

# K2 SPORTS

## RETAIL DEALER AGREEMENT

This Retail Dealer Agreement (this “**Agreement**”), effective \_\_\_\_\_, 20\_\_\_\_ (the “**Effective Date**”), between K2 Sports, LLC, an Indiana limited liability company with a principal place of business at 413 Pine Street, Third Floor, Seattle, WA 98101 (“**K2 Sports**”), and the retail dealer identified below (“**Retail Dealer**”), govern the relationship by which, on a non-exclusive basis the Retail Dealer will represent those certain K2 Sports products designated by this Agreement (the “**K2 Sports Products**”) in accordance with the K2 Sports Retail Dealer Terms and Conditions attached to this Agreement and as revised by K2 Sports, LLC from time to time (as amended, the “**Terms**”), and the applicable K2 Sports Product prices and terms supplied to Retail Dealer by K2 Sports (as amended, the “**Price List**”), as may be revised by K2 Sports from time to time, both of which are incorporated herein by this reference.

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**K2 Sports Products\* Represented by Retail Dealer:**

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> K2 Skis       | <input type="checkbox"/> Atlas Snowshoes          | <input type="checkbox"/> Line Skis           |
| <input type="checkbox"/> K2 Snowboards | <input type="checkbox"/> Tubbs Snowshoes          | <input type="checkbox"/> Full Tilt Ski Boots |
| <input type="checkbox"/> K2 Skates     | <input type="checkbox"/> Backcountry Access (BCA) | <input type="checkbox"/> Madshus             |
| <input type="checkbox"/> K2 Ski Boots  | <input type="checkbox"/> Ride Snowboards          | <input type="checkbox"/> Other _____         |

*\* Includes related hard and soft goods and accessories. Any K2 Sports Product additions (including any new products) must be confirmed by the parties' mutual execution of an addendum to this Agreement before they may be sold under the terms of this Agreement. K2 Sports Products may be removed at any time in K2 Sports' sole discretion.*

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**Retail Dealer's Authorized Locations\* (the “Authorized Locations”):**

Location: _____	Street Address: _____
Location: _____	Street Address: _____
Location: _____	Street Address: _____

*\* Identify the street address of each retail location. If more room is needed, please insert “See Attached List,” and attach same. Any additions, deletions, or address changes are subject to prior written approval by K2 Sports and confirmed by the parties' mutual execution of an amendment to this Agreement.*

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**Special Terms (if any):**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*\*Any special terms shall take priority over the Terms, to the extent they conflict in whole or in part.*

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This Agreement is entered into by the undersigned by their authorized representative as of the Effective Date.

**K2 Sports:**

**Retail Dealer:** \_\_\_\_\_  
(full legal name)

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

## K2 SPORTS RETAIL DEALER TERMS AND CONDITIONS

### 1) SCOPE

- a) General. During the Term (as defined below) of this Agreement, Retail Dealer is authorized to (i) purchase K2 Sports Products from K2 Sports, in accordance with the terms of purchase orders and order acknowledgment forms provided by K2 Sports, and (ii) display, promote, market and sell K2 Sports Products to end users only, at the Authorized Locations set forth above (or except as otherwise authorized in a writing signed by the parties), all in compliance with the terms of this Agreement.
- b) Related Obligations. Retail Dealer agrees:
  - i) Except as otherwise authorized by K2 Sports in writing, to only purchase K2 Sports Products from K2 Sports or its authorized designees;
  - ii) To comply with all applicable laws concerning the sale, storage, transport or marketing of K2 Sports Products;
  - iii) To maintain facilities and staff at Retail Dealer's Authorized Location(s) for the promotion, marketing, sale, fitting and service of K2 Sports Products, all as required to effectively promote, sell, fit and service K2 Sports Products in a professional manner, and to maintain the high quality reputation of K2 Sports and K2 Sports Products;
  - iv) To deal only directly and personally with consumers who are the prospective or actual end users of the K2 Sports Products and not to offer for sale or sell any K2 Sports Products through any means other than through direct personal contact at the Authorized Location (except if Retail Dealer is permitted to sell in any other manner pursuant to a mutually executed written amendment to this Agreement);
  - v) That no exclusive rights are conferred to Retail Dealer by this Agreement;
  - vi) That it will not impugn or otherwise disparage the quality or reputation of K2 Sports or K2 Sports Products, or engage in any misleading, deceptive, statements, actions or advertising or promotion concerning K2 Sports or K2 Sports Products, and will only use K2 Sports and K2 Sports Product trademarks and imagery in a manner consistent with any written guidelines issued by K2 from time-to-time, and in a manner otherwise consistent with the high quality reputation of K2 Sports and K2 Sports Products;
  - vii) That it will at all times comply with any terms, conditions or procedures set forth on the then-current Price List (as defined below);
  - viii) That it will promptly comply with any request by K2 Sports for K2 Sports to have the opportunity to review and comment on Retail Dealer's advertising content from time to time and to approve or reject such content in K2 Sports' reasonable discretion;
  - ix) That Retail Dealer will not extend any warranty of K2 Sports Products, on its or K2 Sports' behalf, other than any applicable standard K2 Sports Product warranty, as issued by K2 Sports from time to time;
  - x) That Retail Dealer will assist K2 Sports in preventing any unauthorized distribution or sale of K2 Sports Products.
  - xi) That Retail Dealer will comply with the terms and adhere to the guidelines of the current version of any applicable technical manual issued by K2 Sports with respect to the K2 Sports Products.
- c) MAP Policy. Retail Dealer acknowledges that:
  - i) It has been informed that K2 Sports maintains a Minimum Advertised Pricing Policy (the "**MAP Policy**") that is applicable to Retail Dealer and all K2 Sports retailers; a copy of which has been provided to the Retail Dealer;
  - ii) All Retail Dealer advertising of K2 Sports Products must comply with the MAP Policy and applicable Minimum Advertised Prices, as communicated to Retail Dealer by K2 Sports from time to time;

