



Authorized Dealer Agreement

This AGREEMENT made between:

Austin Air Systems Limited
500 Elk Street
Buffalo, NY 14210
Phone: 716-856-3700
Fax: 716-856-6023

Herein after referred to as "Austin Air" and

Dealer Name: _____
Company Name: _____
Company Address: _____
City: _____ State: ____ Zip: _____
Phone: _____ Fax: _____
Email: _____

Herein after referred to as "Dealer"

This Authorized Dealer Agreement (Agreement) is entered into by and between Austin Air and Dealer identified above. Intending to be legally bound the parties agree to all of the terms and conditions set forth in this Agreement. The purpose of this Agreement is to establish the rights and responsibilities of the Dealer as an authorized Austin Air Dealer for the Austin Air Product line herein after referred to as "Products"

I. Dealership and Products. During the term of the agreement, Austin Air hereby appoints Dealer the non-transferable right to display and sell Austin Air Products.

II. Obligations of Austin Air. If Dealer abides by all terms of this Agreement and is current on all payments, Austin Air will:

- 2(A). Supply Dealer with Austin Air cleaners in the regular course of its business, consistent with Austin Air's standard credit policies, pricing structure and subject to availability of merchandise.
- 2(B). Make available to Dealer advertising and promotional materials to support the sale of Products.
- 2(C). Unless otherwise agreed in writing, Austin Air shall determine applicable shipping instructions. No terms on purchase orders, invoices or like documents by Dealer shall serve to alter or add to the terms of this Agreement. Austin Air may accept or reject any order in whole or part, at its discretion.

III. Obligations of Dealer. Dealer agrees to:

- 3(A). Display, at all times, all Products listed in their Dealer Program. If the Dealer operates multiple store locations, each location must maintain the minimum display of Products required by Austin Air.
- 3(B). Purchase the minimum required Products commensurate with the pricing status extended to the Dealer. Dealer's pricing status is calculated at the end of each quarter and is subject to adjustment at

Austin Air's discretion.

- 3(C).** Have its retail sales personnel adequately and properly trained with respect to the Products.
- 3(D).** Maintain, as a minimum, a 15-business day supply of inventory and display Products.
- 3(E).** Not offer for sale or sell any Products to any person or entity for the purposes of resale.
- 3(F).** Ensure that all Dealer advertised or promoted prices for the Products shall be the same or higher than Austin Air's Advertising Price Schedule. This policy does not restrict the actual price Dealer may sell the Products for to its customers.
- 3(G). Marketing Activities:** Except as otherwise set forth herein, Dealer shall be solely responsible for all costs and expenses related to advertising, marketing, promoting and selling the Products. Dealer shall use its best efforts to promote honestly and vigorously the marketing and sale of the Products to realize the maximum sales potential for the Products. If Austin Air so elects, Dealer agrees to sell to Austin Air all rights to the marketing materials, designs or publicity developed by or for Dealer at a price equal to Dealer's actual cost. If Dealer wishes to create its own marketing materials, Dealer shall, prior to its use of such materials, submit such materials to Austin Air for approval, which shall not be unreasonably withheld. Austin Air will review such materials promptly. Dealer warrants that all documentation and/or verbal descriptions related to Products made by or for Dealer shall be accurate and made in a professional manner. Dealer shall not modify the written warranties of Austin Air relating to the Products.
- 3(H). Trademarks and Trade Names.** During the term of this Agreement Dealer shall have the right to indicate to the public that it is an authorized Dealer of Austin Air's Products and to advertise such Products under the Trademarks and Trade Names that Austin Air may adopt from time to time ("Trademarks and Trade Names"), provided that all representations of the Trademarks and Trade Names that Dealer intends to use shall first be submitted to Austin Air for approval (which shall not be unreasonably withheld). Nothing herein shall grant to Dealer any right, title or interest in or to the Trademarks and Trade Names. Upon termination of this Agreement, Dealer shall immediately cease to use same.
- 3(I).** Acquire and maintain, at Dealers own expense, liability insurance in amounts reasonably satisfactory to Austin Air, to cover all activities of Dealer.
- 3(J).** That any and all use of the Austin Air Trademark and logo shall be used in accordance with Austin Air's Logo Standards.
- 3(K).** To conduct its business operations in compliance with all applicable Federal and State laws, rules and regulations and refrain from unethical false or misleading advertising, promotions and sales efforts.

