

## Authorised Dealer Agreement

3rd Light GmbH  
Butzweilerhof-Allee 3  
50829 Cologne

- hereinafter: 3rd Light -

and



- hereinafter: Dealer -

3rd Light and Dealer are hereinafter also referred to individually as "Party" and collectively as "Parties".

3rd Light distributes coloured smoke items and paintball / airsoft accessories as a wholesaler and via the trade portal <http://handel.enolagaye.com>. 3rd Light operates under the Enola Gaye, EG and EG Grenade Co brand.

Dealer is interested in distributing 3rd Light products as a reseller.

Having said this, the Parties agree as follows.

### 1. Subject of the Agreement

1.1. The subject matter of this Agreement is the entrustment of Dealer with the distribution of the products designated in **Annex 1** (hereinafter: Contractual Products) of 3rd Light in Germany and the European Union. Sales of Contractual Products into other regions outside of the European Union will require written consent from 3rd Light.

1.2. 3rd Light may also extend this contract to such 3rd light products that 3rd Light includes in its distribution as follow-up or supplementary products. There is no obligation to accept these.

1.3. The legal relationship between the Parties in respect of all transactions relating to this Agreement shall be based exclusively on this Agreement.

### 2. Status of the Dealer

2.1. Dealer agrees to buy and sell the Contractual Products in its own name and at its own expense. He is not entitled to represent 3rd Light in legal transactions.

2.2. Dealer is an independent contractor and not an employee of 3rd Light. He procures the necessary operating resources and equipment himself at his own expense. He is in a position to assess the economic opportunities and risks of his activity contractually adopted here himself. 3rd Light is therefore not responsible for the profitability of Dealer's business.

2.3. Dealer is entitled to maintain its own sales organisation. The dealer is requested to keep records of all sales of contractual products, should they be required by the authorities for any ongoing investigation of misuse.

2.4. Dealer assures sufficient knowledge of the Contractual Products in order to provide his customers with information on the features, special characteristics and safety instructions of the Contractual Products.

### **3. Sales Obligations of the Distributor**

3.1. Dealer will purchase the Contractual Products from 3rd Light, an approved distributor or approved re-seller.

3.2. Dealer shall use its best endeavours to promote the sale of the Contractual Products. He shall protect the interests of 3rd Light with the diligence of a prudent businessman.

3.3. Dealer sells the Contractual Products both within the framework of his - if existing - stationary trade and via his online shop.

3.4. Dealer shall comply with all statutory and/or regulatory requirements, laws, ordinances, and orders affecting Dealer and the ability to store and distribute the Contractual Products. In particular, Dealer is aware that the sale of certain Contractual Products to anybody who has not yet reached the age of 18 is prohibited.

3.5. Dealer will with all good intentions protect the interests of 3rd Light and not to do anything that could endanger the reputation, market position or creditworthiness of 3rd Light or cause damage to 3rd Light. If Dealer becomes aware of a complaint or adverse statement about a Contractual Product and/or 3rd Light, he shall inform 3rd Light so that 3rd Light is able to continually review and improve its products and service.

### **4. Advertising Guidelines**

4.1. The Dealer is allowed to run advertising campaigns on Internet search engines and social media websites, at his own expense.

4.2. Within the scope of its advertising and other sales activities, the Dealer is prohibited from using brands and brand names for the contractual products other than specified in Section 1.1 incl. Annex 1 or from selling them without the specified brand (white label). In particular, he is prohibited from selling the contractual products under his own brands or brand names.

### **5. Cooperation and Support Obligations of 3rd Light**

5.1. 3rd Light will support Dealer to a reasonable extent with advertising material (sticker, banners, images, etc.). The advertising material remains the property of 3rd Light. It must be returned immediately after termination of the Agreement, to the extent it has not been used up completely for its intended purpose.

5.2. 3rd Light will support Dealer in the performance of his duties and always provide him with the required information and details. The information required also includes details of forthcoming or completed changes to the prices and the delivery programme of 3rd Light.

### **6. Purchase and Delivery of the Contractual Products**

6.1. The order and delivery of the Contractual Products shall be based on separate purchase agreements via the online portal <https://handel.enolagaye.com>, by email, by telephone or certificated partner. Orders are requested to be placed with precise details of the quantity and the specific Contractual Product.

6.2. A purchase agreement is only completed with an order confirmation from 3rd Light by email or telephone, at the latest with the delivery of the goods to Dealer. If Contractual Products are not available or not available in the quantity requested by Dealer, the adjusted order confirmation is to be understood as an offer by 3rd Light, which must be accepted by the Dealer.