### 2) TERM; TERMINATION

- a) Term. For purposes of this Agreement, the period from the Effective Date to the date of termination pursuant to the terms of this Agreement shall be referred to as the "Term."
- b) Termination. This Agreement shall be effective as of the Effective Date and shall continue in effect until terminated as follows:
  - i) Immediately, if Retail Dealer (1) becomes insolvent, becomes the subject of a bankruptcy petition or other creditor proceeding, (2) engages in felony criminal activity or activity which is otherwise disparaging to K2 Sports or K2 Sports Products, (3) experiences a change of control whether by sale of substantially all of its assets, merger, consolidation or other transfer, (4) experiences a change in the persons principally responsible for Retail Dealer's management, (5) defaults in any payment(s) due to K2 Sports for a period of thirty (30) days or more, (6) trades, directly or indirectly, in products reasonably suspected by K2 Sports to be grey market products, or otherwise trades in K2 Sports Products in violation of its obligations under this Agreement; or (7) breaches this Agreement.
  - ii) Without cause at any time, on thirty (30) days' prior written notice by one party to the other. As consideration for the right to terminate this Agreement under this Section 2(b)(ii), Retail Dealer shall, upon furnishing notice of termination, pay to K2 Sports a termination fee in an amount equal to the value of all outstanding orders ("**Termination Fee**"). The parties intend the Termination Fee to be liquidated damages constituting compensation, and not a penalty. The parties acknowledge and agree that damages resulting from termination pursuant to this Section would be impossible or very difficult to accurately estimate, and that the Termination Fee is a reasonable estimate of the anticipated or actual harm that may arise from such termination. The Retail Dealer's payment of the Termination Fee is the Retail Dealer's sole liability and entire obligation and K2 Sports' exclusive remedy for any termination by the Retail Dealer under this Section 2(b)(ii).
- c) Effect of Termination. On termination of this Agreement, K2 Sports may, at its sole discretion, cancel or deliver any of Retail Dealer's outstanding K2 Sports Product orders. Any amounts owed by Retail Dealer to K2 Sports shall become immediately due and payable, Retail Dealer shall discontinue promotion and sale of K2 Sports Products and use of K2 trademarks or other images, and Retail Dealer shall immediately return to K2 Sports any documentation, equipment or other materials furnished to it by K2 Sports at no cost. Retail Dealer shall cease to identify itself as an authorized retailer of K2 Sports Products, and shall

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cease to accept any returns or warranty claims from customers but rather shall refer any warranty claims to a currently authorized K2 Sports retailer in the consumer's area. K2 Sports shall have the option (but not the obligation) to repurchase any of Retail Dealer's remaining K2 Sports Product inventory at the price paid for same by Retail Dealer (less any outstanding amounts owed, any applicable discounts or any fees or charges normally assessed by K2 Sports on Retail Dealer returns). Additionally, K2 Sports shall have the right (but not the obligation) to permit Retail Dealer to sell off any remaining inventory for a period of time to be determined in K2 Sports' sole discretion, but not to exceed ninety (90) days. Those obligations under this Agreement which are continuing by nature (e.g. obligations of non-disparagement, confidentiality, payment of outstanding obligations) shall continue in full force and effect upon termination.

