

## 9B: SAMPLE DEALER TERMS

*This is an annotated version of ADB's distributor terms sheet intended to help new companies get a grip on what to cover. You can certainly make your terms whatever you want, although (if you don't know what this stuff means) it isn't that hard to include something that the wholesalers are going to reject or abuse.*

**CONTACT:** Stephen V Cole or Leanna M Cole  
ADB Inc., PO Box 8759, Amarillo TX 79114-8759  
806-351-1950 Fax: 351-2585 sales@starfleetgames.com

*It never hurts to put the contact information in a handy place. Do not assume that because you gave them a business card that this document and that card will stay together.*

### AUTHORIZED DISTRIBUTORS

To qualify as a distributor, a business (not listed in Games Quarterly) must have an established clientele of retail stores, and must provide us with a vendor's license or sales tax certificate and a copy of their catalog. All new distributors must provide game industry credit references and pay for their initial order in advance. Each account must be a bona fide distributor selling to retail stores, or a retail chain of sufficient size to order in distributor quantities. (A listing in Games Quarterly as a wholesaler is sufficient to establish bona fides.)

*You want to be sure you are dealing with real wholesalers, not somebody trying to get cheap games. Ask other manufacturers about any wholesaler you do not know. If they are listed in Games Quarterly, they are probably ok.*

Distributors not listed in Games Quarterly must order at least \$2,400 (wholesale/invoice price) per year to remain qualified.

We provide a list of distributors to retail stores on request; this list is posted to our web site under "Retailer info". We will sell to stores on a COD/no-return basis, but strongly urge them to buy from the wholesalers.

*This is a general policy many companies have.*

### TERMS OF SALE

**US Distributors** receive a 56% discount;

*This can sound confusing since "everybody knows" that distributors expect a 60% discount. This discount combined with the "fast pay" discount below gives the 60%.*

due date for the net amount is 30 days from Invoice Date. (Invoice Date is the shipping date.) We pay the freight to the first destination within the 48 contiguous states.

*This means the first destination for a given box. Alliance and Diamond want to be sure you'll pay the freight to each of their domestic warehouses, which is what you do.*

When sent by a trucking company, inside delivery charges are the responsibility of the distributor. We ship almost everything by UPS unless other arrangements are requested by the Wholesaler.

**FAST PAY:** We allow an additional 9% discount (net = 40.04%)

*This is very common (59.96% discount) but that book from GAMA about how distributors want you to do your business notes that this 0.04% thing is a big deal. It's NOT a big deal as long as you tell them what the discount is.*

if payment is postmarked or wire transferred within 13 days of Invoice Date. We go by the US Postal Service post-mark, not by the postage meter date.

*Many companies give ten days. We give 13 to allow for the average of 3 days it takes for the box to reach the*

*wholesaler.*

Prepaid orders are allowed 11% rather than 9% additional discount (net = 39.16%). We will fax you a copy of the invoice when the products are ready to ship so you can send payment.

*Print an extra invoice, fax it, and write on it the date and phone number you faxed it to. Sooner or later some wholesaler will insist that he never got a copy and that's why he's paying late ... and taking the discount.*

**Canadian & Overseas Distributors** use the same terms as US distributors except that the net amount date is 45 days from the Invoice Date to allow the shipment to clear customs.

*Fairly common terms.*

When your chosen freight forwarder

*Freight Forwarders are a special kind of company with a good working knowledge of import-export laws. Basically, a big warehouse just on this side of the US-Whatever border receives packages from a lot of places for lots of foreign customers, and combines them in larger shipments across the border to save on shipping. The forwarder knows more about customs laws than you need to know. The foreign customer is paying for him to do his service; not you.*

signs for a shipment from us, our responsibility to replace or refund for lost or damaged items ends.

