



Purchase Order Terms and Conditions

PRIMERO GAMES, LLC¹

Purchase Order Terms and Conditions

1. **These Terms Shall Govern.** This purchase order is an offer by Primero Games, LLC (“**Primero Games**”) for the purchase of the goods or services specified on the face of this purchase order (the “**Goods**”) from the party to whom the purchase order is addressed (the “**Seller**”) in accordance with and subject to these terms and conditions (the “**Terms**”; together with the terms and conditions on the face of the purchase order, the “**Order**”). This Order constitutes the sole and entire agreement of the parties with respect to the Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order. The Order expressly limits Seller’s acceptance to the terms of the Order. Any proposal for additional or different terms (or any attempt by Seller to vary in any degree any of the terms and conditions of the offer) is hereby objected to and rejected. If the Order is deemed an acceptance of a prior offer by Seller, such acceptance is limited to the express terms contained herein and additional or different terms (or any attempt by Seller to vary in any degree any of these Terms) shall be deemed a material alteration and are hereby objected to and rejected.

2. **Acceptance of the Order.** This Order is not binding on Primero Games until Seller accepts the Order in writing or starts to perform in accordance with the Order. If Seller does not accept the Order in writing or provide written notice that it has commenced performance within 10 days of Seller’s receipt of the Order, this Order will expire. Primero Games may withdraw the Order at any time before it is accepted by Seller. In any event, fulfillment of this Order constitutes acceptance by Seller of these Terms.

3. **Quantity.** If Seller delivers more than the quantity of Goods ordered, Primero Games may reject all or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller’s risk and expense. If Primero Games does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the price for the Goods shall be adjusted on a pro-rata basis. Primero Games is not obligated to any minimum purchase or future purchase obligations under this Order.

4. **Price.** The price of the Goods is the price stated in the Order (the “**Price**”). If no price is included in the Order, the Price shall be the price set out in Seller’s published price list in force as of the date of the Order. Unless otherwise specified in the Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties, and fees and applicable taxes, including, but not limited to, all sales, use or excise taxes. No increase in the Price is effective without the prior written consent of Primero Games.

¹ July 17, 2023



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5. **Payment Terms.** Primero Games shall pay all properly invoiced amounts due to Seller within the number of days set forth on the face of the Order, except for any amounts disputed by Primero Games in good faith. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under the Order notwithstanding any such dispute.

6. **Delivery.** Seller shall deliver the Goods in the quantities and on the date(s) specified in this Order or as otherwise agreed in writing by the parties (the “Delivery Date”). Primero Games’ production schedules are based upon Seller’s undertaking that the Goods will be delivered to Primero Games’ plant no later than the Delivery Date. Timely delivery of the Goods is of the essence. Delivery shall be considered timely if delivered no more than three days early, but zero days late. If at any time Seller believes that the Goods will not be made or delivered as scheduled, Seller shall immediately give written notice thereof to Primero Games. If Seller fails to timely deliver the Goods in full, Primero Games may (a) reject any delivery; and/or (b) terminate the Order immediately by providing written notice to Seller. All Goods shall be delivered to the address specified in this Order (the “Delivery Location”) during Primero Games’ normal business hours or as otherwise instructed by Primero Games.

7. **Shipping Terms.** Delivery shall be made FOB Destination or as otherwise designated on the face of this Order. Seller shall give written notice of shipment to Primero Games when the Goods are delivered to a carrier for transportation. Seller shall provide Primero Games all shipping documents, including the commercial invoice, packing list, bill of lading and any other documents necessary to release the Goods to Primero Games. Unless otherwise provided in this Order, no charge shall be made by Seller to Primero Games for shipping.

8. **Title and Risk of Loss.** Unless otherwise specified on the face of the Order, title passes to Primero Games upon delivery of the Goods to the Delivery Location. Seller bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Location.

9. **Packaging.** All Goods shall be packed for shipment at Seller’s expense according to Primero Games’ instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Seller must provide Primero Games prior written notice if it requires Primero Games to return any packaging material. Any return of such packaging material shall be made at Seller’s expense.

