

TERMS AND CONDITIONS OF PURCHASE

Any purchase order issued by Community Products, LLC d/b/a Community Playthings and Rifton Equipment (“Buyer”) constitutes an offer to the supplier to whom the purchase order is issued (“Seller”) to purchase the goods or services set forth in the purchase order (the “Product”) exclusively upon the terms and conditions of purchase set forth below, and shall become a binding contract upon either issuance of an order confirmation by Seller or partial or full performance thereunder by Seller (the “Agreement”). No contrary or additional terms or conditions of sale proposed by Seller will be accepted by Buyer absent a written instrument executed by an authorized officer of Buyer making specific reference to the purchase order and the specific contrary or additional term proposed by Seller which is accepted by Buyer and any proposed contrary or additional terms not expressly accepted by Buyer in writing in accordance with the provisions hereof are hereby rejected. Seller’s performance pursuant to Buyer’s purchase order shall be deemed unqualified acceptance of the terms and conditions of purchase set forth herein.

- 1. Price.** The price for the Product shall not be higher than that appearing on the face of the purchase order, unless otherwise authorized in writing by Buyer.
- 2. Warranty.** All Products shall be in full conformance with the specifications set forth or referred to on the face of the purchase order or if none are set forth or referred to, shall be in conformance with Seller’s published specifications and/or samples provided to Buyer. All Products will be new, fit, and sufficient for the use within parameters provided in (i) specifications set forth or referred to on the face of the purchase order, or (ii) in the absence of (i), specifications provided by Seller to Buyer. All Products will be merchantable and of good quality and workmanship and free from defects. The foregoing warranty shall survive any acceptance of the Products by Buyer and shall be in addition to any warranty furnished or represented to Buyer by Seller. To the extent that the design and specifications for the Products are provided to Seller by Buyer, Seller does not warrant that the products are fit or sufficient for use within the parameters provided by Buyer’s specifications. Seller will defend, indemnify, and hold harmless Buyer from and against any and all costs (including reasonable attorneys’ fees incurred), expenses, damages, losses, liabilities, penalties, and judgments attributable to any Product that fails to conform to any warranty set forth in this Section 2 and Section 9 below, or which is otherwise implied by applicable law.
- 3. Inspection.** All Products shall be subject to inspection and acceptance, including reasonable acceptance testing, by Buyer at Buyer’s facility notwithstanding any prior payment or inspection. Acceptance of any Products shall not alter or affect the warranties of Seller. Buyer may, at its option, either hold rejected Products for Seller’s instructions and at Seller’s risk, or return them to Seller at Seller’s expense and require their correction.
- 4. Cancellation.** Buyer reserves the right to cancel any purchase order or any part thereof, or terminate any Agreement or any part thereof, and Buyer’s sole responsibility to Seller shall be to pay the agreed price for such Products as have been delivered as of the time such cancellation is effective and to reimburse to Seller its actual costs of materials and direct labor expended by it in reasonable anticipation of its fulfillment of the Agreement which are not recoverable by Seller, provided that no allowance shall be made to Seller for any overhead or anticipated profit for undelivered Product. Buyer’s maximum liability on account thereof shall be agreed price for the Products as set forth in Paragraph 1 above, and Seller shall deliver to Buyer any inventory paid for by Buyer under this Paragraph 4.

Community Products, LLC

5. Time, Delivery, and Risk of Loss. Because Buyer's business and operations are in part dependent on receipt of the Products that are the subject of the purchase order, timely delivery of the Products is essential to the performance of Seller's obligations. **Time is of the essence.** Unless otherwise specified on the face of a purchase order, terms of delivery of the Products are thirty days. Risk of loss passes to Buyer only upon delivery of the Products to Buyer's location as set forth in the applicable purchase order.

6. Force Majeure. Neither Buyer nor Seller shall be held responsible for the failure or delay in performance where such failure or delay is attributable to any act of God or of the public enemy, war, compliance with laws, governmental acts or regulations, in any case, not in effect as of the date of the purchase order, fire, flood, quarantine, embargo, epidemic, unusually severe weather, or other causes similar to the foregoing beyond the reasonable control of the party so affected. The party seeking to avail itself of any of the foregoing excuses must promptly notify the other party of the reasons for the failure or delay and shall use its best efforts to avoid further delay.