IV. Internet Advertisement/Sales. If Dealer proposes to sell, promote or advertise Austin Air Products on the Internet, Dealer specifically agrees to the following conditions:

- 4(A).** If Dealer proposes to create an Internet page or pages containing any reference to Austin Air's name or Products, Dealer must submit the proposed Internet page(s) via e-mail to info@austinair.com for Austin Air's specific written approval prior to the page or its content being posted on the Internet. This protocol will also apply to the following Internet activities, where the Austin Air name, logo or its Products are featured:
1. Any page(s) on a website(s) featuring Products.
 2. In addition to page(s) about Austin Air, any general information page

on any website(s) including, but not limited to: (i). "About Us" pages (ii). "Contact Us" pages (iii). FAQ (frequently asked questions) pages

3. Any additional website(s) owned, controlled or effected by the Dealer, other than the primary domain name, where the AustinAir's name, logo or its Products are featured.
4. Advertising on the Internet, including, but not limited to: (i). Banners, includes the banner's content and where the banner [which site(s)] will be placed. (ii). Portal sites (search engines, yahoo, etc.) All content describing the Dealer's website(s), including the web pages' meta-tags are subject to review. (iii). Click-through search engines. This includes sites which do not sell Products from their site, but display an advertisement or link for any Product with the opportunity to either purchase or display Products on the Dealer's website.
5. Acquiring or using domain names incorporating the words Austin and or Austin Air or Austin Air's product names belonging to AustinAir is strictly prohibited.
6. Selling Products via auction is prohibited.

4(B). Dealers with website(s) are responsible for providing AustinAir with the name(s) of the individual(s) responsible for the creation and maintenance of all pages on the Internet, which involve the use of the Austin Air name, logo or Products. This responsibility includes: (i). Having the name of a person easily available at the Dealership that arranged for the web site(s). (ii). Having the name and telephone number of any third party that created the web site(s) for them. (iii). In the absence of an arrangement with a third party, the dealer assumes full responsibility for making any necessary changes to the page(s) in question within three (3) business days. This time period shall apply to both Dealers and individuals assuming responsibility directly or for third parties.

4(C). If Dealer proposes to modify, in any way, an approved Internet web site(s) or its content, the modification of the page as well as its content must be submitted to Austin Air for specific written approval [section IV (A)]. Austin Air will attempt to provide said written approval within ten (10) business days after receipt, but in any event, the modification to the Internet page(s) and its content cannot be used prior to the receipt of written approval from AustinAir.

4(D). Agrees to ensure that sale of Products over the Internet may only be made through authorized Dealers having authorized Internet pages as provided in this Agreement. Dealer specifically agrees not to sell Austin Air's Products through a non-authorized Internet web site(s), or through any non-authorized affiliate Internet page. An affiliated Internet page will also be deemed to exist if a non-authorized Internet site receives a percentage, commission, or any kind of benefit, direct or indirect, on a transaction by way of the Internet from an authorized Austin Dealer.

4(E). Agrees that at its sole discretion Austin Air may institute new Internet policies at any time during the duration of this Agreement and Dealer specifically agrees to comply with any such revised policies within the time frame imposed by AustinAir.

4(F). Dealer agrees that any Internet advertising of Products must show the price Dealer is selling for. This pricing must be the same or higher than Austin's Advertising Price Schedule as it may be amended from time to time.

V. Return Policy. Dealer hereby agrees to abide by AustinAir's return procedure set forth below. Upon the receipt of a shipment of Products, Dealer will:

5(A). If shipped via FedEx, UPS or courier, inspect each product for shipping damage or factory malfunctions. If any problem is found, Dealer will contact their Austin Air Customer Service Representative immediately. Dealer will obtain and submit within fifteen (15) days an Austin Air Return Authorization Number with the date of shipments, appropriate serial number(s), model(s) and color(s) of damaged Product(s). Damaged shipment(s) or Product(s) must be returned within thirty (30) days.

5(B). If shipped via common carrier (Yellow Freight, Roadway, Preston, etc.), Dealer will sign: "shipment subject to inspection." This allows Dealer 15 days to contact common carrier if there are any damaged goods.

VI. Term and Termination.

6(A). Term The term of this Agreement shall commence on the date of its final execution by an authorized officer of Austin Air and shall continue in force for three (3) years (the "Fixed Term") unless terminated earlier. If both Austin Air and Dealer do not renew this Agreement in writing within sixty (60) days before the end of the Fixed Term, this Agreement shall not be renewed and shall automatically terminate at the end of the Fixed Term and be of no further force or effect. The parties agree that, notwithstanding the number of times this Agreement may be renewed, it is not the intention that it be construed as a contract of indefinite duration.

6(B). Credit Status If Dealer becomes more than thirty (30) days past due on any Austin Air invoice, then Austin Air may immediately terminate this agreement upon giving notice and there upon this agreement shall become void, but without prejudice to the rights of either party to monies due or to become due under this Agreement. Notices hereunder shall be delivered to the addresses for the parties listed herein.