10. **Inspection and Rejection of Nonconforming Goods.** Primero Games has the right to inspect the Goods on or after the Delivery Date. No acknowledgement on a packing slip or bill of lading or any payment shall serve as acceptance of the condition of such Goods. Primero Games shall notify Seller in a reasonable time after the discovery of any nonconforming Goods. Primero Games, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If Primero Games rejects any portion of the Goods, Primero Games has the right, effective upon written notice to Seller, to: (a) rescind the Order in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If Primero Games requires replacement of the Goods, Seller shall, at its expense, promptly replace the nonconforming Goods.



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and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. If Seller fails to timely deliver replacement Goods, Primero Games may replace them with goods from a third party and charge Seller the cost thereof and terminate this Order for cause. Any inspection or other action by Primero Games under this Section shall not reduce or otherwise affect Seller's obligations under the Order, and Primero Games shall have the right to conduct further inspections after Seller has carried out its remedial actions. These Terms apply to any repaired or replacement Goods provided by Seller.

11. Seller's Obligations Regarding Services. Seller shall:

- a. comply with all rules, regulations and policies of Primero Games, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by Primero Games to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures;
- b. comply with any and all quality standards provided by Primero Games regarding the services;
- c. maintain complete and accurate records relating to the provision of the services;
- d. ensure that all persons, whether employees, agents, subcontractors, or anyone acting for or on behalf of the Seller, are properly licensed, certified or accredited as required by applicable law and are suitably skilled, experienced and qualified to perform the services; and
- e. keep and maintain any Primero Games equipment in its possession in good working order and shall not dispose of or use such equipment other than in accordance with Primero Games' written instructions or authorization.

12. Changes. Primero Games may at any time, by written instructions or drawings issued to Seller (each a "Change Order"), order changes to the Goods. Seller shall within five days of receipt of a Change Order submit to Primero Games a firm cost proposal for the Change Order. If Primero Games accepts such cost proposal, Seller shall proceed with the change subject to the cost proposal and the terms and conditions of this Order. Seller acknowledges that a Change Order may or may not entitle Seller to an adjustment in the Seller's compensation or the performance deadlines under this Order. No change to this Order is binding upon Primero Games unless it is in writing, specifically states that it amends this Order, and is signed by an authorized representative of Primero Games.

13. Warranties. Seller warrants to Primero Games that all Goods will: (a) be free from any defects in workmanship, material, and design; (b) conform to applicable specifications, drawings, designs, samples and other requirements specified by Primero Games; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests or other encumbrances; and (f) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of, or for, the Goods by Primero Games. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from



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the date of Primero Games' discovery of the noncompliance of the Goods with the foregoing warranties. If Primero Games gives Seller notice of noncompliance with this Section, Seller shall, at its own cost and expense, promptly replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, all of Primero Games' damages that result from the defective or nonconforming Goods, regardless of whether Seller had advance knowledge of the potential for the resulting damage.

14. **Indemnification.** SELLER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS (I) PRIMERO GAMES, (II) ITS SUBSIDIARIES, AFFILIATES, SUCCESSORS OR ASSIGNS AND THEIR RESPECTIVE DIRECTORS, OFFICERS, SHAREHOLDERS AND EMPLOYEES, AND (III) PRIMERO GAMES' CUSTOMERS (COLLECTIVELY, "**INDEMNITEES**") AGAINST ANY AND ALL LOSS, INJURY, DEATH, DAMAGE, LIABILITY, CLAIM, DEFICIENCY, ACTION, JUDGMENT, INTEREST, AWARD, PENALTY, FINE, COST OR EXPENSE, INCLUDING REASONABLE ATTORNEY AND PROFESSIONAL FEES AND COSTS (COLLECTIVELY, "**LOSSES**") ARISING OUT OF, OR OCCURRING IN CONNECTION WITH, THE GOODS PURCHASED FROM SELLER, SELLER'S NEGLIGENCE OR WILLFUL MISCONDUCT, OR SELLERS BREACH OF THE ORDER. IN ADDITION, SELLER SHALL, AT ITS EXPENSE, DEFEND, INDEMNIFY, AND HOLD HARMLESS ANY INDEMNITEE AGAINST ANY AND ALL LOSSES ARISING OUT OF, OR IN CONNECTION WITH, ANY CLAIM THAT AN INDEMNITEE'S USE OR POSSESSION OF THE GOODS INFRINGES OR MISAPPROPRIATES THE PATENT, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHT OF ANY THIRD PARTY.

