



**GW10**

**Text and Imagery Licence**

**June 2013**

**GW10V1: 300413**

## 1 Introduction

GW permits Trade Accounts to use the Authorised Text and Imagery in accordance with the terms and conditions set out in this Text and Imagery Licence, and any further instructions or usage guidelines provided by GW in connection with the Authorised Text and Imagery.

## 2 Definitions and Interpretation

2.1 The definitions and rules of interpretation in Trade Terms shall apply to this document. In addition, the following definitions shall also apply:

**Licensed IP** the Intellectual Property Rights in the Authorised Text and Imagery

**Intellectual Property Rights** all patents, rights to inventions, registered designs, design rights, copyright and related rights, performance rights, database rights, trade marks, trade names and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, moral rights, rights in confidential information (including know how/trade secrets) and any other intellectual property rights of any nature whether registered or unregistered, including all applications (or rights to apply) for, and renewals or extensions of such rights and all similar or equivalent rights in any part of the world

**Licensed Purposes** the activities for which the Trade Account is permitted to use the Licensed IP, as detailed in the Appendix to this licence

**Territory** worldwide

## 3 Licence

3.1 GW (subject to the Trade Account complying with their obligations under the Trade Agreement and this licence) grants to the Trade Account the non exclusive right to use the Licensed IP for the Licensed Purposes in the Territory during the term of the Trade Agreement.

3.2 The licence granted at **Section 3.1** shall be personal to the Trade Account, who shall have no right to assign or grant sub-licences of or from such licence.

3.3 No further right or licence is granted by GW to the Trade Account by this agreement, save as expressly set out in **Section 3.1**Error! Reference source not found..

3.4 Nothing in this licence shall restrict or prevent GW from using or licensing any of the Authorised Text and Imagery (or any other Intellectual Property Rights of GW) for any purpose whatsoever at any time.

## 4 Term

This licence shall come into effect on the date the Trade Agreement commences, and shall (subject to termination under **Section 9**) remain in effect until the Trade Agreement terminates.

## 5 Intellectual Property Rights

- 5.1 Nothing contained in this licence shall be construed as an assignment or grant to the Trade Account of any rights title or interest in or to the Licensed IP, other than the licence granted at **Section 3.1**, and the Trade Account acknowledges that all rights in the Licensed IP (including any and all goodwill) are reserved by GW.
- 5.2 The Trade Account warrants and undertakes:
- 5.2.1 not to use the Licensed IP (or any other Intellectual Property Rights of GW) or anything confusingly similar as part of the name or trading name of the Trade Account;
  - 5.2.2 not to register or use any of the Licensed IP (or any other Intellectual Property Rights of GW) or anything confusingly similar, as part of any URL or domain name;
  - 5.2.3 not to use any mark or name which is confusingly similar to any element of the Licensed IP (or any other Intellectual Property Rights of GW) in respect of any goods similar to the Products;
  - 5.2.4 not to use any of the Licensed IP (or any other Intellectual Property Rights of GW) in combination with any third party Intellectual Property Rights without the prior written consent of GW;
  - 5.2.5 not to register, apply to register or authorise any third party to register any of the Licensed IP (or any other Intellectual Property Rights of GW) or any other rights which comprise, consist of, or are confusingly similar to the Licensed IP (or any other Intellectual Property Rights of GW), in any part of the world;
  - 5.2.6 not to make any use (commercial or otherwise) of the Licensed IP (or any other Intellectual Property Rights of GW) other than expressly permitted by this licence, unless prior written consent has been obtained from GW;
  - 5.2.7 not to do, or omit to do, or permit there to be done any act which may jeopardise or render invalid any registration or application for registration, which may assist or give rise to an application to remove from any register, or which may prejudice the right or title of GW, of or to, any Licensed IP (or any other Intellectual Property Rights of GW);
  - 5.2.8 not to engage in any practices or behaviour which is prejudicial to the goodwill, reputation, image or prestige of GW or the Licensed IP (including, but not limited to, any use of the Licensed IP in connection with any defamatory or obscene material, munitions or armaments, political affiliations, narcotics terrorism, or any form of discrimination or abuse regarding religion, sex or sexuality, race, disability or age);
  - 5.2.9 not to alter or vary the Authorised Text and Imagery without the prior written consent of GW, and not to subject the Licensed IP to any 'derogatory treatment' (meaning any addition to, deletion from, or alteration or adaptation of the work resulting in distortion or mutilation of the work);
  - 5.2.10 to use the Licensed IP at all times in a manner which conforms to the parameters, functionality and ambience of the Licensed IP;