### 3) ORDERS; INVOICING

- a) Order Process. All K2 Sports Product orders by Retail Dealer shall be subject to the terms and conditions of this Agreement and the then-current Price and Terms document issued by K2 Sports (the "**Price List**"), which Price List is hereby incorporated in this Agreement by this reference, setting forth the current prices for K2 Sports Products and other related terms. Orders shall only be placed on K2 Sports order forms (in the event non-complying Retail Dealer orders are placed, the terms and conditions of such orders, other than to the extent of identifying quantities of K2 Sports Products K2 Sports K2 has otherwise confirmed or shipped, shall not be applicable). Pre-season orders are firm orders and non-cancelable without K2 Sports' prior written consent. All other orders may be modified or cancelled by Retail Dealer not later than four (4) weeks prior to the first scheduled ship date so long as the Retail Dealer immediately pays to K2 Sports a cancellation fee equal to fifteen percent (15%) of the value of the cancelled orders ("**Cancellation Fee**"). The parties intend the Cancellation Fee to be liquidated damages constituting compensation, and not a penalty. The parties acknowledge and agree that damages resulting from cancellation pursuant to this Section would be impossible or very difficult to accurately estimate, and that the Cancellation Fee is a reasonable estimate of the anticipated or actual harm that may arise from such termination.
- b) Payment. All invoices from K2 Sports shall be paid in accordance with their terms. Any and all amounts not paid when due shall lose all applicable discounts and shall remain payable along with interest rate of one and one-half percent (1.5%) per month or any part thereof, or the maximum rate allowed by law, whichever is less, commencing from the date such payment is due.
- c) Collection. The Retail Dealer agrees to pay all costs of collection, including reasonable attorneys' fees incurred by K2 Sports as a result of the failure of the Retail Dealer to make payments to K2 Sports when due. K2 Sports has the right to obtain, and the Retail Dealer shall execute upon request, sufficient security agreements and financing statements on inventory and equipment of the Retail Dealer in order to protect K2 Sports' interests.
- d) Acceleration. All amounts payable at any time to K2 Sports by the Retail Dealer shall, at the option K2 Sports and upon written notification to the Retail Dealer, become immediately due and payable in the event of: insolvency or commencement of a proceeding in bankruptcy or reorganization by or against the Retail Dealer; assignment for the benefit of creditors by the Retail Dealer; any statement or representation made to K2 Sports by the Retail Dealer pertinent to its financial condition which is determined by K2 Sports to be false or misleading.
- e) Survival. The provisions of this Section 3 (including, without limitation, the terms of the then-current Price List) shall survive any termination or expiration of this Agreement.

### 4) GENERAL

- a) Confidentiality. During the Term of this Agreement, and at all times thereafter, Retail Dealer and its staff shall maintain in confidence all proprietary or confidential information related to K2 Sports Products or K2 Sports' business, which shall include any information which is not generally available to the public or is otherwise deemed by K2 Sports to be proprietary or confidential, and which shall include, without limitation, the terms of this Agreement. Retail Dealer acknowledges that any breach of the obligations described in this paragraph shall cause K2 Sports irreparable harm and K2 Sports shall be entitled to an injunction and all other remedies available at law or equity.
- b) Trademarks. Retail Dealer acknowledges that K2 Sports is the owner of various trademarks, logos and designs used from time to time in connection with the development, manufacture, marketing and sale of K2 Sports Products, and the goodwill associated therewith ("**Trademarks**"), and agrees not to contest K2 Sports' validity or K2 Sports' ownership of the Trademarks or any applications or registrations therefor, and shall not at any time apply for or obtain the registration of any Trademarks or do anything or allow anything to be done which might in any way impair K2 Sports' rights in and to the Trademarks or any trademarks, service marks or trade names which are confusingly similar to the Trademarks or adversely affect the validity of the Trademarks. Retail Dealer also agrees to immediately notify K2 Sports if it becomes aware of any potential infringement of any Trademark and to not use any Trademark in any manner without K2 Sports' prior written consent.
- c) Indemnification. The Retail Dealer agrees to indemnify and hold harmless K2 Sports and its parents, subsidiaries and affiliates from any and all claims brought because of death or injury to person or property resulting from any assembly, misrepresentation, advertising, misuse, unauthorized alteration, modification, warning, instruction or negligence on the part of the Retail Dealer or its personnel.
- d) Title. Title to the K2 Sports Products and all risk of loss shall pass from K2 Sports to the Retail Dealer upon removal from K2 Sports' warehouse. The Retail Dealer represents that it has obtained all applicable licenses and shall be responsible for all sales and use taxes which may be applicable to Retail Dealer's marketing and sale of the K2 Sports Products, and agrees to provide K2 Sports with evidence of compliance with such representation if requested.
- e) Insurance. While this Agreement remains in effect and for a period continuing through the warranty period on all K2 Sports Products sold pursuant hereto, the Retail Dealer will maintain at its expense insurance policies meeting the requirements set

