

## **Dealer Agreement Instructions**

Authorized Signatures: The “Debtor” Signature blank is to be filled in as follows.

<b>PROPRIETORSHIP:</b>	The owner must sign.
<b>PARTNERSHIP:</b>	The signature of any of the partners is sufficient.
<b>CORPORATION:</b>	An Executive Officer, either the President, Vice President, or Secretary must sign,

Form Guidelines:

A. Credit Application

Please complete thoroughly.

B. Insurance Statement

This is to name Texas Outdoor Power Distributors, Inc. as a loss payee on losses (fire, Theft, etc) pertaining to inventory of which a balance is owed to TOPE.

C. Dealer Agreement

D. Security Agreement

Please sign on the backside and have your signature witnessed (ATTEST).

E. Continuing Guaranty

We ask for business principal and principal spouse’s signature and home address. This document Also requires a witness for signatures.

F. Financial Statement

In order to help insure a proper credit line, we respectfully request a copy of your most recent financial statement. Should you not have one, a simplified form is enclosed.  
Be assured that this information is kept in strict confidence

### **Open Account and Floor Plan Terms Summary**

Texas Outdoor Power Equipment Distributors, Inc. has open account and floor plan terms available.

Participating Floor Plan Companies

Transamerica Commercial Finance

Terms (Pre-Season and In-Season) are outlined in each product line’s marketing program.

Our open account billing cycle runs from the 26<sup>th</sup> through the 25<sup>th</sup> of the following month. (Ex.- January billing is from December 26<sup>th</sup> – January 25<sup>th</sup>). Should the cut off date (25<sup>th</sup>) fall on a weekend, the preceding Friday will be the cut off date. Regular terms are due Net 10 the following month.

Net Due Date and/or Discount Date (which ever is applicable) is shown on the face of each Invoice.

### Credit Application

For the purposes of obtaining merchandise from TEXAS OUTDOOR POWER EQUIPMENT DISTRIBUTORS, INC. on credit, the following statement in writing is made, intending that it should be relied upon as correct.

<b>Firm Name:</b> _____
D.B.A.: _____
Street Address: _____
Mailing Address: _____
City: _____ State: _____ Zip: _____
Business Phone: _____ Fax: _____

Business Lic. No.: _____	Annual Gross Sales \$: _____
No. Years This Business: _____	Taxable: _____ Yes _____ No
Ownership: <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Proprietorship	

Owner's Name(s): _____
Title: _____
Soc. Security No.: _____
% of Ownership: _____

Name of Spouse: _____
Home Address: _____
How Long: _____
Own/Rent: _____
Res. Phone: _____

Accounts Payable Representative: _____
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**Credit Application**

**BANK REFERENCES**

Name _____	
Address _____	
Phone Number _____	Bank Officer _____
Type of Account _____	How Long? _____

Name _____	
Address _____	
Phone Number _____	Bank Officer _____
Type of Account _____	How Long? _____

**TRADE REFERENCES**

**Give only names of those you buy from on open account for at least one year.**

Name _____		
Address _____		
Phone Number _____	Fax _____	High Credit \$ _____

Name _____		
Address _____		
Phone Number _____	Fax _____	High Credit \$ _____

Name _____		
Address _____		
Phone Number _____	Fax _____	High Credit \$ _____

Do You Own Your Business Location? _____
If No, State Name, Address and Telephone Number of Landlord
_____
_____

**Insurance Authorization**

**Name of Agency:** \_\_\_\_\_

Address: \_\_\_\_\_

City, State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone Numer: \_\_\_\_\_

RE:Policy No: \_\_\_\_\_

Expiration Date: \_\_\_\_\_

To Whom It May Concern:

Please forward a copy of the above identified policy covering inventory along with a loss payable clause favoring the company named below at the address indicated:

Texas Outdoor Power Equipment, Inc.  
111 Halmar Cove  
Georgetown, TX 78628

*Should you have any question relative to this request, please contact me.*

Dealer Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State: \_\_\_\_\_ Zip: \_\_\_\_\_