6(C). Adherence The Dealer acknowledges that any violation of this Agreement will lead to an immediate suspension or cancellation of the Dealer Agreement. Reinstatement of the Agreement following any such violation will be solely at the discretion of Austin Air.

6(D). Termination for Cause.

1. If either party defaults in the performance of any provision of this Agreement the non-defaulting party may terminate this Agreement without prior notice. Without limitation, Dealer's failure to provide proper support to a customer shall be cause for termination.

2. This Agreement shall terminate, without notice, (i) upon the institution by or against Dealer of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of Dealer's debts, (ii) upon Dealer's making an assignment for the benefit of creditors, (iii) upon Dealer's dissolution, or (iv) upon the sale, transfer, hypothecation or other disposition of fifty percent (50%) or more of the stock or ownership of Dealer. (v) This agreement may be terminated immediately by Austin Air if Dealer commits a material breach or default of this Agreement.

6(E). Termination for Convenience. Either Austin Air or Dealer may terminate this Agreement at any time, with or without cause, upon seven (7) days prior written notice to the other party.

6(F). Effect Termination. Upon termination of this Agreement for any reason, Austin Air shall not be liable to Dealer for, and Dealer hereby expressly waives all rights to compensation, indemnities or damages of any kind, whether on account of the loss by Dealer of present or prospective profits, commissions, anticipated orders, expenditures, investments or commitments made in connection with this Agreement, goodwill created, or on account of any other reason.

1. Upon termination of this Agreement for any reason whatsoever, Dealer shall immediately pay or cause to be paid to Austin Air all amounts owed to Austin Air. Late payment fees shall apply from the effective date of termination. In addition, Austin Air shall have the right to purchase, at its sole election, and Dealer shall deliver C.O.D. within 10 days of the date when notice of such election is sent, any or all Products in Dealer's inventory or control at cost paid by Dealer less Austin Air's applicable restocking fee and plus any credits in Austin Air's favor. As to any Products not repurchased by Austin Air, Dealer shall have the right to dispose of such products in the regular course of its business.

If, under any applicable law, dealers are entitled to any compensation upon termination for cause or the expiration of a fixed term of their dealer agreements, this Agreement shall be deemed to be a contract for a duration of not more than three (3) years, and shall expire upon the expiration of such three (3) years after the initial effective date of this Agreement. To the extent any such compensation is deemed earned as a matter of law, the parties shall retroactively readjust all prices so that the prices charged to the Dealer shall be increased by the amount necessary to give such compensation to the Dealer as part of the overall pricing and compensation arrangements between the parties, and no additional payments shall be due Dealer from AustinAir.

6(G). Return of Materials. All designs, drawings, photographs, samples, literature, and sales aids of every kind relating to AustinAir Products shall remain the property of Austin Air. Within ten (10) days after the termination of this Agreement, Dealer shall ship such items to Austin Air as Austin Air may direct, at Austin Air's expense. Dealer shall not make or retain any copies of any "Confidential Information," which may have been entrusted to it.

VII. Rights and Confidentiality.

7(A). Proprietary Rights. Dealer agrees that AustinAir owns all right, title, and interest in and to all patents, trademarks, trade names, inventions, copyrights, know-how and trade secrets ("Proprietary Rights") relating to the design, manufacture, operation, documentation or service of the Products and all translations thereof. The use by Dealer of any of these Proprietary Rights is authorized only for the purposes herein set forth, and upon termination of this Agreement for any reason such authorization shall cease.

7(B). Confidentiality. Each party hereto acknowledges that by reason of its relationship to the other herein it will have access to certain information and materials concerning the other party's business, plans, customers, technology and products that are confidential and of substantial value to such party, which value could be impaired if such information were disclosed to third parties. Without limiting the foregoing, each party agrees that it will not use in any way for its own account or the account of any third party, nor disclose to any third party, any information received. Each party shall protect the confidential nature of such Confidential Information with at least the level of care it takes to protect its own confidential information of similar value, but in no event with less than reasonable care.

7(C). Injunctive Relief. The parties agree that any violation by Dealer of any of the proprietary rights or confidentiality restrictions set forth in this Section 7 could cause Austin Air irreparable harm without adequate remedy at law. Austin Air shall be entitled to seek injunctive relief against any such violation or intended violation by Dealer.

VIII. General Provisions.

8(A). Independent Contractors. Austin Air and Dealer are independent contractors. Nothing contained in this Agreement shall be construed to (i) give either party the power to direct and control the day-to-day activities of the other, (ii) constitute the parties as agents, partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking, or (iii) allow Dealer to create or assume any obligation on behalf of AustinAir for any purpose whatsoever.

