

STANDARD TERMS AND CONDITIONS OF SALE

1. *Parties.* “Seller” means Magic Play, LLC, a Michigan limited liability company. “Buyer” means the person or entity accepting equipment sent by Seller.
2. *Application.* These Standard Terms and Conditions of Sale define the relationship of Buyer and Seller and apply to all sales of equipment, parts, supplies, materials, or other personal property (individually and collectively, “Equipment”) by Seller to Buyer. Buyer acknowledges and agrees that these Standard Terms and Conditions of Sale are incorporated in, and are a part of, each quotation, purchase order, invoice, release, requisition, work order, shipping instruction, specification, and any other document, whether expressed verbally, in written form or electronic commerce, relating to the sale of Equipment by Seller to Buyer (these documents are collectively referred to as the “Agreement”).
3. *Quotation Expiration.* Written quotations are valid for a period of 30 days unless otherwise noted by Seller. Seller will have the right to withdraw any quote that has not been accepted by Buyer within the 30-day time period.
4. *Pricing.* Prices for Equipment and other related information shown in any Seller or manufacturer product publication, including but not limited to catalogs, brochures, and websites, are subject to change without notice. Prices do not include related freight charges, use tax, sales tax, excise tax, value-added tax, or similar taxes, or charges of any nature whatsoever imposed by any governmental authority unless otherwise expressly noted by Seller.
5. *Taxes.* Prices quoted do not include (and Buyer shall pay) all taxes and fees of any kind that may be levied or imposed on either party by federal, state, municipal, or other governmental authorities in connection with the sale or delivery of the Equipment by Seller with the exception of Seller’s income tax obligations arising out of the sale of the Equipment.
6. *Terms of Payment.* Unless otherwise specifically agreed in writing by Seller, the total price is due and payable to Seller, without setoff or other deductions or charges, net 30 days of Seller’s invoice.

A \$250 late fee will be assessed for any balance not paid in full within thirty (30) days of the date of this invoice.

Any amounts due by Buyer to Seller that are unpaid on or after 30 days of Seller’s invoice will bear interest at the rate of twelve percent (12%) per year or the maximum rate permitted by law, whichever is less. The accrual or payment of any interest as provided above will not constitute a waiver by Seller of any rights and remedies in connection with a default by Buyer. Buyer will pay all court costs, attorney fees, and other costs incurred by Seller in collecting past-due amounts, including interest.

If shipment or delivery of Equipment is delayed by or at the request of Buyer, payment will remain due in full 30 days from the date of Seller's invoice. In such event, Seller may impose, and Buyer shall pay, storage charges and other incidental expenses incurred by Seller as a result of the delay in addition to any interest on late payments as described above.

7. *Security Interest.* As security for payment of all amounts due to Seller, Buyer grants to Seller a security interest in all Equipment sold by Seller to Buyer, and Seller will have all rights of a secured party under the Uniform Commercial Code with respect to the Equipment. Buyer appoints Seller as its attorney-in-fact with authority, at Seller's option, to take actions as Seller deems reasonable in the circumstance to perfect the above security interest in any one or more jurisdictions, and Buyer shall pay all applicable filing fees.
8. *Limited Warranty—Disclaimer of Warranties.* The warranty obligations of Seller for Equipment sold by Seller will in all respects conform and be limited to the warranty extended by the manufacturer of the Equipment, if transferable. The sole remedy available to Buyer with respect to defects in the Equipment will be against the manufacturer under any applicable manufacturer's warranty to the extent available to Buyer. TO THE EXTENT THE MANUFACTURER WARRANTY IS NOT TRANSFERABLE TO BUYER, SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO OR IN ANY WAY RELATING TO THE EQUIPMENT, WHETHER BASED ON BREACH OF WARRANTY OR CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

If Equipment is resold by Buyer, Buyer will include in its agreement for resale provisions that limit recoveries in accordance with the Agreement. In case of Buyer's failure to include in any agreement for resale the terms providing for such limitations, Buyer will indemnify and hold Seller harmless against any liability, loss, cost, damage, or expense (including reasonable attorney fees) arising out of or resulting from the failure.

IN NO EVENT WILL SELLER BE LIABLE OR RESPONSIBLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, OR FOR EXPENSE OCCASIONED BY THE USE OF DEFECTIVE EQUIPMENT.

BUYER ASSUMES FULL RESPONSIBILITY THAT THE EQUIPMENT PURCHASED UNDER THE AGREEMENT MEETS THE SPECIFICATIONS AND/OR INTENDED USE OF BUYER, AND SELLER MAKES NO REPRESENTATION WITH RESPECT TO THEM.

9. *Delivery.* Any delivery dates or other schedule of performance by Seller are approximations, and the sole obligation of Seller with respect to the schedule of

delivery or performance will be to use commercially reasonable efforts to deliver the Equipment, or otherwise to perform, consistent with the reasonable demands of its business. In any event, Seller will have no liability to Buyer or any other person for delays in performance due to strikes or labor disputes of any type; accidents, fire, floods, acts of God, or actions by governmental authorities; acts, omissions, or delays of Buyer or any other third party; shortages of labor; or without limitation of the above, for any causes reasonably beyond the control of Seller.