6.3. The prices for the Contractual Products result from the current price list of 3rd Light. This price list will be made available to Dealer by 3rd Light by email. The prices are net prices. Dealer shall bear all additional costs, fees and taxes incurred.

6.4. 3rd Light shall issue an invoice to Dealer for each of the Contractual Products ordered. Invoices are due upon receipt on the date specified in the invoice. Payments are to be made to the 3rd Light account, as indicated on the commercial invoice.

6.5. Upon expiry of the payment term as defined in Section 6.4 the Dealer shall be in default. In the case of default of payment by the Dealer 3rd Light shall reserve the right to terminate this agreement at per clause 16.

6.6. 3rd Light is free not to offer Contractual Products for sale, in particular if the Contractual Product cannot be distributed by 3rd Light or can no longer be distributed by 3rd Light under economically justifiable conditions.

6.7. 3rd Light shall select the shipping method, unless otherwise agreed. Partial deliveries are permissible.

## 7. Final Prices

7.1. Dealer is free to set his prices and conditions.

7.2. 3rd Light shall send Dealer the respective valid price list with the Company's recommended retail prices (list prices).

## 8. Retention of Title

The Contractual Products shall remain the property of 3rd Light until payment is made in full. Dealer may use the Contractual Products and resell them in the ordinary course of business as long as he is not in default of payment.

## 9. Contact

9.1. Both Parties shall appoint a Contact Person who is available for the respective other party and is authorised to make and receive binding declarations for the respective party (hereinafter: Contact Person).

9.2. Parties are entitled to re-nominate the Contact Persons at any time by means of an email to the other party. At the start of the Agreement, the Parties have appointed the following Contact Persons:

- a) Dealer:
- b) 3rd Light: Thomas Berger, thomas.berger@enolagaye.com, phone number: +49 (0)5957 8699 795

9.3. Only the Contact Persons designated for Dealer are authorised to place orders by email or telephone.

## 10. Secrecy and Confidentiality

10.1. Dealer shall keep any business secrets of 3rd Light entrusted to him or made known to him as such by 3rd Light during his activity confidential, even after termination of the Agreement.

10.2. Documents concerning secret business transactions entrusted to Dealer must be returned by Dealer to 3rd Light immediately after its use in accordance with the order, at the latest, however, upon termination of the contractual relationship.

10.3. The Dealer is obliged to treat the contents of this Agreement including its annexes as confidential. Excluded from this is the disclosure to persons who are subject to a legal obligation of secrecy or on the basis of an official or judicial order.

## 11. Claims for Defects of Dealer

11.1. The statutory provisions shall apply to Dealer's rights in the event of material defects and defects of title, unless otherwise stipulated below. In all cases, the special statutory provisions on the reimbursement of expenses in the case of final delivery of newly manufactured goods to a consumer (supplier's recourse pursuant to sections 478, 445a, 445b or sections 445c, 327 para. 5, 327u German Civil Code - BGB) shall remain unaffected insofar as they are applicable and insofar as no equivalent compensation has been agreed, e.g. within the framework of a quality assurance agreement.

11.2. The basis of 3rd Light's liability for defects is above all any agreement reached on the quality and presumed use of the goods (including accessories and instructions). All product descriptions and manufacturer's specifications which are the subject of the individual agreement, or which were publicly announced by 3rd Light at the time of conclusion of the agreement shall be deemed to be an agreement on quality in this sense. Insofar as the quality was not agreed, it shall be assessed in accordance with the statutory regulation whether a defect exists or not (Sec. 434 para. 3 German Civil Code - BGB). Public statements made by the manufacturer or on its behalf, in particular in advertising or on the label of the goods, shall take precedence over statements made by other third parties.

11.3. 3rd Light shall generally not be liable for defects of which Dealer is aware at the time of conclusion of the Agreement or is not aware due to gross negligence (Sec. 442 German Civil Code - BGB). Furthermore, Dealer's claims for defects presuppose that he has fulfilled his statutory duties of inspection and notification (Sec. 377, 381 German Commercial Code - HGB). If a defect becomes apparent during delivery, inspection or at any later time, 3rd Light must be notified of this in writing without delay. In any case, obvious defects shall be notified to us in writing within five (5) working days of delivery and defects not apparent on inspection within the same period of time from discovery. If Dealer fails to carry out the proper inspection and/or give notice of defects, 3rd Light's liability for the defect not reported or not reported in time or not reported properly shall be excluded in accordance with the statutory provisions.

