



## AUTHORIZED RETAILER AGREEMENT

112 Etna Rd.  
Lebanon, NH 03766  
603-298-0314 Fax: 603-298-6134

Retailer Full Legal Name: \_\_\_\_\_

Principal Business Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

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

Retailer Web Address(es) (collectively, the "**Website**"): \_\_\_\_\_

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. Amazon (seller information / name (if applicable): \_\_\_\_\_)
5. eBay (seller information / name: \_\_\_\_\_)

This AUTHORIZED RETAILER AGREEMENT (this "**Agreement**") is entered into effective \_\_\_\_\_, 20\_\_\_\_ ("Effective Date"), by and between Marker Volkl USA, Inc., dba Marker Dalbello Völkl ("**MDV**") and the retailer named above ("**Retailer**"). For good and valuable consideration, MDV hereby appoints the Retailer, on a non-exclusive basis, as an Authorized Retailer subject to the following terms and conditions, and MDV and the Retailer hereby agree as follows:

**1. Sales to Retailer.** During the term hereof, MDV agrees to sell to the Retailer, in accordance with the terms of purchase orders and order acknowledgment forms provided by MDV, the products checked below, subject to inventory and production capacity. For purposes of this Agreement, all products manufactured, sold and/or distributed by MDV shall hereinafter be referred to as the "**MDV Products**" and those certain product types checked below shall be referred to as the "**Authorized Product Line**."

**Völkl Brand**

- ☐ Alpine Skis
- ☐ Rental Skis
- ☐ Accessories

**Marker Brand**

- ☐ Bindings
- ☐ Rental Bindings
- ☐ Accessories
- ☐ Protective Snow Equipment
- ☐ Rental Helmets

**Dalbello Brand**

- ☐ Ski Boots
- ☐ Accessories
- ☐ Rental Ski Boots

Title to all Authorized Product Line units properly purchased by the Retailer, and all risk of loss, shall pass from MDV to the Retailer upon shipment, FOB MDV's warehouse. The Retailer represents that it has obtained a sales and use tax exemption, if sales tax is applicable in the state of sale, and agrees to provide MDV with evidence of such exemption if requested. The Retailer represents that it will abide by: (i) the current MDV General Terms and Conditions, as set forth on the attached Exhibit A and as amended by MDV from time to time (the "**Term and Conditions**"); and (ii) if Retailer is authorized above as an authorized retailer of Marker brand bindings and/or rental bindings (collectively, "**Marker Bindings**"), the current published edition of the Marker Technical Manual (including any amendments or updates issued from time to time by MDV, the "**Manual**").

**2. Term.** This Agreement shall have an initial term (the "**Initial Term**") commencing on the Effective Date and shall, unless earlier terminated as provided in Section 13, below, continue in effect until the following March 31. Thereafter, this Agreement shall be automatically renewed for additional terms of one year each, commencing on April 1 and ending on the following March 31, unless earlier terminated in accordance with Section 13. For purposes of this Agreement, the Initial Term together with any renewal terms shall be collectively referred to as the "**Term**".

**3. Location of Sales.** The Retailer hereby agrees to sell and display the Authorized Product Line only at the following location(s)<sup>1</sup>:

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

(collectively, such locations shall be hereinafter referred to as the "**Authorized Location**"). In order to ensure that quality

<sup>1</sup> If there are additional locations, please attach as a separate page. Any additions, deletions, or address changes are subject to MDV's prior written approval and must be confirmed by the parties' mutual execution of an addendum to this Agreement.

in sales and service is maintained, the Retailer agrees to deal only directly and in person with consumers who are the prospective or actual users of any item in the Authorized Product Line, and not to offer for sale or sell any item in the Authorized Product Line through mail order catalogs, by telephone, electronic medium, any website or portal, or through any means other than through direct personal contact at the Authorized Location (except through the Website and in accordance with the terms provided for online sales in Section 14, below (collectively, **"Permitted Remote Sales"**)). Failure to adhere to these requirements will cause direct and irreparable harm to MDV and its affiliates and shall be grounds for immediate termination of this Agreement as well as equitable relief. The Retailer further agrees to assist MDV in preventing any unauthorized distribution or sale of all products it manufactures, sells or distributes.