- 5.2.11 to use the Licensed IP in the form provided or approved by GW, and at all times to comply with Local Requirements and the instructions of GW regarding the use and presentation of the Licensed IP;
- 5.2.12 not to use the Licensed IP in any material which infringes the Intellectual Property Rights of any third party (excluding where the Licensed IP has caused the material to infringe); and
- 5.2.13 not to dispute or challenge the validity of, or the rights of GW to any of, the Licensed IP (or any other Intellectual Property Rights of GW).
- 5.3 Whenever the Licensed IP is used by the Trade Account, the Licensed IP shall be directly accompanied by an intellectual property notice in a form to be determined and provided at the sole discretion of GW. It shall be the responsibility of the Trade Account to obtain such intellectual property notice from GW. The Trade Account shall comply with GW's instructions with regard to the placement of any such intellectual property notice.
- 5.4 GW excludes, to the fullest extent permitted by law, all representations, warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, which are not expressly set out within this licence.
- 5.5 The Trade Account assigns to GW in perpetuity any and all Intellectual Property Rights, and all rights, title, interest or goodwill which might arise in connection with the Trade Account's use of the Licensed IP. If for any reason the Trade Account is prevented or restricted at law from assigning such Intellectual Property Rights, or any other rights, title, interest or goodwill, the Trade Account agrees to grant to GW an exclusive, worldwide, unconditional, royalty free, irrevocable licence in perpetuity, for the purpose of enabling GW to use such Intellectual Property Rights, rights, title, interest or goodwill for any purpose required by GW at any time in the future.
- 5.6 The Trade Account shall perform all and any acts and execute all and any documents which are necessary to give effect to the assignment (or licence) of rights in **Section 5.5**. If the Trade Account fails to do any such act or execute any such document within fourteen (14) days of a written request from GW, GW shall have the right to do so as the Trade Accounts' lawfully appointed attorney and the Trade Account shall be bound by any actions of GW under this **clause 5.6**. Such authority and appointment shall take effect as an irrevocable appointment notwithstanding termination or expiry of this agreement.

## **6 Reporting**

- 6.1 Trade Accounts shall supply to GW upon request and free of charge, full particulars (including any supplementary information, examples or exhibits which GW may request) in respect of any use of the Licensed IP. Any information supplied to GW under this **Section 6.1** shall not affect or lessen the obligations of the Trade Account in respect of the Licensed IP under this licence.
- 6.2 Trade Accounts shall promptly comply with any instructions of GW concerning the use and presentation of the Licensed IP, and shall immediately withdraw from public display, destroy or alter, any materials featuring the Licensed IP, as and when requested by GW.

## **7 Infringements**

7.1 The Trade Account shall immediately give notice by way of full particulars in writing to GW if it becomes aware of any:

7.1.1 attack on, or opposition to, the Licensed IP;

7.1.2 infringement or suspected infringement of any of the Licensed IP;

7.1.3 claims made or threatened that the Licensed IP infringe the rights of any third party or are invalid; or

7.1.4 application for, or registration of, any intellectual property right which conflicts with any of the rights granted to the Trade Account under this agreement

and the Trade Account shall make no allegation, comment or admission to any third party in any of the circumstances listed in this **Section 7.1**.

7.2 In the case of any of the circumstances listed in **Section 7.1** arising:

7.2.1 GW shall, in its sole discretion, decide what action if any to take;

7.2.2 GW shall have sole control over, and conduct of, all claims and proceedings;

7.2.3 the Trade Account shall, subject to an indemnity from GW for its reasonable costs, provide GW with all assistance that it may reasonably require in the conduct of any claims or proceedings; and

7.2.4 GW shall bear the cost of any proceedings and shall be entitled to retain all sums recovered in any action for its own account.

## **8 Liability**

8.1 GW excludes and shall have no liability to the Trade Account, to the extent permitted by law, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any losses whatsoever of the Trade Account arising out of, or in connection with this licence, including but not limited to, all direct loss and all consequential loss, indirect loss, incidental loss, special loss, loss of profits, loss of revenue, loss of future earnings, loss of opportunity or loss of savings.

8.2 Without prejudice to **Section 8.1**, in the event that GW is found liable for any losses of the Trade Account, to the extent permitted by law, GW's total liability to the Trade Account in respect of any losses arising under or in connection with this licence, whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall not exceed £100.

8.3 The Trade Account shall indemnify GW against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by GW arising out of or in connection with any breach of the terms of this licence by the Trade Account.

## **9 Termination**

- 9.1 GW may terminate this licence without liability on giving 7 days written notice to the Trade Account.
- 9.2 GW may terminate this licence without liability immediately on giving written notice to the Trade Account if:
- 9.2.1 the Trade Account commits a breach of this licence or the Trade Agreement;
  - 9.2.2 the Trade Account becomes insolvent or unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), enters into liquidation, whether voluntary or compulsory (other than for reasons of bona fide amalgamation or reconstruction), passes a resolution for its winding-up, has a receiver, administrative receiver, administrator, or administrator manager, trustee, liquidator or similar officer appointed over the whole or any part of its assets, makes a composition or arrangement with its creditors or takes or suffers any similar action in consequence of its debt;
  - 9.2.3 any event occurs, or proceeding is taken, with respect to the Trade Account in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in **Section 9.2.2**; or
  - 9.2.4 the Trade Account suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 9.3 Termination of this licence shall not prejudice or affect the rights of any party against the other party in respect of any breach of this licence prior to termination.
- 9.4 In the event of termination of this licence however arising, and subject to any express provisions set out elsewhere in this licence, the Trade Account shall immediately:
- 9.4.1 cease all and any use of the Licensed IP; and
  - 9.4.2 co-operate with GW in the cancellation of all or any licences registered pursuant to this licence and shall execute such documents and do all acts and things as may be necessary to effect such cancellation.
- 9.5 The provisions of this **Section 9** shall remain in effect notwithstanding termination or expiry of this agreement until the settlement of all subsisting claims by GW.