11.4. If the delivered item is defective, 3rd Light may initially choose whether to provide subsequent performance by remedying the defect (rectification) or by delivering an item free of defects (replacement). If the chosen type of subsequent performance is unreasonable for Dealer in the individual case Dealer may reject it. The right of 3rd Light to refuse subsequent performance under the statutory conditions remains unaffected.

11.5. 3rd Light is entitled to carry out subsequent performance that is owed dependent on Dealer paying the due purchase price.

11.6. Dealer must give 3rd Light the time and opportunity required for the subsequent performance owed, in particular to hand over the rejected goods for inspection purposes. In the event of a replacement delivery, Dealer shall return the defective item to 3rd Light at our request in accordance with the statutory provisions; however, Dealer shall not have a claim for return.

11.7. The expenses required for the purpose of inspection and subsequent performance, in particular transport, travel, labour, and material costs shall be borne or reimbursed by 3rd Light in accordance with the statutory provisions and this Agreement if there is actually a defect. Otherwise, 3rd Light may demand reimbursement from Dealer of the costs incurred from the unjustified request for rectification of the defect if Dealer knew or was negligent in not knowing that there was actually no defect.

11.8. In urgent cases, e.g. if operational safety is at risk or to prevent disproportionate damage, 3rd Light must be notified at the earliest possible opportunity.

11.9. Claims of Dealer for damages or reimbursement of futile expenses shall also exist in the case of defects only in accordance with Section 14 and are otherwise excluded.

11.10. Notwithstanding section 438 (1) No. 3 of the German Civil Code -BGB, the general limitation period for claims arising from material defects and defects of title shall be one year from delivery.

## **12. Material Defect Claims of the Customer, Product Liability**

12.1. Dealer is obliged to fulfil justified material defect claims of customers. Dealer shall inform 3rd Light in good time of any case of material defect which, on the basis of concrete indications, is likely to lead to a legal dispute.

12.2. Dealer shall inform 3rd Light without delay of any product defects and risks in the use of the Contractual Products of which it becomes aware.

12.3. This Agreement does not affect the product liability of 3rd Light in accordance with the following paragraph 4.

12.4. Dealer will not change Contractual Products without the prior consent of 3rd Light. This also applies with regard to their equipment and packaging as well as warning notices. If Dealer violates this obligation, he shall be liable vis-à-vis 3rd Light in the internal relationship for product liability claims of third parties if and to the extent that the damage incurred was caused by Dealer's conduct.

## **13. Infringements of Intellectual Property Rights**

13.1. 3rd Light shall not be liable for infringement of intellectual property rights which arise because of instructions of Dealer or a use of the Contract Products not foreseeable by 3rd Light or because of changes made to them by the distributor or at its cause. Dealer is obliged to ensure for itself whether the contract products infringe any intellectual property rights of third parties in his territory.

13.2. If, in addition, at the time of the passing of the risk, an infringement of intellectual property rights arises within the responsibility of 3rd Light, for which 3rd Light is liable, 3rd Light shall provide alternative performance as follows:

- a) 3rd Light modifies the Contractual Products in such a way that an intellectual property right of a third party is no longer infringed and the functionality or usability of the Contractual Products is not unreasonably impaired;
- b) 3rd Light exchanges the infringing items against products of which the use in accordance with the Agreement does not infringe any intellectual property right and is acceptable for Dealer and its customers;
- c) 3rd Light acquires the utilisation right which corresponds to the objectives of this agreement or is otherwise adequate.

Further rights and claims to reduction, withdrawal and/or compensation for damages exist only on the basis of this Agreement.

13.3. Dealer is obliged to inform 3rd Light at the earliest possible time in writing if a third party alleges or claims in or out of court an intellectual property right with regard to the Contract Products. Prior to the acknowledgement of any such claim of an alleged infringement of intellectual property rights, 3rd Light shall be given the opportunity to state its position. On request, 3rd Light is to be given authority to conduct negotiations or to litigate the legal dispute with the third party for its own account and in its own responsibility.

13.4. If Dealer is in culpable breach of its obligation under the previous Section 16.3, he is liable for the damage caused thereby. Claims under Section 16.2 above are excluded to that extent.

#### **14. Liability**

14.1. 3rd Light is liable to Dealer only for damage caused by intent or gross negligence. Other than in case of intent, 3rd Light is not liable for indirect damage and consequential damage, in particular, not for loss of profit, interruption in production and/or interruption of operations at the distributor or its customers. Mandatory statutory claims of Dealer are not affected hereby; this applies, above all, to claims due to harm done to a person's life, body or health or under the German Product Liability Act (Produkthaftungsgesetz).

