

# MISSISSIPPI

## 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: \_\_\_\_\_ (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. Dealer represents that the Company's Products will not be used for personal use and will be sold to third parties from whom sales and use tax will be collected unless the Buyer is exempt. Dealer has provided Company with a Mississippi Permit to Engage in Business/Sales Tax Permit/Resale Permit, which is attached as Exhibit A and incorporated as part of this Agreement. Dealer, as the Purchaser for resale, agrees to provide Company (TOP) with an executed Permit to Engage in Business/Sales Tax Permit/Resale Permit, or other similar form as the Mississippi Tax Commission may require, for each calendar year. The parties intend for this single Permit to Engage in Business/Sales Tax Permit/Resale Permit to include all merchandise, including parts or accessories, shipped to Dealer during the calendar year.

### 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. 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.

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. Note: This dealer agreement covers location of dealership as shown on this form only.

(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. PARTICIPATION IN MANUFACTURER BID ASSISTANCE PROGRAMS.

Equipment Manufacturers will periodically offer dealers bid assistance for sales to specific classes of customers, such as governmental entities, non profits (Churches, School Districts, etc.). For Dealer rebates, you must obtain written approval from Company Equipment Sales Manager (by Fax or Email) or Michael Elliott ("Mike") for any bid discount above Twenty percent (20%) and you must follow the Claim Procedure set out in the Manufacturer's Program. Dealers are eligible to receive bid assistance credits for sales in their trade area only.

## IX. 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.

## X. REPURCHASE

In accordance with the Texas Business and Commerce Code, Title 4, Chapter 55, Subchapter D, §55.155, if this Agreement is terminated, Company may at Company's sole discretion repurchase and Dealer will resell, all new, unused, unsold, undamaged, and complete equipment, other than repair parts, returned by Dealer, at the Dealer cost of such items, less any applicable discounts or payments made thereon and less a Fifteen Percent (15%) handling charge computed on Dealer's net cost. In addition, Company will repurchase Dealer's new, unused, unsold, undamaged, complete, in new physical condition and appearance, including packaging, and suitable for reshipment by Company to other dealers, the repair parts returned by Dealer, in an amount equal to Eighty-Five Percent (85%) of the current price of such repair parts, if Company handles, packs, and loads the parts. If Dealer handles, packs, and loads such repair parts, Company will repurchase such repair parts in an amount equal to Ninety Percent (90%) of

the current price of such repair parts. Company and Dealer are each responsible for One-half (1/2) of the cost of delivering the inventory to the Company. This includes costs incurred by company should Company employee need to make a trip to Dealer to pick up parts. Company will not repurchase parts or accessories whose condition may have deteriorated while in Dealer inventory. This includes, but is not limited to, rubber items, gaskets, batteries, or trimmer line. Dealer will provide invoices showing proof of purchase from Company.

#### XI. 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.

#### XII. 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 and Dealer agrees to submit to the jurisdiction of the State of Texas.

(J) In the event any legal action is necessary to enforce the terms of this Dealer Agreement, or any subsequent agreement between the Parties hereto, such action shall 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 Dealer Agreement shall insure to the benefit of and bind the heirs, administrators, executors, successors, and assigns of Dealer.

(K) Dealer acknowledges that all of Dealer's purchases or rentals of tangible personal property from Company are exempt from sales and use taxes as sales for resale. Any sale or use taxes imposed on the sale of tangible personal property by any taxing authority will be the responsibility of Dealer to pay, or collect and remit, to the proper taxing authorities.

(L) The person(s) executing this document has the authority, and is authorized, to execute this document in their individual capacity or as agent of any entity named below.

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

Dealer:

Address:

Telephone:

Facsimile:

E-mail Address:

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

Address:

Telephone:

Facsimile:

E-mail Address:

In witness whereof, the undersigned has executed this Dealer Agreement on this the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

Guarantor \_\_\_\_\_, (Individual Name) Title: \_\_\_\_\_

(Dealer Name) \_\_\_\_\_

TEXAS OUTDOOR POWER EQUIPMENT

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

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

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

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

## State of Mississippi Resale Certificate

To: \_\_\_\_\_

The undersigned hereby certifies that the merchandise purchased on each order we shall give, and until this notice is revoked by us in writing, is purchased for resale as tangible personal property or resale as a service subject to tax. As purchaser of such goods and services, we are solely responsible for any sales or use tax due thereon.

We further agree to reimburse you for any and all sales and use tax which you became legally obligated to pay to the State of Mississippi on orders which you received from us. It is our intention and purpose to indemnify and hold you harmless for all costs incurred by you for your reliance on this Resale Certificate furnished by us.

**SALES TAX REGISTRATION  
OF PURCHASE:** \_\_\_\_\_

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

\_\_\_\_\_  
**Purchaser**

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

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

\_\_\_\_\_

**WARNING:**

**This blanket Certificate of Resale must be completed and signed before it is valid.**

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 then \$\_\_\_\_\_. I (we) acknowledge that the origination of ACH transactions to my (our) account must comply with the provisions of U.S. law.

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Financial Institution

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City/State/Zip

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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.**

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Print or Type Individual Name

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Signature

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Date

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