*This is important. You will ship most stuff to the forwarder by UPS and can file damage claims with UPS (see below). But if the package arrives at the freight forwarder damaged, the forwarder needs to refuse it or inspect it, not send it overseas. If the forwarder sends it overseas, he is in effect saying that there was no damage when he received it. When it arrives damaged at the overseas customer, the freight forwarder will absolutely insist that it arrived damaged and therefore isn't his fault. The foreign wholesaler will then insist that his freight forwarder is blameless and demand that you reimburse him for the loss, something you cannot do (other than out of your own pocket) since you now have no way to get UPS to pay for it since UPS cannot inspect the shipment after it leaves the country. When you start up with a new foreign distributor, you need to emphasize this point to him, as "Just so we're all on the same sheet music, I want to point out the part in our terms about your freight forwarder. If your forwarder sends the package to you, UPS and I are not going to pay for any freight damage claims."*

### MINIMUM ORDERS AND OTHER TERMS

Our minimum order is \$200 net.

*Net means the amount they pay (before the quick-pay discount).*

If the invoice total is less than \$200, we will add a 10% shipping and handling fee to the invoice amount. This also applies to initial orders of new products although it is often waived in the case of minor releases. We will Email you regarding sub-minimum orders if we have your Email address on file so that you may increase or cancel the order.

On orders meeting the \$200 minimum, we pay the freight to the first destination within the 48 contiguous states.

*You need a reasonable minimum order, enough for it to be worth your bother to issue and keep track of an invoice. While many companies have various order sizes, \$200 is a practical one.*

If a distributor requires us to use a shipper other than UPS, we will add a 2% shipping and handling surcharge to the invoice amount.

*Nobody has ever asked us to use anybody other than UPS.*

## RUNNING A GAME PUBLISHING COMPANY

Shipments sent directly to points outside of the contiguous 48 states will have the actual shipping charges added to the invoice.

*Nobody has ever asked us to do this.*

Minimum order is waived on new product releases if six copies of each item are ordered.

*This is something unique to us and reflects that some of the distributors are really small.*

All products must be ordered in multiples of six copies. If a product is ordered in a wrong multiple, we will round up your order to the next multiple of six copies. Some older products may be restocked in any quantity; ask the sales director for more info.

*While this is a fairly common clause in many terms, as a practical matter none of the wholesalers pay any attention to it and none of them will allow you to increase the order to the next multiple of six. You might as well just skip this.*

Title to the merchandise remains with ADB, Inc., until payment in full is received.

*The theory is that if the wholesaler files bankruptcy, your merchandise is sent back to you instead of being auctioned off (no payment to you) to pay the wholesaler's bills. As a practical matter, the bank or whoever forced the wholesaler into bankruptcy is going to ignore this and sell your stuff to recover what is owed to HIM and not pay you. While you could in theory get a lawyer, a judge, and a deputy US marshal and make them give you your stuff, as a practical matter it's just not going to be worth your bother.*

Placing an order constitutes accepting these terms.

*Nice theory, and maybe it will work. Watch for wholesalers, however, to modify YOUR terms by stating on THEIR purchase order that you need to do this or that or the other and that by accepting their purchase order you accept THEIR terms.*

### PAYMENT

All payments must be made in US funds, payable on a US bank. We accept wire transfers, checks, and money orders. Wire transfer fees are the responsibility of the distributor.

*Fairly common terms.*

Payments received will be applied first to finance charges and other fees, then to the oldest outstanding invoice, then to current invoices.

*Nice theory, but on Planet Earth, even the best wholesalers will sometimes pay late and ignore any service or finance charges. The worst will always do it.*

No credit will be extended without prior approval.

*You would think this goes without saying, but you need to say it.*

Delinquent accounts will be placed on hold or COD status until current, and may have their credit revoked, in which case orders will be sent only COD or prepaid. If a check is returned for any reason (other than the FDIC closing your bank), the account's status will become COD or pre-paid (cash, money order, or certified check only). If a check is returned, the fast-pay discount will be forfeited for that invoice and the distributor will be charged a \$20 NSF fee. If a distributor has a past due invoice outstanding, all fast-pay discounts will be forfeit until the account is current. Delinquent accounts will be charged the highest interest permitted by law. If a delinquent account is sent to a collection agency, the distributor will be responsible for all related costs including, but not limited to, collection agent fees, attorney costs, and court costs.