## **10 General**

- 10.1 Any notice given in connection with this licence shall be in writing and delivered personally, by registered mail, airmail or email to the address or email address of GW or the Trade Account as specified in the Account Application Form (or as otherwise notified in writing, or used in correspondence with GW, from time to time). GW may also provide notice to Trade Accounts by posting such notice at the Trade Web Pages. Notices shall be deemed to have been given at the time of delivery if delivered by hand, three Working Days after the date of posting if sent by registered mail, five Working Days after the date of posting if posted at the Trade Web Pages, ten Working Days after the date of posting if sent by airmail, and at the time of sending if sent by email. If a notice is delivered on a day which is not a Working Day, or after 4pm on a Working Day, it will instead be deemed to have been given at 9am on the next Working Day.

- 10.2 A copy of any notice sent by a Trade Account to GW in accordance with **Section 10.1**, must also be sent by hardcopy to Games Workshop, Trade Policies, Willow Road, Nottingham, NG7 2WS, or by email to [tradepolicies@gwplc.com](mailto:tradepolicies@gwplc.com). If no copy notice is sent, the notice shall not be deemed effective.
- 10.3 GW shall be permitted to, and Trade Accounts acknowledge that GW may, vary at any time without notice to Trade Accounts, the Authorised Text and Imagery.
- 10.4 Subject to **Section 10.3**, GW may amend this licence by written notice to Trade Accounts from time to time. Such written notice shall be effective 14 days following deemed receipt by the Trade Accounts of any written notice from GW to amend this licence. Where GW gives notice of any amendment under this **Section 10.4**, Trade Accounts will be deemed to have accepted that amendment unless the Trade Account provides written notice to GW during this 14 day period, informing GW that the Trade Account does not accept the amendments. If the Trade Account provides such notice to GW, GW shall treat this as notice from the Trade Account to terminate this licence. All notices shall be provided in accordance with **Section 10.1**.
- 10.5 Trade Accounts shall not assign, transfer, sub contract or sub licence their rights or obligations under this licence without the prior written consent of GW.
- 10.6 If any provision of this licence is found by any court or competent authority to be illegal, invalid or unenforceable, that provision shall be interpreted purposively or deleted and the validity and enforceability of the other terms shall not be affected.
- 10.7 No failure or delay by GW to exercise any right or remedy provided under this licence or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 10.8 The Trade Agreement (including this licence) constitutes the entire agreement between GW and the Trade Account party to the Trade Agreement, and supersedes any previous agreements relating to the Products.
- 10.9 Both GW and Trade Accounts acknowledge and agree that, in entering into this licence, they do not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person relating to the Licensed IP, other than as expressly set out in this licence. This acknowledgement does not extend to fraudulent statements.
- 10.10 No provision of this licence shall be enforceable by any party other than GW and the Trade Account party to this licence.
- 10.11 This licence shall be governed by the law of, and subject to the exclusive jurisdiction of the courts of, the country in which GW (applicable sales business) is located.

## 11 Questions

If a Trade Account has any questions in connection with this licence, or the Licensed IP, they are advised to send an email to [tradepolicies@gwplc.com](mailto:tradepolicies@gwplc.com).

## **Appendix**

### **Licensed Purposes**

Trade Accounts shall be permitted, subject to the terms set out in this licence, to use the Licensed IP for the specific purposes detailed in this Appendix, and for no other purposes without prior written consent of GW (such consent to be given or refused at the complete discretion of GW).

Any use of the Licensed IP must be strictly in connection with the promotion and sale of the Products, which is limited to use of the Licensed IP:

### **GW logos**

- (i) on the Trade Account's website, which must be a website owned and controlled by the Trade Account through which Products are sold;
- (ii) on the Trade Account's social media pages (including Myspace, Facebook and Twitter) which must be controlled by the Trade Account;
- (iii) at the Trade Account's place of business, from which Products are sold:
  - (a) internally, on outward facing windows, flyers, posters, banners, shopfront, stickers and on signage; and
  - (b) externally, on A-boards within the vicinity of the place of business;
- (iv) on staff apparel, including t-shirts, name badges and lanyards;
- (v) on plastic and paper bags for purchases;
- (vi) in advertisements in local press and catalogues (for trade and retail); and
- (vii) on loyalty cards.

### **All other imagery**

Restricted to (i), (ii), (iii) (a) and (vii) above.

None of the purposes listed above shall be exploited in return for any payment or fees (over and above payment for the Products).

GW shall be entitled to remove any of the above purposes, or make the above activities subject to additional restrictions, immediately at any time on notice to Trade Accounts.