Signature: \_\_\_\_\_

**\*\*Execute this form if you wish to provide insurance coverage through your insurance agent.\*\***

## DEALER AGREEMENT

THIS AGREEMENT, between Texas Outdoor Power Equipment Distributors, Inc., with its principal place of business at 111 Halmar Cove, Georgetown, Texas 78628 (hereafter called "Company"), and \_\_\_\_\_ (Dealership Name) (Indicate if Individual, Partnership or Corporation.) with its place of business for the retail sale of Company products covered by this Agreement located at: City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ (hereafter called "Dealer") (hereafter called "Agreement") to become effective the \_\_\_\_ day of \_\_\_\_\_ 20\_\_ (hereafter called the "Effective Date.") .

### I. PURPOSE

This Agreement is to establish a relationship between Dealer and Company for the retail sale of Company's products including parts and accessories therefore (hereafter called "Products") and to establish the responsibilities of the parties. This Agreement is to establish Dealer as a Dealer of Company with the non-exclusive right to sell at retail Company's Products, including parts and accessories therefore (hereafter called "Products") in the trade area served by Dealer and to establish the responsibilities of the parties.

Company reserves the right to sell, in the trade area served by Dealer, to federal, state and local governments and educational institutions. Company may appoint other Company dealers in the trade area served by Dealer.

### II. TERMS OF SALE

Upon acceptance by Company of a Dealer order for Products, terms of purchase will be as set forth in Company's most currently published "TERMS AND DISCOUNT SCHEDULE". Company will have the right to change the Product offering and the terms and prices therefore at anytime and from time to time. **Need client decision of option a:** Prices and terms of Products shall be those in effect at the date of F.O.B. shipment, Company location. Or option b: Prices and terms for Products shall be those in effect on the date Company accepts the Dealer order. All shipments are F.O.B., Company location).

### III. CREDIT

When credit is extended to Dealer, Dealer agrees that title to all Products with right of repossession for default shall remain with Company until the purchase price is paid in full. Credit will be extended to Dealer after execution and filing of security agreements and related documents satisfactory to Company. At Company's request, Dealer shall provide Company with yearly financial statements, including complete balance sheet and profit and loss statement, and related information Company may reasonably request. Company shall take reasonable measures to preserve the confidentiality of all such information within the Company. Failure by Dealer to promptly provide such information, or should Company otherwise deem itself insecure, Company may suspend or reduce Dealer's credit limit, or take what other steps necessary to protect Company's interest.

Dealer shall permit persons designated by Company, during normal business hours, to enter Dealer's place of business, to inventory Products at Dealer's location and to examine, copy and audit all Dealer records and documents relating to the Products.

### IV. WARRANTY

Company Products are sold subject only to the applicable Company standard printed warranty in effect at the time of sale and such warranty shall be in lieu of all other warranties express or implied. Dealer is not authorized to assume, on Company's behalf, any liabilities in connection with Dealer's sale of Product other than as set forth in such Company standard warranty. Dealer shall indemnify and hold Company harmless with respect to any Dealer representation beyond those in such Company warranty. COMPANY MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

### V. DELIVERY

Company shall not be responsible for failure to deliver Products on time or to fill orders when such delay or failure results from causes beyond Company's control.

### VI. RESPONSIBILITY OF DEALER

Dealer shall:

- (A) Maintain an inventory of Products in keeping with the sales potential in the area served by dealer and satisfactory to Company.
- (B) Aggressively promote the sale of Products, through, but not limited to, advertising, open houses, farm shows, field demonstrations and other applicable gatherings using Company's advertising and/or sales promotion material as provided by Company, and by participation in early order and other sales related programs offered by the Company.
- (C) Extend to Dealer's customers Company's applicable standard printed Product warranty which is in effect at the time of retail sale. Dealer understands that no other warranty is expressed or implied.
- (D) Properly staff and train sales, service and parts personnel with respect to Products.
- (E) Set up Products following Company's standard setup instructions and explain proper operating and safety instructions to Dealer's retail customers, together with delivery of applicable written operating and safety instructions.
- (F) Obtain written consent of Company if Dealer intends to open any additional business location for the sale or service of Products or for the purpose of displaying Products at any location other than the business location described above.
- (G) Carefully store and care for all Products for which Dealer is indebted to Company under this Agreement and protect same from damage or loss from any cause. Dealer shall maintain insurance of the types, in an amount and non-cancelable without 10 days written notice to Company from the insurer, covering any such damage or loss, all satisfactory to Company.
- (H) Encourage retail customers to use Company's original equipment parts (OEM) in the repair and replacement of Products in order to maintain the Products performance and high quality. Dealer shall not represent non-OEM parts as Company OEM parts.
- (I) Cooperate with Company's Annual Performance Review, and any other programs or matters pertaining to the administration of this contract.

## VII. TERM

The term of this Agreement shall be for a period of one year, commencing on the effective date hereof. This Agreement shall be automatically renewed for successive terms of one year each unless either party shall give the other notice of non-renewal not less than sixty (60) days prior to the end of the then current term or unless this Agreement is otherwise terminated as provided herein.

## VIII. TERMINATION

Unless otherwise provided by applicable state law, either party may terminate this Agreement without cause and for any reason, upon not less than ninety (90) days written notice given to the other party, provided that nothing contained herein shall prevent Company from immediately terminating this Agreement in the event of bankruptcy or insolvency of Dealer, Dealer's failure to pay any amounts owing Company when due, Dealer's failure to hold proceeds of the sale of Products in trust for Company, or Dealer's failure to maintain satisfactory insurance with respect to Products. Upon termination for any reason, all amounts owed Company will become immediately due and payable.

## IX. REPURCHASE

Unless otherwise provided by applicable state law, if this Agreement is terminated, Company will repurchase and Dealer will resell, all new, unused, current, complete and undamaged wholegoods Products at the prices of original invoice less any applicable discounts or payments made thereon and less a \_\_\_% handling charge computed on Dealer's net price. In addition, Company will repurchase Dealer's Product parts subject to such parts being current, unused and in a new physical condition and appearance, including packaging, and suitable for reshipment by Company to other dealers. Company will not repurchase parts whose condition may have deteriorated while in Dealer inventory. The price to be paid or credited to Dealer's account for such parts will be at current dealer net price less a \_\_\_% handling charge. Dealer will provide invoices showing proof of purchase from Company.

## X. TRADEMARKS/TRADE NAMES

Dealer is hereby licensed to use Company's name and trademarks in the normal course of distributing Company's Products and performing related services under this Agreement. Dealer agrees not to use Company's name as part of Dealer's name or in any manner which would misrepresent the relationship between Dealer and Company. Dealer may represent itself as an "authorized dealer" of Company, and, with prior approval of Company, may use Company's name and Product related trademarks on signs or other advertising or promotional material. Dealer's license to use Company's name and trademarks is limited and Dealer shall abide by restrictions and limitations imposed by Company from time to time. Upon termination of this Agreement, Dealer shall immediately cease representing itself as a dealer of Company and shall cease use of all Company names and trademarks and any signs or other material, of whatever nature, identifying Dealer as a dealer of Company shall be removed or obliterated.

XI. GENERAL

- (A) Dealer is not an agent or joint venturer of Company nor is Dealer authorized to incur any obligations or make any representations on behalf of Company.
- (B) This Agreement is binding on the parties, their heirs, executors, administrators, successors and assigns.
- (C) Dealer may not assign this Agreement or any provisions thereof to another dealer or party without the written approval of Company.
- (D) If any provision of this Agreement shall be held unenforceable, then the remainder of this Agreement shall not be affected thereby.
- (E) No waiver by Company of any default under this Agreement by Dealer shall be deemed a waiver of any prior or subsequent default by Dealer hereunder.
- (F) All understandings and agreements between the parties are contained in this Agreement which supersedes and terminates all other agreements between the parties. The rights of either party pertaining to Products sold by Company to Dealer under previous arrangements will be governed by this Agreement, provided, however, that nothing contained in this Agreement will, in any way, alter or change the rights and obligations of the parties pursuant to any security agreements or other agreements presently in existence.
- (G) Company reserves the right to modify and/or update this Agreement consistent with the modification and/or updating of all agreements Company has with other similar dealers, and replace or substitute such modified or updated agreement for this Agreement and such replacement or substitution shall not constitute termination of this Agreement. Failure of Dealer to execute such replacement or substitution agreement within 30 days of it being offered shall constitute automatic termination of this Agreement by Dealer.
- (H) Dealer agrees that application of any provision of this Agreement or related documents, or any other change implemented by Company, if equally applied to all other similar Company dealers, shall not constitute a change in the competitive circumstances of Dealer.
- (I) This Agreement will be governed by the laws of the State of Texas.