7. Intellectual Property Warranty and Indemnity. Seller warrants that the Products, and the use of the Products for their normal purposes, will be free from any claims of alleged infringement of patent, copyright, trade mark, service mark, trade secret, or any other intellectual property right of any other party. If any third party asserts any such claim or allegation against Buyer or its customers, Seller shall defend, indemnify, and hold harmless Buyer from and against any and all costs (including reasonable attorneys' fees incurred), expenses, losses, damages, liabilities, penalties, or judgments relating to such claim or allegation. Such warranty and indemnity shall not apply to the extent such claims and/or losses arise out of Buyer's infringement of such intellectual property rights by reason of Buyer providing infringing specifications or designs to Seller. Buyer warrants that the Products designed by Buyer and the specifications provided by Buyer will be free from any claims of alleged infringement of patent, copyright, trade mark, service mark, trade secret, or any other intellectual property right of any other party. If any third party asserts any such claim or allegation against Seller, Buyer shall defend, indemnify, and hold harmless Seller from and against any and all costs (including reasonable attorneys' fees incurred), expenses, losses, damages, liabilities, penalties, or judgments relating to such claim or allegation.

8. Assignment of Work Product to Buyer. All work product developed by Seller in connection with its performance under any purchase order, including but not limited to computer files, concepts, ideas, designs, discoveries, drawings, inventions, models, plans, programmings, schedules, specifications, technical documentation, software, source code, tools, dies, and molds ("Work Product") is Buyer's property and all right, title, and interest, including without limitation patent and copyright interest, shall belong exclusively to Buyer and shall be assigned to Buyer accordingly. The term "Work Product" does not include any machinery or fixed assets constructed or assembled by Seller to produce the Products, except so much thereof as is designed or paid for by Buyer. All such Work Product shall be delivered to Buyer upon request. Seller is not permitted to retain copies of such Work Product for its own purposes and exploitation. Each purchase order and Agreement transfers all right, title, or interest, including without limitation copyright and patent, that Seller may otherwise have in such Work Product to Buyer. Seller will at Buyer's request execute and deliver such documents as in Buyer's opinion may be necessary or advisable to protect, register, enforce, or evidence further Buyer's ownership of such Work Product. Except only to the extent set forth in the last sentence hereof, Seller warrants and represents that any tangible Work Product developed by it pursuant to any purchase order will be either original to Seller, in the public domain, or obtained by Seller with the written consent of the owner thereof to use such other works or intellectual property in or to develop the Work Product. Seller shall defend, indemnify, and

Community Products, LLC

hold harmless Buyer from and against any and all costs (including reasonable attorneys' fees incurred), expenses, losses, damages, liabilities, penalties, or judgments relating to any claim or allegation that any Work Product infringes any intellectual property right of any third party. Such warranty and indemnity shall not apply to the extent such claims and/or losses arise out of Buyer's infringement of such intellectual property rights by reason of Buyer providing infringing specifications or designs to Seller.

9. Tooling. To the extent Products comprise tooling, dies, molds, fixtures, or other manufacturing implements:

- A. Adequacy of Design.** The parties acknowledge that in various circumstances, one or both parties will have the responsibility for the design of such Product. The parties agree that in addition to the warranty set forth herein, they will bear responsibility for any failure of the design of the Product to produce the required part as follows: (i) if the Product is designed solely by one party, the reasonable cost to rework/remake the Product will be borne by such party, and (ii) if the Product is jointly designed by Buyer and Seller, the reasonable cost to rework/remake the Product will be shared by the parties equitably in relation to their participation in its design and the aspects giving rise to the defect, provided, however, that Buyer's approval of any design or aspect thereof shall not constitute participation in design of such Product.
- B. Warranty.** Seller further warrants that Product shall be capable of producing the number of units, shots, or cycles set forth in the purchase order or otherwise represented by Seller. If the Product fails before producing such number of units, shots, or cycles, the reasonable cost to rework/remake the Product will be borne by Seller.
- C. Inspection; Delivery; Ownership.** The parties acknowledge and agree that the Buyer may direct that the Product may remain in the custody and control of Seller, in order to enable Seller to satisfy certain other contractual obligations to Buyer. In such case, the Product shall be subject to inspection and acceptance, including acceptance testing, by Buyer notwithstanding any prior payment or inspection. Acceptance of any such Product shall constitute delivery to Buyer, but shall not alter or affect the warranties of Seller. During such time as the Product is in Seller's custody and control, Seller will safeguard and insure same against risk of loss, will not encumber same, and will immediately deliver same to Buyer upon request. If the parties have entered into a Bailment Agreement covering such Product, the terms of that agreement shall apply following acceptance of such Product.

