

SUPPLY AGREEMENT (TERMS OF TRADE) WITH FIVE EIGHT DISTRIBUTION LTD

This Agreement is dated theday of 20.....

PARTIES TO THIS AGREEMENT

Five Eight Distribution Ltd (Registered Company #: 3011563) of Unit 8, 10, Canaveral Drive, Albany, 0632, (hereafter referred to as **"Fiveight"**).

and

The **CUSTOMER** listed in Item 1 of the Schedule to Agreement below.

SCHEDULE TO AGREEMENT

Item No.		
1	Customer	Name: Registered Company #: Registered address:
2	Products	Computer and game console software and accessories
3	Terms of Payment	Twenty (20) days month following
4	Volume Rebate	Volume rebate percent% for Products purchased, calculated monthly, net of all credits and other rebates
5	Co-operative Advertising Rebate	Co-operative advertising rebate percent% for Products purchased, calculated monthly, net of all credits and other rebates

1. RECITALS

- a. Fiveight is the supplier of Products described in the Schedule at Item 2 (Products).
- b. The Customer wishes to buy the Products from Fiveight by placing orders from time to time.
- c. Fiveight has agreed to sell and the buyer has agreed to buy the Products and all other goods on the terms and conditions set out in this agreement.

2. Agreement to buy and sell

In consideration of payment for the Products by the Customer to Fiveight, Fiveight sells and the Customer buys the Products and all other goods on the terms and conditions of this agreement.

3. Acceptance of Order

No order for the Products by the Customer shall be binding on Fiveight until accepted by Fiveight. An individual contract for the supply of the Products is formed on acceptance by Fiveight of an order from the Customer. Fiveight reserves the right to accept any order in whole or in part. Where Fiveight makes a partial delivery of any order, such delivery shall constitute a separate contract. No order may be cancelled or varied unilaterally by the Customer after acceptance by Fiveight.

4. Credit granting

All orders are accepted by Fiveight subject to satisfactory credit approval of the Customer. Credit approval may be withdrawn at any time. Where credit approval has not been granted, or is withdrawn, payment of all Products supplied is required before delivery. Where credit has been approved for the Customer, all invoices issued by Fiveight are due and payable as specified in the Schedule at Item 3.

5. Price

The price of the Products shall be as indicated on invoices provided by Fiveight to the Customer regarding Products supplied unless Fiveight provides notice of a specific price prior to the acceptance of the order by Fiveight.

6. Discounts and Rebates

The type and amount of rebates and/or discounts, if any, are specified in the Schedule at Items 4, 5, 6 and 7.

Rebates and discounts must be claimed by the Customer in writing, specifying the type of rebate, the amount claimed, the monthly information used and basis for calculation of the rebate.

The monthly information used to calculate the rebates and discounts must be from each separate Fiveight monthly statement.

A credit note will be issued for all approved Rebate claims and discounts.

7. Liquidated damages

If Fiveight is not paid for any of the Products on the due date specified in an invoice or within the Terms specified in the Schedule at Item 3, without prejudice to any other right or remedy:

- (a) All outstanding money carries interest on daily balances until paid at an interest rate accruing each month of two (2) percent.
- (b) Fiveight may recover the price of the Products together with all interest forthwith from the buyer as a liquidated debt in a court of competent jurisdiction irrespective of any claim that the Customer may have against the manufacturer of the Products for anything or matter related to the Products delivered under this agreement.

Where the Customer defaults in payment, either in full or in part of any invoice when due and payable, the Customer shall indemnify Fiveight from and against all costs and disbursements incurred by Fiveight in pursuing the debt including legal costs on a solicitor and own client basis and Fiveight's mercantile agency costs.

8. Taxes

Where applicable, Fiveight reserves the right to recover from the Customer all Goods and Services Tax (*GST*) payable in respect of supply of Products. Unless specifically included all amounts expressed or described in the agreement or in invoices are GST exclusive amounts.

9. Delivery

Acceptance of a delivery of Products may not be refused by the Customer after an order has been accepted by Fiveight. Where prices are stated as inclusive of delivery, delivery is to the delivery point accepted by Fiveight. The Customer shall make all arrangements necessary to accept delivery of the Products whenever they are tendered for delivery. In the event that the Customer is unable to accept delivery of the Products as arranged, then Fiveight shall be entitled to charge a reasonable fee for redelivery. Delivery of the Products to a third party nominated by the Customer is deemed to be delivered to the Customer for the purposes of this agreement. The failure of Fiveight to deliver by a time specified by the Customer shall not entitle the Customer to treat that contract as repudiated. Fiveight shall not be liable for any loss or damage or expense due to failure by Fiveight to deliver the Products promptly or at all.