14.2. Where the damage is due to the culpable breach of a material contractual duty or to the breach of a duty the discharge of which allows the proper performance of the agreement in the first place and on the fulfilment of which the distributor can regularly rely on and if 3rd Light is responsible for such breach of duty, 3rd Light will be liable in accordance with the statutory provisions. In the event of simple negligence, however, liability shall be limited to foreseeable and typical damage.

14.3. All claims arising from this Agreement shall become statute-barred after 12 months. The period shall commence when the claim arises, but not before the claiming Party has become aware of the facts giving rise to the claim. This shall not affect liability for intentional or grossly negligent breaches of duty and liability for damages arising from injury to life, limb or health and for liability under the Product Liability Act (Produkthaftungsgesetz); in this respect, the respective statutory limitation period and the respective statutory commencement of the limitation period shall apply.

#### **15. Intellectual Property Rights**

15.1. All intellectual property rights to the Contractual Products, including copyrights, trademark rights, firm name or other designations and know-how insofar as they exist are the entitlement of 3rd Light or a company affiliated with 3rd Light.

15.2. Dealer undertakes that it will not contest the intellectual property rights itself or have same contested by third parties, or support third parties in contesting same in any form. If Dealer is in breach of this provision, 3rd Light is entitled to terminate this agreement without notice for good cause.

15.3. Dealer may not obtain protection for or register trademarks, trade names or other designations of 3rd Light or such trademarks, trade names or other designations which are identical or similar to those of 3rd Light or intellectual property rights - insofar as these are susceptible to registration. Accordingly, the distributor is likewise not entitled to adopt and register the aforesaid intellectual property rights and/or designations as part of its business name or domain name in the commercial register, any other public register or any other certification centre.

#### **16. Agreement Period and Termination**

16.1. This Agreement is concluded for a period of 12 months, beginning on [REDACTED]. The agreement will automatically renew upon its due date for a further 12 months, unless terminated.

16.2. The Agreement can be terminated by either Party with one (1) months' notice to the end of any [calendar month] and must be in written form.

16.3. The right to terminate this Agreement with immediate effect for good cause by 3rd Light shall include the following, but are not limited to:

- a) a change in Dealer's ownership or management structure, unless interference with the legitimate interests of 3rd Light is not thereby to be anticipated.
- b) if insolvency proceedings have been opened against Dealer's assets on the basis of a final court decision or the opening of such insolvency proceedings has been rejected for lack of assets;
- c) a not insignificant breach of obligations arising from the purchase agreements concluded under this Agreement, in particular non-payment of purchase price claims;
- d) serious breaches of the Agreement that lead to the loss of mutual trust or the basis of the business;
- e) full or partial and significant closure of business, with an actual or anticipated duration of more than eight (8) weeks.

## **17. Consequences of the Ending of the Agreement**

17.1. The termination and ending of this Agreement shall not affect the purchase contracts concluded in the course of its performance. In the event of ordinary termination, 3rd Light will continue to supply Dealer so that the latter can perform the transactions concluded with third parties in the normal course of business until the expiry of the agreement

17.2. Upon termination of the Agreement, 3rd Light is entitled - but not obliged - to take back the Contractual Products not yet sold by Dealer at the prices charged to it less a flat-rate deduction of 10% to cover the costs of taking back the products at the most at their current market value.

17.3. Documents provided to Dealer may no longer be used from the ending of the Agreement and are to be returned unless consumed as intended.

17.4. The use of intellectual property rights and designations in the sense of this Agreement shall be ceased at the ending of the Agreement. The same applies to the use of domain names. Excepted therefrom shall be a transition period to be agreed with 3rd Light. There is no obligation to grant a transition period.

17.5. Dealer shall not be entitled to any compensation or any kind of indemnity due to the termination of this contractual relationship, irrespective of the legal grounds.

## **18. Completeness and Written Form, Relations to Previous Agreements**

18.1. This Agreement, together with the Annexes, constitutes the entire Agreement between the Parties. Amendments and supplements to this Agreement must be made in writing in order to be effective. This also applies to the waiver of the written form requirement.

18.2. Upon the entry into force of this Agreement, all previous Agreements, if any, between the Parties concerning the business relations governed by this Agreement shall be cancelled.

## **19. Assignment and Set-off**

19.1. Dealer may not assign any rights or obligations under this Agreement to any third party without the prior written consent of 3rd Light.

## **20. Applicable Law and Place of Jurisdiction**

20.1. The law of the Federal Republic of Germany shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