10. Indemnity for Injury to Persons or Property. Seller will defend, indemnify, and hold harmless Buyer and its officers, directors, members, employees, and affiliates from and against any and all costs including reasonable attorneys' fees incurred, expenses, damages, liabilities, penalties, personal injuries, or judgments suffered or incurred by any individual or to any real or personal property attributable to (a) use of the Products within parameters provided in Section 2, (b) Seller's actions or omissions, or (c) Seller's breach of any provision hereof. This indemnity shall not apply to the extent such claims or losses arise directly out of specifications or designs provided by Buyer to Seller.

11. Confidentiality. All data and other information obtained by Seller from Buyer in connection with any purchase order, and any Work Product to be delivered to Buyer thereunder, shall be held in strict confidence by Seller and used solely for the purposes originally intended in connection with the purchase order. Seller shall treat such data, information, and Work Product with the same degree of confidence that it uses to protect its own proprietary or confidential information (but not less than a reasonable

Community Products, LLC

standard of care) and shall ensure that each of its employees to whom such data, information, or Work Product is known is bound to maintain the confidentiality of such data, information, or Work Product by separate agreement with Seller or by operation of law.

12. Insurance. During the term of the Agreement and for a period of at least one year after completion of Seller's obligations thereunder, Seller will maintain the following levels of insurance coverage with a reputable and financially sound insurance carrier: (a) workers' compensation insurance as required by applicable law; (b) employer's liability insurance with limits not less than US \$1 million; (c) Commercial General Liability, including Products and Completed Operations and Contractual Liability, with a minimum combined single limit of US \$1 million per occurrence; and (d) Excess Liability insurance with limits not less than US \$1 million. Seller will provide Buyer with an insurance certificate from its insurance carriers for each of the required foregoing insurance coverages and naming Buyer as an additional insured for Commercial General Liability and Excess Liability insurance. Seller shall require each of its subcontractors, if any, to carry insurance in accordance with such terms.

13. No Assignment. Neither any purchase order, any Agreement, nor any right or obligation of Seller thereunder may be assigned or delegated by Seller, by contract, merger, operation of law, or otherwise, to any other party without the prior consent of Buyer which will not be unreasonably withheld or delayed.

14. Independent Contractor. Nothing in any purchase order or Agreement is intended to, or does, create any joint venture, partnership, agency, or similar relationship between Buyer and Seller other than a buyer and seller relationship. Seller shall not be and is not authorized to represent itself as an agent or representative of Buyer for any purposes.

15. Waiver. Buyer's failure to insist in any one or more instances upon the full performance by Seller of any term, covenant, obligation, or condition imposed on it by any Agreement shall not be construed as a waiver of any right available to Buyer thereunder with respect to such nonperformance or as Buyer's condoning further nonperformance.

16. No Oral Modification. No change, modification, or extension of any purchase order or Agreement shall be effective against Buyer or Seller unless it is made in a writing making specific reference to the purchase order and is signed by an authorized representative of Buyer and Seller.

17. Governing Law. Each purchase order and Agreement shall be governed exclusively by the laws of the State of New York without regard to its conflicts of laws principles that would have a contrary result. The United Nations Convention on the International Sale of Goods shall not apply to any Agreement. Any dispute, claim, or controversy between Buyer and Seller related to a purchase order or an Agreement that cannot be resolved through good faith negotiations shall be formally venued in the New York State Supreme Court situate in Ulster County, New York or the US Federal District Court of the Northern District of New York.

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