Goods delivered will be on demand accepted by the Customer and as fully in accordance with the accompanying delivery document, unless the Customer gives Fiveight notice of damage or loss or wrong delivery of the Goods within 48 hours of receipt of the goods or within 48 hours if discovery of the defect or defects are not apparent on delivery.

10. Delivery charges

Products ordered from Fiveight will generally be dispatched carriage paid, but Fiveight may charge for any special delivery arrangement requested.

Administrative fees may be charged for orders under certain dollar values as notified by Fiveight from time to time.

11. Restrictions on dealings with the Products

The Customer covenants that it shall not export or transport the Products outside New Zealand. If the Customer becomes aware that the Products are or will be transported outside of New Zealand it will notify Fiveight immediately.

The Customer covenants that it will not:

- (a) Lease, rent or licence the Products;
- (b) Exchange the Products other than faulty Products; or
- (c) Re-purchase the Products after sale by the Customer.

12. New Products release date

The Customer agrees that it will not sell any Products before a date nominated by Fiveight as a New Product release date for that particular item. If the Customer sells a particular item of the Products before a date nominated as a New Product release date Fiveight may at its sole discretion withhold, delay, cancel or terminate future orders for new Products.

13. Manufacturer or Licensor of the Products

The Customer acknowledges that Fiveight is not the manufacturer or Licensor of the Products and the Customer will not hold Fiveight out to the public as the manufacturer or Licensor of the Products. The Customer acknowledges that the manufacturer or Licensor of the Products may retain intellectual property and licensing rights in the Products. The Customer accepts the Products subject to the terms and conditions provided by the

Manufacturer or Licensor of the Products and that contract is separate and distinct from the sale of the Products by Fiveight under this agreement.

The Customer shall notify Fiveight immediately if it becomes aware of the infringement of any intellectual property or licensing rights in the Products by any person.

14. Returns

The Customer agrees that it will not return any of the Products without first informing Fiveight so that a Returns Authority (RA) number may be issued by Fiveight for valid returns.

The Customer shall inspect the Products on delivery and shall within 48 hours notify Fiveight of any defect, shortage in quantity, damage or failure to comply with the description or quote. Any Products which are damaged or defective, or which are not in accordance with the Customer's order, may be returned within fourteen (14) days of delivery. The Customer may not return Products that are not in a saleable condition and must include each original packaging for item of the Products. The Customer may not return Products the Customer has sold or acquired second hand.

No credit or replacement shall be given unless and until Products so returned have been verified as being defective. Fiveight reserves the right to recover its costs where the returned Products prove not to be defective.

15. Set-off

The Customer shall not be entitled to set off against or deduct from the price of Products of any sums owed or claimed to be owed to the Customer by Fiveight.

16. Disputed Charges

If a Customer in good faith disputes any invoiced charges, the Customer may withhold the disputed amount, but only if on or before payment, or the due date for payment, the undisputed amount is paid in full and notice in writing of the dispute is given to Fiveight, setting out the details of the amount disputed, the reasons for the dispute, and the basis for calculating the disputed amount. Fiveight will investigate all disputes. If the amount is found to be payable (in whole or in part) then the Customer must pay the amount within 7 days of receiving notice and the basis of the decision. Invoiced charges that are not disputed in good faith within 60 days of the date of an invoice will be deemed to be correct.

17. Title to the Products

Orders are accepted on condition that ownership of the Products shall remain with Fiveight and shall not pass to the Customer until Fiveight has received in full (cash or cleared funds) all sums due to it in respect of the Products and all other sums which are or which become due to Fiveight from the Customer on any account.

