

## MELLOW MILITIA, LLC RESELLER AGREEMENT

THIS RESELLER AGREEMENT ("Agreement") is entered into as of the last date of the signatures below (the "Effective Date") by and between Mellow Militia, LLC ("Mellow Militia") and \_\_\_\_\_ ("Reseller").

Mellow Militia is the creator, developer and owner TIKI TOSS® target games and related products ("Mellow Militia's TIKI TOSS® Products") and owns all associated rights, title and interests, including all intellectual property rights. Specifically, Mellow Militia owns (i) U.S. Registration No. 5,451,209 for its surfboard-shaped product design trade dress; (ii) U.S. Registration No. 4201881 for the TIKI TOSS® trademark; and (iii) U.S. Registration No. 4201882 for the MELLOW MILITIA® trademark (collectively, "TIKI TOSS® Marks").

1. Acknowledgement. Reseller acknowledges the validity and enforceability of the TIKI TOSS® Marks and shall not at any time directly or indirectly contest the validity of TIKI TOSS® Marks. Reseller further acknowledges that any breach of this Agreement will cause Mellow Militia irreparable harm and will entitle Mellow Militia to injunctive relief.

2. Grant of License for TIKI TOSS® Marks. Subject to Reseller's strict compliance with the terms and conditions of this Agreement, Mellow Militia grants to Reseller a limited, non-exclusive, non-transferable and revocable license to use the TIKI TOSS® Marks in connection with the resale and distribution of Mellow Militia's TIKI TOSS® Products in the United State ("Territory").

3. **Strict Prohibition Against Sale Through Third Party Outlets.** Reseller understands and agrees that it is strictly prohibited, both directly and indirectly through any third party, from marketing, advertising, selling and/or distributing, Mellow Militia's TIKI TOSS® Products on or through any thirdparty (i) online marketplaces, storefronts or other platforms including, but not limited to, Amazon.com and Ebay; (ii) drop-ship accounts including, but not limited to, Buy.com, Rakuten.com, Newegg.com and Overstock.com; (iii) classified sites including, but not limited to, Craigslist.com and Facebook Marketplace; and (iv) direct message forums. The foregoing prohibits expressly apply to all stores, websites and other outlets operated under Reseller's alternative, anonymous, assumed or fictitious name. Furthermore, Reseller shall not sell Mellow Militia's TIKI TOSS® Products to any third party that Reseller knows or should reasonably know will sell Mellow Militia's TIKI TOSS® Products in violation of this Section 3. Reseller understands and agrees that this Section 3 is a material term of the Agreement.

4. Minimum Advertised Pricing Policy (MAP) In order to preserve its reputation for providing customers with high value products and strong after sales support, and to further enhance the Mellow Militia's brand image and its competitiveness in the marketplace Mellow Militia, LLC is unilaterally instituting a policy of minimum advertised price standards for Mellow Militia, LLC products. This Minimum Advertised Pricing Policy ("MAP Policy") will apply to all customers (collectively, "Resellers") who resell Mellow Militia products to end users located in the United States. Mellow Militia greatly values the efforts of all Resellers to distribute Mellow Militia products and support our customers. This MAP Policy is adopted for the benefit of all Resellers and will be uniformly enforced.

5. MAP Pricing for all Mellow Militia products is determined by the MSRP for each product. The MSRP in Mellow Militia's wholesale catalog is the MAP for each product. Reseller agrees that Minimum Advertised Pricing will not be below the MSRP for Mellow Militia products. This MAP Policy shall work under the following guidelines:

- A. This MAP Policy applies only to advertised prices and does not apply to the price at which Mellow Militia products are actually sold or offered for sale to an individual consumer within Resellers' retail location or over the telephone. Resellers remain free to sell these products at any prices they choose under these circumstances.
- B. This MAP Policy is not applicable to any in-store advertising that is not distributed to customers.
- C. Pricing listed on an internet site is considered an "advertised price" and must adhere to this MAP Policy. Once the pricing is associated with an intent to purchase (added to shopping cart or order), the price is not bound by this MAP Policy.
- D. This MAP Policy applies to all advertisements of all Mellow Militia product, including MAP Product, in any and all media, including, but not limited to, flyers, posters, coupons, mailers, inserts, newspapers, magazines, catalogs, mail order catalogs, e-mail newsletters, e-mail solicitations, internet or similar electronic media, television, radio, and public signage.
- E. At certain times and under certain circumstances (ie: discontinued product, company wide discount/ promotion), Reseller may be granted permission to break with this MAP Policy. Permission must be granted in writing prior to a change in advertised pricing.

5. Prohibition Against Reseller's Registration of TIKI TOSS® Marks. Reseller covenants and agrees that it will not, either directly or indirectly with any third party, use, register or attempt to register any of TIKI TOSS® Marks with any state or federal agency, as part of any trademark, service mark, domain name or business name, or in connection with any social media pages, accounts or platforms.

6. Successors and Assigns. This Agreement shall extend to, inure to the benefit of, and be binding upon the parties and their respective directors, officers, partners, proprietors, attorneys, agents, servants, employees, representatives, affiliates, subsidiaries, shareholders, predecessors, successors and assigns.

7. Disputes and Interpretation.

A. Severability. In the event that any provision of this Agreement or the application of any provision of this Agreement is held by a tribunal of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement shall remain in full force and effect and this Agreement shall be interpreted as if such valid provision(s) were omitted.

B. Governing Law; Forum. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to or application of choice of law rules or principles. Any claim of action arising from this Agreement shall be brought exclusively in the state or federal courts of California, and each of the parties hereby consent to the personal jurisdiction of, and waives any objection to venue in, such courts.

C. Entire Agreement. This Agreement constitutes the entire agreement and understanding concerning the subject matter between the parties and supercedes and replaces all prior negotiations, proposed agreements and agreements, whether written or oral, relating to such subject matter. This Agreement may not be altered, amended, modified or otherwise changed in any respect except by an instrument in writing duly executed and signed by all of the parties hereto or by authorized representatives of each of the parties. This Agreement shall be construed as a whole, and not strictly for or against any of the parties hereto.

8. Damages in the Event of Breach. Reseller expressly acknowledges and agrees that it breaches any term of this Agreement, Reseller shall be responsible for whatever damages Mellow Militia incurs as a result of Reseller's breach, plus reasonable attorney's fees and costs incurred in enforcing the terms of this Agreement. The remedy provided in this Section 8 shall be in addition to any remedy provided elsewhere in this Agreement or any other remedies available at law or equity.

9. Liquidated Damages. Reseller expressly acknowledges and agrees that any violation of Section 3 of this Agreement will cause Mellow Militia to incur substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain with certainty as a basis for recovery by the Mellow Militia of actual damages, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages for Reseller's violation of Section 3, Reseller agrees that liquidated damages may be assessed and recovered by Mellow Militia against Reseller, in the event of Reseller's violation of Section 3 and without Mellow Militia being required to present any evidence of the amount or character of actual damages sustained by Mellow Militia. Accordingly, Reseller shall be liable to Mellow Militia for payment of liquidated damages in the amount of One Thousand Dollars (\$1,000) for each day that Reseller is in violation of Section 3. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty, and Reseller shall pay them to Mellow Militia without limiting Mellow Militia's right to terminate this Agreement as provided Herein.

10. No Waiver. No waiver by either party of a breach or default hereunder shall be deemed a waiver by such party of a subsequent breach or default of like or similar nature.

11. Scope. The scope of this Agreement is United States and the provisions, covenants, mutual promises and undertakings set forth herein apply to the United States.

12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and which together shall constitute one and the same instrument.

MELLOW MILITIA, LLC

Dated: \_\_\_\_\_ By: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

RESELLER

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_



