on the grounds of race, religion, gender, sexuality or otherwise or which depicts violence or sexual force);
- (k) not to alter or vary any of the text, imagery and trade marks comprised in the Licensed Rights without the prior written consent of Steamforged, and not to subject the Licensed Rights to any 'derogatory treatment' (meaning any addition to, deletion from, or alteration or adaption of the work resulting in distortion or mutilation of the work); and

- (l) not to use the Licensed Rights in any material which infringes the Intellectual Property Rights of any third party.
- 4.2 The Retailer shall supply to Steamforged upon request and free of charge, full particulars (including any supplementary information, examples or exhibits which Steamforged may request) in respect of any use of the Licensed Rights. Any information supplied to Steamforged under this paragraph 4.2 shall not affect or derogate from the obligations of the Retailer in respect of the Licensed Rights under this licence.
- 4.3 Retailers shall promptly comply with any instructions of Steamforged concerning the use and presentation of the Licensed Rights, and shall immediately withdraw from public display, destroy or alter, any materials featuring the Licensed Rights, as and when requested by Steamforged.
- 4.4 Without prejudice to the generality of the foregoing, whenever the Licensed Rights are used by the Retailer, the Retailers use of the Licensed Rights shall be:
- (a) in a form provided or approved by Steamforged, and at all times to comply with any applicable requirements of the country (or countries) in which the Retailer carries on the sale and promotion of the Products and shall otherwise comply with the instructions of Steamforged regarding the use and presentation of the Licensed Rights; and
 - (b) directly accompanied by an intellectual property notice in a form to be determined and provided at the sole discretion of Steamforged. It shall be the responsibility of the Retailer to obtain such intellectual property notice from Steamforged. The Retailer shall comply with Steamforged's instructions with regard to the placement of any such intellectual property notice.
- 4.5 The Retailer shall provide Steamforged with all assistance Steamforged may reasonably require (including, without limitation, the execution of documents) for the purpose of protecting the Licensed Rights and/or the Intellectual Property Rights of Steamforged.

5. **Infringements**

- 5.1 The Retailer shall immediately give notice by way of full particulars in writing to Steamforged if it becomes aware of any:
- (a) attack on, or opposition to, the Licensed Rights (or any other Intellectual Property Rights of Steamforged); or
 - (b) infringement or suspected infringement of any of the Licensed Rights (or any other Intellectual Property Rights of Steamforged); or
 - (c) claims made or threatened that the Licensed Rights infringe the rights of any third party or are invalid; or
 - (d) application for, or registration of, any intellectual property right which conflicts with any of the rights granted to the Retailer under this licence,
- and the Retailer shall make no allegation, comment or admission to any third party in any of the circumstances listed in this paragraph 5.1.
- 5.2 In the case of any of the circumstances listed paragraph 5.1 arising:
- (a) Steamforged shall, in its sole discretion, decide what action if any to take;
 - (b) Steamforged shall have sole control over, and conduct of, all claims and proceedings;
 - (c) the Retailer shall provide Steamforged with all assistance that it may reasonably require in the conduct of any claims or proceedings; and
 - (d) Steamforged shall bear the cost of any proceedings and shall be entitled to retain all sums recovered in any action for its own account.

6. **Liability**

- 6.1 To the fullest extent permitted by law, in no event shall Steamforged be liable to the Retailer for any costs, expenses, loss or damage (whether direct, indirect or consequential, and whether economic or other) arising from the Retailer's exercise of the rights granted to it under this licence.
- 6.2 The Retailer shall indemnify and hold Steamforged harmless against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Steamforged arising out of or in connection with:
- (a) the Retailer's exercise of the rights granted to it under this licence;
 - (b) the Retailer's breach or negligent performance or non-performance of this licence, including any claim relating to any marketing materials developed or put into use by the Retailer using the Licensed Rights; and
 - (c) the enforcement of this licence.
- 6.3 Without prejudice to paragraph 6.1 in the event that Steamforged is found liable for any losses of the Retailer, to the extent permitted by law, Steamforged's total liability to the Retailer in respect of any losses arising under or in connection with this licence, whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall not exceed £5,000.
- 6.4 Steamforged excludes, to the fullest extent permitted by law, all representations, warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, which are not expressly set out within this licence.
- 6.5 Nothing in this licence shall have the effect of excluding or limiting any liability for death or personal injury caused by negligence.

7. **Termination**

- 7.1 In addition to Steamforged's rights of termination under the Agreement, Steamforged may terminate this licence for convenience without liability on giving seven (7) calendar days written notice to the Retailer.
- 7.2 In addition to Steamforged's rights of termination under the Agreement, Steamforged may terminate this licence without liability immediately on giving written notice to the Retailer if the Retailer commits a breach of this licence or the Agreement.
- 7.3 Termination of this licence shall not prejudice or affect the rights of any party against the other party in respect of any breach of this licence prior to termination.
- 7.4 In the event of termination of the Agreement or of this licence however arising, and subject to any express provisions set out elsewhere in this licence, the Retailer shall immediately:
- (a) cease all and any use of the Licensed Rights;
 - (b) shall cease all activities authorised by this licence, including for the avoidance of doubt the Licensed Purposes; and
 - (c) co-operate with Steamforged in the cancellation of all or any licences registered pursuant to this licence and shall execute such documents and do all acts and things as may be necessary to effect such cancellation.
- 7.5 The provisions of this paragraph 7 shall remain in effect notwithstanding termination or expiry of this agreement until the settlement of all subsisting claims by Steamforged.

8. **General**

Steamforged shall be permitted to, and the Retailer acknowledge that Steamforged may, vary at any time without notice to the Retailer this licence, including varying the text, imagery and trade marks comprised in the Licensed Rights.

9. **Definitions and Interpretation**

9.1 In this licence, the following additional definitions shall apply:

Improvements:	any improvement, enhancement or modification of the Licensed Rights.
Licensed Purposes:	<p>the activities for which the Retailer is permitted to use the Licensed Rights, which is limited to the use strictly in connection with the sale and promotion of Products as follows:</p> <ul style="list-style-type: none">(a) use of the Licensed Rights on the Retailer's e-commerce website and the Retailers social media pages, which, in each case, must be controlled by the Retailer;(b) use of the Licensed Rights in advertisements in local press and catalogues (for trade and retail);(c) use of the Licensed Rights at any physical sales outlet where the Retailer sells Products including on flyers, posters, banners, shopfront, stickers and on signage; and(d) use of the Licensed Rights on staff apparel, <p>provided that Steamforged shall be entitled to remove any of the above purposes, or make the above activities subject to additional restrictions, immediately at any time on notice to Retailers</p>

Schedule 5 Price List

[INSERT LIST PRICES]