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forth in this Section. All of the Retail Dealer's deductibles, self-insured exposures, uninsured, or underinsured exposures are at its risk and are for its account. Promptly upon execution of this Agreement, the Retail Dealer shall provide certificate(s) of insurance that list K2 Sports and its parents, affiliates and subsidiaries as additional insured parties. The Retail Dealer shall cause K2 Sports to receive 30 days written notice prior to any material change in, or cancellation of, such insurance policies. All of the Retail Dealer's insurance policies required herein shall contain provisions that the insurers shall have no right of recovery or subrogation against K2 Sports or its insurers. These insurance terms shall control over any provisions to the contrary contained in purchase orders or work orders or other related documents issued by the Retail Dealer. All of the Retail Dealer's insurance required herein shall be primary to, and shall receive no contribution from, any other insurance maintained by, on behalf of, or benefiting K2 Sports. The Retail Dealer shall maintain: (i) workers' compensation in amounts meeting applicable statutory requirements; (ii) commercial general liability insurance (and/or excess/umbrella liability), written on an occurrence basis, with minimum policy limits of \$1,000,000 per occurrence, including, without limitation, premises liability, blanket contractual coverage, and products/completed operations liability. Evidence of such insurance shall be provided during the Term of this Agreement and through the expiration of the Retail Dealer's warranty period for all K2 Sports Products sold pursuant to this Agreement.

- 5) **MISCELLANEOUS.** This Agreement constitutes the entire understanding between the parties and supersedes all prior agreements, representations or understandings between them relating to this subject matter. In the event of any conflict between the terms of this Agreement, the Price List, and/or the terms of any purchase order or similar document, the terms of this Agreement shall govern. Except as otherwise set forth in the Agreement, this Agreement may only be modified or amended by written agreement of the parties. Past practice, course of dealings and any oral statements between the parties shall not serve to amend the terms of this Agreement. The failure of either party to require the performance of any term of this Agreement or the waiver by either party of any breach shall not prevent a subsequent enforcement of such term, nor be deemed a waiver of any subsequent breach. The parties agree that this Agreement shall be governed by the laws of the State of Washington, without regards to conflicts of law principles. The Retail Dealer irrevocably submits to the jurisdiction of the state and federal courts located in King County, Washington, waives any right to a jury in any proceedings, and agrees to be subject to the Washington Long Arm Statute for service of process. The prevailing party in any action concerning this Agreement shall be entitled to an award of costs and reasonable attorneys' fees and arbitration costs. The provisions of this Agreement are severable, and should any provisions be void, unenforceable or invalid, such provision shall not affect any other portion or provision of this Agreement. Waiver of any right, obligation or breach must be in writing and shall not be construed as a continuing waiver of or consent to any subsequent breach of this Agreement. The Retail Dealer shall at all times during the Term of this Agreement be deemed a non-exclusive authorized retailer of K2 Sports Products with the right to offer the K2 Sports Products only at the Authorized Location(s) to end users, and as such, shall not be an agent, employee or representative of K2 Sports, but rather shall be an independent contractor. Any notice required to be provided hereunder shall be provided via United States mail, postage prepaid, registered or certified, and addressed as follows: (i) to ATTN: Legal, K2 Sports, LLC, 413 Pine Street, Suite 300, Seattle, WA 98101 with a copy via email to legal@k2sports.com, and (ii) to Retail Dealer at the address indicated on the face of the Retail Dealer Agreement, or such other address as either may designate to the other in writing. This Agreement may not be assigned in whole or in part by the Retail Dealer without the written approval of K2. It is agreed by the parties that an assignment shall include a change of ownership or control. K2 may assign this Agreement to an affiliate or to a third party who acquires all or substantially all of its assets without the consent of the Retail Dealer. The terms of this Section 5 shall survive any termination or expiration of this Agreement.