15. **Insurance.** During the term of the Order, Seller shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, general liability, products liability, and workers compensation in amounts customary for the industry. Upon request, the Seller shall provide Primero Games with a certificate of insurance showing such insurance coverages.

16. **Termination.** Primero Games may terminate this Order, in whole or in part, at any time with or without cause for undelivered Goods on five days' prior written notice to Seller. In addition to any remedies that may be provided under these Terms, Primero Games may terminate this Order with immediate effect upon written notice to the Seller, either before or after the acceptance of the Goods, if Seller has not performed or complied with any of these Terms, in whole or in part. If the Seller becomes insolvent, files a petition for bankruptcy, or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then Primero Games may terminate this Order upon written notice to Seller. If Primero Games terminates the Order for any reason, Seller's sole and exclusive remedy is payment for the Goods received and accepted by Primero Games prior to the termination.

17. **Force Majeure.** Primero Games' acceptance of the Goods or delivery thereof is subject to, and Primero Games shall not be liable for, any delay in or impairment of performance resulting in whole or in part from any war (whether or not declared), strike, differences with workmen, accident, pandemic, fire, flood, acts of God, delay in transportation, shortage of materials,



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equipment breakdown, laws, regulations, rules or acts of any governmental agency or body, or any cause beyond the reasonable control of Primero Games.

18. **Limitation of Primero Games' Liability.** IN NO EVENT SHALL PRIMERO GAMES BE LIABLE FOR ANTICIPATED PROFITS OR FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. Primero Games' liability for any claim for any loss or damage arising out of, or in connection with, this Order shall in no case exceed the price allocable to the Goods which gives rise to the claim. Any action resulting from any breach on the part of Primero Games in connection with the Order must be commenced within one year after the cause of action accrued.

19. **Confidential Information.** All non-public, confidential or proprietary information of Primero Games, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Primero Games to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Order is confidential, solely for the use of performing the Order and may not be disclosed or copied unless authorized by Primero Games in writing. Upon Primero Games' request, Seller shall promptly return all documents and other materials received from Primero Games. Primero Games shall be entitled to injunctive relief for any violation of this Section.

20. **No Waiver.** No waiver by any party of any of the provisions of the Order shall be effective unless explicitly set forth in writing and signed by the party so waiving.

21. **Assignment.** Seller shall not assign, transfer, delegate, or subcontract any of its rights or obligations under the Order without the prior written consent of Primero Games. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder. Primero Games may at any time assign, transfer, or subcontract any or all of its rights or obligations under the Order without Seller's prior written consent.

22. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in the Order shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from this Order. This Order is for the sole benefit of the parties hereto.

23. **Compliance with Law.** Seller shall comply with all applicable laws, regulations, and ordinances. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Order. Seller shall comply with all export and import laws of all countries involved in the sale of Goods under this Order.

24. **Governing Law/Jurisdiction.** All matters arising out of or relating to this Order shall be governed by and construed in accordance with the internal laws of the State of Georgia without giving effect to any choice or conflict of law provision or rule (whether of the State of Georgia or



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any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Georgia. Any legal suit, action or proceeding arising out of or relating to this Order shall be instituted in the U.S. district court for the Northern District of Georgia or the Georgia State-wide Business Court, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

25. **Cumulative Remedies.** The rights and remedies under this Order are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. Without prejudice to any other right or remedy it may have, Primero Games reserves the right to set off at any time any amount that it owes to Seller against any amount owed by Seller to Primero Games.

26. **Severability.** If any term or provision of this Order is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Order or invalidate or render unenforceable such term or provision in any other jurisdiction.

27. **Survival.** Provisions of this Order which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order including, but not limited to, the following provisions: Warranties, Indemnification, Confidential Information, Governing Law/Jurisdiction, and Survival.