8(B). Indemnity. Dealer shall be solely responsible for, and shall indemnify and hold Austin Air free and harmless from, any and all claims, damages or lawsuits (including attorneys' fees) arising out of the acts or omissions of Dealer, its employees or agents and from any claims or liabilities arising out of, or connected

to, any breach by Dealer of its obligations under this Agreement, including, without limitation, any penalties, interest, attorneys' fees and disbursements incurred by Austin Air or any person relying upon Dealer's obligations under this Agreement.

8(C). Governing Law. The rights and obligations of the parties under this Agreement shall be governed by and construed under the laws of the State of New York, without reference to conflict of laws principles

8(D). Entire Agreement. This Agreement sets forth the entire agreement and understanding between the parties relating to the subject matter hereof and merges all prior discussions between them. No modification of or amendment to this Agreement shall be effective unless in writing signed by Austin Air. Notwithstanding anything to the contrary, Austin Air may modify the terms, upon 30 days prior notice, given in a fax, letter, electronic mail or other notice.

8(E). Notices. Except as set forth in Section 8 (D), any notice required or permitted by this Agreement shall be in writing and shall be sent by mail, addressed to the other party at the address shown at the beginning of this Agreement. Such notice shall be deemed, to have been given five (5) days after deposit in the mail, except that notice of change of address shall be effective only upon receipt.

8(F). Force Majeure. Nonperformance of either party (except for payment obligations) shall be excused to the extent that performance is rendered impossible by strike, fire, flood, act of God, governmental acts, failure of suppliers or any other reason beyond the reasonable control of the non-performing party.

8(G). No Waiver. The failure of either party to enforce at any time any of the provisions of this Agreement, or the failure to require at any time performance by the other party of any of the provisions of this Agreement, will in no way be construed to be a present or future waiver of such provisions, nor in any way affect the validity of such provision, or the ability of either party to enforce each and every such provision thereafter.

8(H). Non-assignability and Binding Effect. Dealer agrees that its rights and obligations under this Agreement may not be transferred or assigned directly or indirectly without the prior written consent of Austin Air. Subject to the foregoing sentence, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

8(I). Compliance With Laws. Dealer shall comply with all laws and regulations applicable to Dealer with respect to (i) Products, and (ii) the conduct of business generally. Non-compliance by Dealer or its employees or agents shall be deemed to constitute a material default under this Agreement, justifying termination for default under Section 6(D).

8(J). Severability. If any provision of this Agreement becomes or is declared by an arbitrator or court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision. The parties agree to negotiate in good faith and be bound by a substitute, valid and enforceable provision that most nearly effects the parties' intent.

IX. LIMITED LIABILITY. Except as set forth in 6(B), Austin Air's total liability under any cause of action arising under this agreement shall not exceed the amounts received by Austin Air from Dealer under this Agreement in the transaction giving rise to the liability. In no event shall either party have any liability to the other or to any other third party, for any lost profits or costs of procurement of substitute goods or services, or for any other indirect, special or consequential damages resulting from the use of the Products, or the failure of the Products to perform, or for any other reason, or arising under any cause of action; provided, however, that this limitation shall not apply to any breach of the confidentiality obligations set forth in 7(B) or to dealer's exceeding its

authority granted herein. It is acknowledged by the parties that nothing in this Agreement shall limit dealer's obligation to pay amounts already due and owing to AustinAir.

X. Payment. Austin Air shall submit an invoice to Dealer upon each shipment of Product ordered by Dealer. The invoice shall cover Dealer's cost for the Products in a given shipment plus any freight, taxes and other applicable costs initially paid by Austin Air but to be borne by Dealer. The full invoiced amount shall be paid by Dealer at or prior to delivery of all Products. Credit terms, when approved by AustinAir in writing, require payment within thirty (30) days of the date of invoice plus a late payment fee of 1.5% per month, or lesser amount required by law, on amounts not paid within such thirty (30) days. Dealer shall pay all of Austin Air's costs and expenses (including reasonable attorneys' fees) to enforce and preserve AustinAir's collection rights under this Agreement. For Dealer's telephone orders using a credit card, this Agreement constitutes Dealer's signature (or its ordering party's signature) on file with AustinAir.

XI. Assignment. This Agreement may be assigned by Austin Air. This Agreement may not be assigned by Dealer.

IN WITNESS WHEREOF, parties have executed this Agreement on the date indicated below by their signatures.

DEALER NAME: _____ Austin Air Systems, Ltd.

Signature: _____ Signature: _____

By: James McClocklin / Sales Manager

Dated: _____ Dated: _____