10. *Title and Risk of Loss.* Title to and risk of loss or damage to the Equipment will pass to Buyer on delivery by Seller F.O.B. (a) Seller's facility, (b) Seller's supplier's facility when Equipment is shipped directly from the manufacturer, or (c) as otherwise specifically indicated in the Agreement.
11. *Inspection and Acceptance.* Buyer will have seven (7) days from the date of delivery to inspect the Equipment for defects and nonconformance and to notify Seller, in writing, of any defects, nonconformance, or rejection of the Equipment (other than defects or nonconformities due to damage, shortage, or errors in shipping that will be reported as set forth below). Claims for shipping damage, errors, or shortages must be made in writing to Seller no more than seven (7) days after receipt of shipment. After this period, Buyer will be deemed to have irrevocably accepted the Equipment, if not previously accepted. After acceptance, Buyer will have no right to reject the Equipment for any reason or revoke acceptance. Claims for damage due to shipping must be made by Buyer to the freight carrier.
12. *Return of Equipment.* All returns will be pursuant to Seller's instructions. Buyer must contact Seller for a Return Material Authorization (RMA) before returning any Equipment. All returns must reference the RMA number along with the original invoice number and the reason for return. Non-warranty returns of normal stock products that are unused and are in resalable condition will be subject to Seller's return policies in effect at the time, including applicable restocking and transportation charges and other conditions of return.
13. *Cancellation or Termination.* In the event of cancellation of the Agreement by Buyer, or in the event of default under the Agreement by Buyer that is not cured within 30 days after notice by Seller, Buyer will pay to Seller on demand all direct and indirect costs (including, without limitation, all applicable restocking, return shipping, or cancellation charges, including reimbursement for direct costs assessed by the manufacturer or freight carrier) incurred directly or indirectly by Seller in connection with the Agreement, all as reasonably determined by Seller, plus any profit to be negotiated with Buyer.
14. *Changes.* Seller reserves the right from time to time to correct any typographical or clerical errors, including errors in mathematical computation, that may exist in the Agreement.

15. *Technical Support.* Unless otherwise specifically provided on the quotation or invoice, the Agreement does not include any services of Seller in connection with installation, testing, or evaluation of the Equipment.
16. *Modifications and Waiver—Entire Agreement.* Neither party has rights, warranties, or conditions expressed or implied, statutory or otherwise, other than those contained in the Agreement. The Agreement contains the entire agreement between Seller and Buyer and can be modified or rescinded only by a writing signed by both parties. No waiver of any provision of the Agreement will be binding unless in writing signed by an authorized representative of the party against whom the waiver is asserted, and unless expressly made generally applicable, will apply only to the specific case for which the waiver is given. Failure of either party to insist on strict performance of the Agreement will not be construed as a waiver of any term or condition of the Agreement.

Any document submitted by Buyer to Seller confirming its intention to purchase Equipment described in the Agreement (purchase orders or releases) will be deemed to constitute a confirmation and acceptance of the Agreement, even if the document states terms in addition to or different from those in the Agreement. All agreements between Seller and Buyer will be solely under the terms and conditions of the Agreement and these Standard Terms and Conditions of Sale, and Seller objects to any and all additional or different terms contained in any document submitted to Seller by Buyer. Any execution by Seller of any other document submitted by Buyer in connection with the purchase of Equipment does not constitute acceptance of or agreement to any terms and conditions in addition to or different from those contained in the Agreement and these Standard Terms and Conditions of Sale, but will constitute only acknowledgment of receipt of the document. In addition, notwithstanding any terms contained in any documents submitted by Buyer in connection with the purchase of Equipment described under the Agreement, the acceptance of delivery by Buyer of Equipment described in the Agreement will constitute a course of conduct constituting Buyer's agreement to the terms and conditions of the Agreement and these Standard Terms and Conditions of Sale, to the exclusion of any additional or different terms and conditions.

The terms contained in these Standard Terms and Conditions shall supersede and control in the event of any conflict between these Standard Terms and Conditions of Sale and any terms contained in any quotation, purchase order, invoice, release, requisition, work order, shipping instruction, specification, or any other document between the parties pertaining to the purchase of the Equipment described in the Agreement.

17. *Compliance with Laws.* Buyer will be responsible for compliance with any and all federal, state, or local laws or regulations respecting safety or respecting use of the Equipment and shall indemnify and hold Seller harmless from and against any and all claims of violations of laws or regulations or other claims of personal injury or property damage directly or indirectly related to the installation, maintenance, or operation of the Equipment.

