



**15950 Downey Avenue  
Paramount, CA 90723  
(310) 438-4466**

**DEALER AGREEMENT**

THIS AGREEMENT, dated and effective the \_\_\_\_\_ day of \_\_\_\_\_ 2018, (hereafter called "Agreement") between **MUSCLE D FITNESS** with its primary place of business at 15950 Downey Avenue, Paramount, CA 90723 (hereafter called "**MD**") and

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(Dealer Name above)

Check if  Individual,  Partnership, or  Corporation with its principal place of business at:

Street \_\_\_\_\_ State \_\_\_\_\_

Zip \_\_\_\_\_

(hereafter called "Dealer").

**PURPOSE**

This Agreement is to establish Dealer as a dealer of MD products with the non-exclusive right to sell at retail MD products, including part and accessories therefore (hereafter called "Products") in the trade area served by the Dealer and to establish the responsibilities of the parties. All potential dealers **MUST** be interviewed by one of the principles of MD prior to becoming an authorized dealer in order to obtain final approval.

**AUTHORIZED SALE AND LOCATION**

MD hereby authorizes Dealer to sell and display the Products at the following Authorized Location (s)...attach separate list in Exhibit A if necessary:

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**PRICING AND TERMS**

Terms of payment are 100% prepaid by dealer before shipping. Dealer agrees to make payment for the Products in accordance with the schedule and amounts set forth in the invoices and price lists provided by MD. Prices are subject to change without notice. Customer agrees to pay prices in effect at the time of shipment. There will be a \$75 charge for every check returned due to insufficient funds.

### **RESALE CERTIFICATES & BUSINESS LICENSES**

Dealers will submit copies of their respective business licenses. California dealers must have a State Resale Permit and fill out the Resale Form for MD.

### **RETURNS /CANCELLATIONS**

Goods may not be returned and orders once accepted may not be cancelled without MD's prior written consent. Authorized returns are subject to a 20% restocking fee and returning party will be responsible for all shipping charges. **It is MD's option to REPAIR or REPLACE equipment that is damaged or not operating correctly.**

### **INSURANCE SECTION**

Dealer will obtain and maintain at Dealer's cost Commercial General Liability Insurance of at least \$1,000,000.

### **TERRITORY**

No territorial rights of any kind are conferred upon Dealer by this Agreement. MD expressly reserves the right to determine its distribution of Products and to authorize the sale of Products and to authorize the sale of such Products at such locations, and in such manner, and by such Dealers as MD deems appropriate. Any statement by any person which is inconsistent with this section is unauthorized and of no force or effect, and Dealer agrees to report any such statement to MD's corporate headquarters immediately and in writing.

### **INTERNET SALES**

Dealer is authorized to sell and advertise Products on its own website. **However, all MAP pricing for every Product will be followed. MAP is equal to MD's MSRP. Any Promotional discounts by Dealer are not allowed to bring the final pricing below MAP pricing.** Failure to adhere to these guidelines may result in immediate termination of the Agreement. MAP pricing will be set for each Product and sent to Dealer. Any updates will be in writing.

**Delivery and installation of online sales made to customers by any dealer out of the geographic area in which the dealer is located MUST be handled by the dealer.** MD is not responsible for the logistics required to make the delivery. If the MD equipment must be assembled and palletized to ship to the final customer, then there is a SURCHARGE to be determined depending on the items being sold. Those charges will vary and will be on the final invoice sent to the dealer prior to shipment.

### **WARRANTY**

MD Products are sold subject only to the applicable MD 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 MD's behalf, any liabilities in connection with Dealer's sale of Product other than as set forth in such MD standard warranty. Fitness equipment warranty extends to original end user only. MD

MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, AND NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Upon approval by MD, Dealer may use its own service group for warranty work providing that the time and costs provided meet the maximum allotted time frames for any particular warranty repair situation.

#### **DELIVERY**

MD shall not be responsible for failure to deliver Products on time or fill orders when such delay or failures results from causes beyond MD's control. Risks of Loss. Delivery of goods to carrier shall be deemed delivery to Customer, and thereupon title to such goods, and risk of loss or damage, shall be Customer's. Any claim by Customer against MD for shortage or damage occurring prior to such delivery to carrier must be made in writing within seven (7) days after receipt of shipment and accompanied by original transportation bill of lading signed by carrier noting that the carrier received goods from MD in condition claimed.