Until ownership of the Products has passed to the Customer; the Customer shall keep the Products in question as fiduciary agent and bailee for and on behalf of Fiveight. The Customer shall store and segregate the Products (at no cost to Fiveight) in such a way that they can be identified as Fiveight's property, shall keep them properly stored, protected and insured and shall deliver them to Fiveight upon request and Fiveight shall be entitled to enter the premises where they are stored to retrieve them at any time. The Customer will however be entitled to sell such Products within the ordinary course of business on condition that so long as title to such Products remain with Fiveight, that Fiveight shall legally and beneficially be entitled to the proceeds of sale that the Customer shall hold on trust for Fiveight or where applicable the Customer will assign or transfer to Fiveight the claims the Customer has in respect of such sales.

18. Passing of Risk

Risk in each order passes to the Customer upon delivery of that order to the Customer or collection of that order by the Customer's agent or any courier as the case may be.

19. Disclaimer of Liability

The Customer acknowledges that it has not relied on any advice given or made by or on behalf of Fiveight in connection with the Products. Fiveight excludes all implied conditions and warranties from this agreement.

Fiveight limits its liability for any error or omission in delivery of the Products caused by Fiveight to (at Fiveight's sole discretion) resupply of the Products affected by the breach, or any payment of the cost of resupply.

Subject to this Clause, Fiveight excludes all other liability to the Customer for any costs, expenses, losses and damages suffered or incurred by the Customer in connection with this agreement whether that liability lies in contract, tort (including Fiveight's negligence) or under statute. Without limitation, Fiveight will in no circumstances be liable for any indirect or consequential losses, including loss of profits, loss of revenue and loss of business opportunity.

20. Indemnity

The Customer indemnifies Fiveight and its officers, employees, contractors and agents against any costs, expenses, losses, damages and liability suffered or incurred arising from the Customer's breach of this agreement and any negligent or unlawful act or omission of the Customer in connection with the Products.

21. Assignment

The Customer may not assign or subcontract any contract for the purchase of Products or its obligations under this agreement.

22. Force Majeure

Fiveight will have no liability to the Customer in relation to any loss, damage or expense caused by Fiveight's failure to complete an order or delivery or contract as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lock out, war or the inability of Fiveight's suppliers to supply necessary materials or any other matter beyond Fiveight's control.

23. Privacy Act 1993

The Customer and its directors/partners/proprietors hereby authorises and unconditionally grants its consent to Fiveight obtaining a credit report from a credit reporting agency or any other person or company information from time to time. The Customer further authorises and consents to Fiveight obtaining and disclosing information about its credit worthiness to and from credit reporting agencies and credit providers from time to time.

24. Consumer Guarantees Act 1993 & Sales of Good Act 1908

The provisions of the Consumer Guarantees Act shall not apply to any supply of Products provided to the Customer by Fiveight, and the conditions, warranties and guarantees set out in the Sale of Goods Act 1908 or implied by common law will not apply and are excluded from this Agreement.

25. Waiver of terms of agreement

The failure by Fiveight to exercise, or delay in exercising, any right, power or privilege available to it under this agreement will not operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any right or power.

26. Jurisdiction

The agreement is governed by and will be construed in accordance with the laws of New Zealand and the parties agree to submit to the exclusive jurisdiction of the Courts of New Zealand.

27. Entire Agreement

This document represents the entire agreement between the parties and may not be amended except in writing signed by each of the parties.

28. General Terms

Fiveight may serve any notice or Court document on the Customer by forwarding it by ordinary pre-paid post to the last known address of the Customer or alternatively to the address listed in Item 1 of the Schedule to Agreement.

If any term of this agreement shall be invalid, void, illegal or unenforceable, the remaining provisions shall not be affected, prejudiced or impaired.

Fiveight may assign or licence or subcontract all or any parts of its rights and obligations without the Customer's agreement or consent.

Fiveight reserves the right to change these terms of trade from time to time.

A Statement of Claim duly signed by a representative of Fiveight shall be evidence and proof of money owing by the Customer to Fiveight at that time.

EXECUTED AS AN AGREEMENT

<p>Signed on behalf of</p> <p>Five Eight Distribution Ltd (Registered Company #: 3011563)</p> <p>by:</p> <p>Full name:.....Position:.....Date:.....</p> <p>Signature:.....</p> <p>Witness:</p> <p>Full name:.....Date:.....Signature:.....</p>
<p>Signed on behalf of the Customer</p> <p>The Customer: ACN.....</p> <p>By:</p> <p>Full name:.....Position:.....Date:.....</p> <p>Signature:.....</p> <p>Witness:</p> <p>Full name:.....Date:.....Signature:.....</p>