*Try very hard to enforce these terms, but most manufacturers will give let a wholesaler slide once or twice and then the wholesaler will decide they can do it every time.*

### SHORTAGES, DAMAGED OR DEFECTIVE GOODS

**Shortages** must be reported to our sales department within two business days of receipt of the shipment.

*There are all kinds of stories in the industry about wholesalers who either help themselves to a little extra profit by claiming shortages that aren't really short, or whose warehouse employees are just stupid (or thieves). You can protect yourself by having two people check each shipment and by noting what went into each box on a separate document you keep in your file. If you seriously think that the shipment was not short, simply go repack it and weigh it. Record on your file copy of the invoice the precise weight (fractional pound) but of course UPS works by the next whole pound. The fractional pound will be needed to confirm that everything is there.*

**Damaged** shipments should be noted on the waybill when signing for the shipment. Keep the goods and packaging and notify us immediately for replacement or adjustment.

*This is a constant problem with wholesalers. They just don't want to be bothered keeping the goods or packaging. If it's damaged, what they want to do is toss it (which means the warehouse crew get free ... if battered ... games) and have you send more stuff or issue a refund or credit. UPS won't process the freight claim unless they can inspect the stuff. (Most of the time, UPS will just take your word on claims under \$100. Since UPS wants to pay you what you paid the printer, most of your shipments have a replacement cost less than \$100 anyway.)*

**Defective** goods must be reported to us as soon as possible. Defective goods must be returned for replacement in complete condition so we can make our printers aware of the problem and prevent any recurrence. We do not accept covers as returns; send the whole product. Please call for a Return Authorization Number before returning defective products.

*Same story. If they get defective stuff they want to toss it and have you replace it, not send it back. If you ask them to (or insist that they do) send it back, expect to pay the freight.*

### RETURNS

While we offer a liberal return policy, there are a few rules:

*Never hurts to insist that your policy is liberal -- even if it isn't.*

1. The merchandise must have been purchased within the last year (six months for Captain's Log). The original invoice must have been paid on time; credit will be at the lowest price you paid in the previous 12 months.

*Fairly common terms ... which wholesalers will ignore since returns tend to be a negotiated thing anyway.*

2. The merchandise must be in new and salable condition. Damaged, shop-worn, or price marked items cannot be accepted for credit. All stickers and price tags must be cleanly removed before return to us.

*This one is tough to enforce, mostly because wholesalers tend to ignore it and just assume that you'll want their business enough to be a good sport.*

3. All returns must be authorized in advanced by the sales office [806-351-1950], which will issue a Return Authorization Number. Include that number with the return shipment.

4. We cannot accept returns damaged in transit if they were improperly packed by the distributor. Use proper cartons and sufficient packing material to guarantee safe arrival.

*Fairly common terms.*

## RUNNING A GAME PUBLISHING COMPANY

5. ADB Inc. cannot accept returned merchandise which you originally bought from TFG (Task Force Games). We cannot compensate you for price changes on merchandise you bought from TFG.

*Unique to our situation. We bought TFG's inventory but not TFG and were not interested in paying for TFG's mistakes.*

6. Merchandise which is designated for close-out cannot be returned. The current close-out list includes:

Module D3. Star Fleet Missions card game.

PD Modules: PD Rulebook (1993), Uprising, Graduation Exercise, Prime Adventures #1.

These items can be ordered one copy at a time.

*If you sell anything you won't take back, you have to tell them.*

7. Freight or postage on returned merchandise is the responsibility of the distributor.

*Insist on this. If they overbought, that's not your fault.*

8. Returns will be credited against outstanding invoices minus a 15% restocking fee.

*Insist on this. If they overbought, that's not your fault.*

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