(Dealer Name)

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

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

Date : \_\_\_\_\_

TEXAS OUTDOOR POWER EQUIPMENT, INC.

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

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

Date: \_\_\_\_\_

## SECURITY AGREEMENT

THIS SECURITY AGREEMENT, enters into and effective this \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, (the "Effective Date") by and between TEXAS OUTDOOR POWER EQUIPMENT, INC., a Texas Corporation (hereinafter referred to as "Secured Party" and \_\_\_\_\_ (hereinafter referred to as "Dealer")):

WITNESSETH:

WHEREAS, Dealer and Secured Party desire to enter into a Security Agreement whereby Dealer will grant Secured Party a purchase money security interest in certain goods and merchandise which will from time to time be sold to Dealer by Secured Party:

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other valuable considerations, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

- (1) **PURCHASE MONEY SECURITY INTEREST:** To secure the payment of the purchase price of the goods and merchandise from time to time hereafter sold or to be sold by Secured Party to Dealer, the Dealer hereby grants a purchase money security interest to Secured Party in all of such goods and merchandise described in Exhibit A attached hereto and incorporated herein by reference (the "Collateral") and in all future shipments of goods and merchandise now or hereafter placed upon the premises known as \_\_\_\_\_, located at \_\_\_\_\_ (the "Premises"). Dealer agrees to do, make, execute and deliver all such additional acts, things, assurances and instruments as reasonably requested by the Secured Party to protect the Secured Party's rights hereunder, including maintaining complete records of the Collateral.
- (2) **PROCEEDS OF GOODS AND MERCHANDISE:** The Dealer shall have the right to sell or rent the goods and merchandise covered by the terms of this Agreement. The security interest granted to Secured Party herein shall attach to any proceeds from such sale or rental.
- (3) **SEGREGATION OF GOODS AND MERCHANDISE:** The Dealer Agrees to keep the goods and merchandise, and proceeds therefrom, subject to the security interest created herein, separate and apart from its other inventory and at all times capable of identification as the goods and merchandise subject to the Secured Party's purchase money security interest. Dealer agrees with respect to the Collateral to keep full, complete, and unencumbered title to such goods subject only to Secured Party's security interest created herein. Dealer shall allow Secured Party to inspect its premises during normal business hours to determine if Dealer is observing such segregation. The Dealer further agrees not to remove any of the goods and merchandise subject to this Security Agreement from the Dealer's address set for above, without the written consent of the Secured Party, except for the purpose of sale or rental and subject to the provisions and conditions herein provided.
- (4) **INSURANCE:** The Dealer agrees to keep the goods and merchandise fully insured at its expense against such risks as the Secured Party may request, the insurance policies to be satisfactory to Secured Party, and payable to Secured Party as an additional insured as its interest may appear.
- (5) **EVENTS OF DEFAULT:** The Dealer shall be in default under this Agreement upon the happening of any of the following events:
  - (a) default by Dealer in the payment when due of any invoice or invoices covering goods or merchandise subject to this Agreement.
  - (b) the Dealer's misrepresentation or misstatement in connection with, noncompliance with or nonperformance of any of its obligations or covenants under this Agreement; or
  - (c) if bankruptcy or insolvency proceedings are instituted by or against the Dealer or if the Dealer makes any assignment for the benefit of creditors.
- (6) **SECURED PARTIES' RIGHTS UNDER DEFAULT:** If the Dealer shall be in default under the terms of this Agreement, the Secured Party may exercise and shall have any and all rights and remedies afforded to it by the Texas Uniform Commercial Code. In addition, the Secured Party shall have the right to take the following actions:

- (a) foreclosure on the security interest by any available judicial procedure; or
- (b) take possession of the goods and merchandise and to prepare or process the goods and merchandise for disposition or sale; or
- (c) to accept the goods and merchandise in discharge of the obligations secured by the Agreement.

Dealer agrees to pay to Secured Party on demand any and all expenses, including legal expenses and reasonable attorney's fees, incurred or paid by Secured Party in protecting or enforcing any right of the Secured Party hereunder.

- (7) **MODIFICATION**: No change or modification of this Agreement shall be valid unless the same be in writing and signed by all parties hereto.
- (8) **CONSTRUCTION**: This Agreement shall be deemed to have been made under and shall be governed by the laws of the State of Texas in all respects including matters of construction, validity and performance.

Secured Party:  
TEXAS OUTDOOR POWER EQUIPMENT, INC.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Credit Manager

Dealer

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Dealer

## CONTINUING GUARANTY AGREEMENT

For valuable consideration, receipt of which is hereby acknowledged,

\_\_\_\_\_ (name of individual hereafter referred to as "Guarantor") hereby unconditionally covenants, promises and guarantees that Guarantor will fully and promptly pay and discharge all of the performance, including without limitation, all of the existing and future obligations of \_\_\_\_\_ ("Obligor") pursuant to the Agreement by and between Obligor, as Buyer, and to Texas Outdoor Power Equipment Distributors, Inc., as Seller ("Obligee"), dated \_\_\_\_\_, 200\_\_ ("Agreement") with respect to Obligor's purchase of Goods from Obligee, including without limitation, any extension of credit by Obligee in Obligor's favor, all such liabilities of the Obligor hereafter referred to as the "Obligations."

In the event that Obligor fails to promptly pay the Obligations when due under the Agreement, then Guarantor will become immediately liable for the amounts of such Obligations on the terms and conditions contained in this Continuing Guaranty Agreement ("Guaranty").

Guarantor waives any rights to require Obligee to: (i) first proceed against the Obligor for Obligations due; (ii) proceed against or exhaust any security received by Obligee from Obligor; or (iii) Pursue any other remedy available to Obligee prior to proceeding against Guarantor.

The obligations of Guarantor hereunder are independent of the obligations of the Obligor, and a separate action or actions may be prosecuted against Guarantor whether any action is brought against the Obligor or whether the Obligor be joined in any such action or actions. Obligee may, without notice to Guarantor and without affecting Guarantor's liability hereunder, do any or all of the following: (i) renew, extend, accelerate or otherwise change the time for payment of the Obligations or otherwise change the terms of any Obligation to Obligee; (ii) hold security for payment of this Obligations or any indebtedness of Obligor to Obligee, and exchange, enforce, waive and release and such security; (iii) apply such security directly and order any manner of sale thereof as Obligee in its discretion may determine; and, (iv) assign, without notice, this Guaranty in whole or part.

Guarantor waives any defenses arising by reason of any disability or other defense of Obligor or by the reason of cessation of any cause of the liability of Obligor, and waives the benefit of any statute of limitations applicable to any indebtedness of Obligor or to any liability of Guarantor hereunder. Until such time as all obligations of Obligor to Obligee shall have been paid in full, Guarantor shall have no right of subrogation and waives any right to enforce any remedy which Obligee now or may hereafter have against Obligor, and waives any benefit of any security now or hereafter held by Obligee to insure Obligor's performance. Guarantor waives all presentments for payment, demand for performance, protests, notice of protest, notice of dishonor, and notice of acceptance of this Guaranty, and of the existence, creation, or incurring of new additional indebtedness and waives the benefit of any applicable exemptions and homestead laws. Any indebtedness of Obligor now or hereafter held by Guarantor is hereby subordinated to the indebtedness of Obligor to Obligee.