18. *Export Control.* Equipment supplied by Seller may be subject to various export laws and regulations. It is the responsibility of the exporter to comply with all laws and regulations. Notwithstanding any other provision to the contrary, if federal, state, or local law requires export authorization for the export or re-export of any Equipment or associated technology, no delivery can be made until export authorization is obtained, regardless of any otherwise promised delivery date. If any required export authorization is denied, Seller and Seller's supplier will be relieved of any further obligation relative to the sale and delivery of the Equipment subject to denial without liability of any kind relative to Buyer or any other party. Seller will not comply with boycott-related requests except to the extent permitted by federal law and then only at Seller's discretion.
19. *Governing Law.* The Agreement will be governed by and construed in accordance with the laws of the State of Michigan. All disputes under this Agreement shall be resolved by litigation in the courts of the State of Michigan including the federal courts therein and the Parties all consent to the jurisdiction of such courts, agree to accept service of process by mail, and hereby waive any jurisdictional or venue defenses otherwise available to it.
20. *Venue/Jurisdiction.* The parties (a) irrevocably submit to the jurisdiction of the Oakland County Circuit Court, and the 41B District Court in any action arising out of this Agreement, (b) agree that all claims in any action may be decided in either court, and (c) waive, to the fullest extent that they may effectively do so, the defense of an inconvenient forum. The parties also agree that a final judgment in any such action will be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.
21. *Authority.* Each signatory represents that it has all requisite authority to accept the Equipment and or execute the Agreement on behalf of its principal and that the Agreement is fully enforceable against the principal in accordance with its terms.
22. *Waiver of Jury Trial.* Buyer, after consulting or having had the opportunity to consult with counsel, knowingly, voluntarily and intentionally waives any right it may have to a trial by jury in any litigation based on or arising out of this Agreement, the Equipment, or any of the transactions contemplated by this Agreement. Buyer will not seek to consolidate, by counterclaim or otherwise, any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.
23. *Rights and Remedies Cumulative.* Seller's rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by Seller shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights Seller may have by law, statute, ordinance or otherwise.

24. *Agreement Binding on Successors.* The provisions of the Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, administrators, successors and assigns.
25. *Assignability.* Buyer may not assign this Agreement or the rights and obligations thereunder to any third party without the prior express written approval of Seller.
26. *Severability.* If any provision of this Agreement is deemed not to be enforceable by a court of competent jurisdiction because it is deemed overly broad in terms of time or the geographic area covered, this Agreement will not be void but will be modified to extend through a reasonable time period and/or reasonable geographic area. If any provision of this Agreement cannot be so modified, and if the provision is deemed invalid, unenforceable, illegal or unconstitutional in a court of law, then that section shall be severed from this Agreement. The severing of any section shall in no way affect the validity of the other sections and they shall continue in full force and effect as if the part(s) of the Agreement that were removed never existed.
27. *No Inference Against Author.* No provision of this Agreement shall be interpreted against any party because such party or its legal representative drafted such provision.
28. *Disputes.* Buyer and Seller agree to make a good-faith effort to resolve any dispute arising out of, or in connection with, this Agreement through negotiation. In the event of a dispute between Buyer and Seller on any matter (excluding any action based on Buyer's non-payment of Seller's invoices or fees which may be, at the option of Seller, immediately submitted to a court of competent jurisdiction), the non-defaulting or requesting party shall give written notice to the other party as soon as reasonably possible after learning of the dispute—but no later than the applicable statute of limitations. The notice shall set forth in specific detail the nature and extent of the dispute and damages claimed. The notice will be sent by certified mail, return receipt requested, or served personally on the breaching party. The recipient party shall acknowledge receipt of the notice and respond in writing to the claim within twenty-one (21) days of receipt of the written notice. If the matter is not resolved after receipt of the response, the parties shall mutually agree on a date, time, and neutral location for a face-to-face settlement meeting of the parties and their counsel, if any. Such settlement meeting will be held within twenty-one (21) days after the date of the recipient party's response. The purpose of the settlement meeting is to further define the nature and extent of the dispute and to explore options for resolution.

If no resolution is achieved within fourteen (14) days of the settlement meeting, the parties shall submit the matter to neutral, nonbinding confidential mediation in accordance with the Michigan Court Rules. Unless otherwise agreed, the parties to the dispute will share equally in the costs of the mediation, including forum fees, expenses, and charges of the mediator.

The mediation will be conducted in accordance with the Michigan Court Rules will take place within thirty (30) days after submission of the dispute to the mediator. All

parties will attend the mediation in person unless otherwise mutually agreed, and each party will have at least one person present at mediation with full settlement authority.

If the dispute is not resolved in mediation, then at Seller's discretion, a lawsuit may be filed to resolve the matter in a court of competent jurisdiction, or the matter may be submitted to and heard and determined by the American Arbitration Association pursuant to its commercial arbitration rules in effect at the time of any dispute, and the determination of the arbitrator will be binding on the parties and will not be appealable, and judgment on the award rendered may be entered in any court having jurisdiction on the matter. To that end, both parties submit to the exclusive jurisdiction of the Oakland County Circuit Court or any appropriate district court within Oakland County.