#### **RESPONSIBILITIES OF DEALER**

Dealer shall:

Set-up Products following MD's standard set up instructions and explain proper operating and safety instructions to Dealer's retail customers, together with delivery of applicable written operating and safety instructions. Dealers will also provide service to Dealer's retail customers in a manner satisfactory to MD. If MD deems that adequate service has not been provided, MD reserves the right to procure adequate service through alternative service providers and Dealer agrees that the cost of such service will be the responsibility of Dealer. **If any Dealer decides to use an independent delivery and installation company, it is the responsibility of the Dealer to make sure all MD equipment is operational and cosmetically acceptable. MD is not liable for the oversights and/or mis-assembly of any Dealer's chosen independent delivery and installation company. Dealer must handle customer inquiries.**

Obtain consent of MD if Dealer intends to open any additional business location for the sale, service, or display of Products that include MD at any location other than the business location(s) described above.

Encourage retail customers to use MD's original equipment parts 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 MD OEM parts.

#### **BACKORDERS**

MD maintains a very large inventory of all advertised equipment. The goal is to have all items in stock so that shipments can be made on a timely basis to customers. However, given the fact that over 150 items are part of MD's inventory, it is nearly impossible to have all items in stock 100% of the time. **Please check with MD before promising any firm delivery date for all items that you may have on your purchase order. If an item is backordered, priority is given for items that have been paid in full.** Thus, if

an order has been paid for by the dealer, any items that might be on backorder will be allocated from the next incoming shipment to that dealer. If the dealer cannot wait, a refund will be offered to the dealer or another similar item can be substituted at a like cost if the dealer agrees.

#### **TERM**

The term of this Agreement shall be for a period on one (1) year, commencing on the effective date hereof. This Agreement shall be automatically renewed for successive terms of one (1) year unless either party shall give the other notice of non-renewal not less than 30 days prior to the end of the then current term or unless the Agreement is otherwise terminated as provided therein.

Unless otherwise provided by applicable state law, MD may terminate this Agreement with due cause, upon 14 days notice given to the other party, provided that nothing contained herein shall prevent MD from immediately terminating this Agreement in the event of a bankruptcy or insolvency of Dealer; Dealer's failure to pay any amounts owing MD when due; Dealer's failure to maintain satisfactory insurance with respect to Products; or any other breach of this Agreement. Upon termination for any reasons, all amounts owed MD will become immediately due and payable.

#### **TRADEMARKS/TRADE NAMES**

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

MD's failure to enforce any of the conditions herein or to exercise any right arising from Customer's default shall not affect or impair MD's rights in the event such default continues or in the event that there are subsequent defaults by Customer and neither any such failure nor any prior course of performance between parties shall constitute a waiver of other or future defaults by customer.

In the event that any one of more of these terms or conditions is held invalid, illegal, or unenforceable, such provision or provisions shall be severed, and the remaining terms and conditions shall remain binding and effective.

Except as otherwise provided herein, this agreement and all rights and obligations of the parties hereunder, including matters of constructions, validity and performance, shall be governed by the laws of

the State of California or domicile state of the Dealer for all laws pertaining to operation of Dealer's said business. It is understood, however, that this is a general form of contract, and that any provision that contravenes the law of any appropriate state or jurisdiction shall be deemed not to be part of this contract to the extent that it so contravenes.

**GENERAL**

Dealer is not an agent of MD nor is Dealer authorized to incur any obligations or make any representations on behalf of MD. This Agreement is binding on the parties, their heirs, executors, administrators, successors and assigns. Dealer may not assign this Agreement or any provisions thereof to another dealer or party with the approval of MD. If any provisions of this Agreement shall be held unenforceable, then the remainder of this agreement shall not be affected thereby.

No waiver by MD of any default under this Agreement by Dealer shall be deemed a waiver of any prior or subsequent default by Dealer hereunder. All understandings and agreements between the parties with respect to the subject matter contained herein are contained in this Agreement that supersedes and terminates all other conflicting agreements between the parties.

MD reserves the right to modify and/or update this Agreement consistent with the modification and/or updating of all agreements MD has with other similar dealers and replace or substitute such modified or updated agreement for the 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 its being offered shall constitute automatic termination of this Agreement by Dealer.

This Agreement will be governed by the laws of the State of California.

**DEALER AGREEMENT AND ACKNOWLEDGEMENT**

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

Signed by: \_\_\_\_\_ Date: \_\_\_\_\_

(Please Print Name above)

Authorized Dealer Signature: \_\_\_\_\_

**Muscle D Fitness:**

Signed by: \_\_\_\_\_ Date: \_\_\_\_\_

(Please Print Name above)

Authorized MD Signature: \_\_\_\_\_

**MD Contact Information:**

15950 Downey Avenue  
Paramount, CA 90723  
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