This Guaranty may be executed simultaneously in one or more counterparts, each of which shall be deemed original, but all of which together shall constitute one and the same instrument. For purposes of this Guaranty, Obligor and Guarantor shall include the plural if there be more than one (1) Obligor of Guarantor. If there is more than one Guarantor, their liabilities hereunder shall be joint and several, and each shall be deemed a primary Obligor: The liability of a Guarantor shall not be affected by the death of any other guarantor. Any married person who signs this Guaranty hereby expressly agrees that recourse may be had against his/her separate property for all his/her obligations under this Guaranty.

The validity of the Guaranty and any of its terms or conditions, as well as the rights and duties of the parties hereunder, shall be interpreted and construed pursuant to and in accordance with the law of the State of Texas.

This Guaranty has been entered into by Obligee in reliance upon the financial, business, and personal reputation and credit worthiness of Guarantor. Therefore, this Guaranty may not be transferred, delegated or assigned by Guarantor without Obligee's prior written consent, which may be withheld by Obligee in Obligee's sole and absolute discretion.

Any capitalized term appearing in this Guaranty not defined herein shall have the same meaning of such term as defined in the Agreement.

In the event any legal action is necessary to enforce the terms of this Guaranty, or any subsequent agreement between the Guarantor or Obligee, such action will be brought and maintained only in the proper court in Williamson County,

Texas, or in the United States District Court, Western District, of Texas. The prevailing party in any such action or proceeding shall be entitled to reasonable attorney's fee and costs.

This continuing Guaranty shall insure to the benefit of and bind the heirs, administrators, executors, successors and assigns of Obligee and Guarantor.

All notices required pursuant to this Continuing Guaranty Agreement shall be deemed actually received five (5) days after their date of deposit in the United States mail, first class, postage prepaid, address as follows:

Obligor:

Address:

Telephone:

Facsimile:

E-mail Address:

Guarantor (Individual): \_\_\_\_\_

Address:

Telephone:

Facsimile:

E-mail Address:

In witness whereof, the undersigned has executed this Continuing Guaranty Agreement on \_\_\_\_\_, 200\_.

Guarantor \_\_\_\_\_ (Individual Name - Owner):

Credit Application – Financial Information

<b>ASSETS</b>	
Cash on Hand in Banks	
Accounts Receivable	
Notes Receivable	
Real Estate	
Automobiles	
Other Assets- Itemized	
<b>TOTAL ASSETS</b>	
<b>LIABILITIES AND NET WORTH</b>	
Notes Payable Banks	
Secured	
Unsecured	
Notes Payable Other	
Accounts and Bills Payable	
Accrued Taxes and Interest	
Mortgages Payable	
On Real Estate	
Security Agreements	
Other Debts- Itemize	
<b>TOTAL LIABILITES</b>	
<b>NET WORTH</b>	

PROOF OF AUTHORIZATION

I (we) hereby authorize TOP Equipment, hereinafter called TOPE, to initiate debit entries to my (our) account indicated below and the financial institution named below, hereinafter called Financial Institution, to initiate a single or recurring debit entries equal to or less than \$\_\_\_\_\_. I (we) acknowledge that the origination of ACH transactions to my (our) account must comply with the provisions of U.S. law.

\_\_\_\_\_  
Financial Institution

\_\_\_\_\_  
City/State/Zip

\_\_\_\_\_  
Routing Number

\_\_\_\_\_  
Account Number

Type of Account: \_\_\_\_\_ Checking \_\_\_\_\_ Savings

This authority is to remain in full force and effect until TOPE has received written notification from me at the address indicated on this form (or either of us) of its termination in such time and manner as to afford TOPE and Financial Institution a reasonable opportunity to act on it.

**I am a duly authorized check signer on the Financial Institution account identified below, and authorize all of the above as evidenced by my signature below.**

\_\_\_\_\_  
Print or Type Individual Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Please Attach Copy of Voided Check to This Form!!!