**4. Independent Contractor.** The Retailer shall at all times during the Term be deemed a non-exclusive Authorized Retailer of MDV Products with the right to offer the Authorized Product Line to end users in accordance with the terms of this Agreement, and as such, shall not be an agent, employee or representative of MDV or any of its affiliates, but rather shall be an independent contractor.

**5. Trademarks and Advertising Content.** During the Term, and subject to the Retailer's compliance with all of the terms of this Agreement, the Manual, and MDV's policies for its authorized retailers as shall be issued from time to time, the Retailer is granted a non-exclusive license to use certain trademarks and other proprietary images and property of MDV and/ or its affiliates (collectively, the **"MDV Trademarks"**). Every use of any MDV Trademarks in the Retailer's advertising or at the Authorized Locations will be in strict accordance with written guidelines provided by MDV. The Retailer's advertising specific to its retail offering will feature only those MDV Products included in the Authorized Product Line. Upon termination of this Agreement, the Retailer shall immediately discontinue use of all MDV Trademarks and all references to MDV, its affiliates, and products, including, without limitation, the Authorized Product Line, including, without limitation, on the Websites. The Retailer acknowledges the validity of all trademarks owned by MDV or its affiliates and that all of Retailers use of the MDV Trademarks shall inure to the benefit of MDV. The Retailer shall not take any action during the Term or at any time thereafter that might prejudice or adversely affect the validity of those trademarks or the ownership thereof. MDV reserves the right to require the Retailer to provide a preview of all MDV related advertising material to MDV prior to said material appearing in print or any media (including, without limitation, on any website or other electronic venue). MDV reserves the right to review and comment upon Retailer's advertising content that contains the MDV Trademarks at any time and MDV shall have the right to approve or reject such content in its sole discretion.

**6. Clinics.** MDV agrees to hold annual clinics, at which sales and service representatives of MDV will be present, for the purpose of developing and maintaining the expertise of the Retailer with respect to the Authorized Product Line. Retailer and its authorized personnel agree to attend all such clinics.

**7. Retailer Obligations.** The Retailer shall at all times during the relevant selling season maintain a complete and representative display of current MDV Products from the Authorized Product Line in the Authorized Locations and on the Website. The display of MDV Products shall be maintained in attractive surroundings and in a manner to maximize sales. The Retailer shall maintain a reasonable inventory of all items in the Authorized Product Line during the Term and shall maintain and update, as required, the equipment and expertise required to provide consumers with the proper selection and service of MDV Products.

**8. MDV's Limited Indemnification of Retailer.** MDV will indemnify, defend, and hold harmless Retailer from any and all claims, actions, costs, reasonable out of pocket attorneys' fees, reasonable out of pocket expenses and other liabilities (collectively, **"Claims"**) arising related to Marker Bindings in accordance with the terms set forth on Exhibit "B" (the **"Marker Bindings Indemnification"**), attached hereto. For avoidance of doubt, the Marker Bindings Indemnification shall not apply to any items in the Authorized Product Line other than the Marker Bindings. Additionally, under no circumstances will MDV be responsible or obligated to indemnify for any consequential, incidental, special, indirect, punitive or similar damages with respect to any Claim, whether or not such Claim relates to Marker Bindings. By signing this Agreement, Retailer accepts the Marker Bindings Indemnification and the terms of this Section 8 in lieu of any other relief or remedy obligations or rights that may otherwise be available at law or equity.

**9. Retailer's Indemnification of MDV.** Except to the extent that the Marker Bindings Indemnification shall apply, the Retailer shall defend and indemnify MDV and its affiliates and its and their respective owners, officers, directors, agents and employees (collectively, the **"MDV Indemnitees"**) from any and all Claims arising in whole or in part from: (i) any breach by Retailer (or any subcontractor or agent of Retailer or any of their respective personnel (collectively, **"Retailer Personnel"**)) of this Agreement; (ii) any negligent act of Retailer or any Retailer Personnel in the sale, marketing, promotion, repair, maintenance or servicing of any MDV Products; or (iii) for Claims associated with Marker Bindings, any failure to comply with the terms of the Manual in effect at the time of the events giving rise to such Claim. Without limiting the generality of the foregoing, Retailer agrees to indemnify and hold harmless MDV and the MDV Indemnitees from any and all claims brought because of death or injury to person or property resulting from any assembly, or any misrepresentation, advertising, misuse, or unauthorized alteration, modification, warning, instruction or any fraud, willful misconduct, gross negligence or negligence on the part of the Retailer or the Retailer Personnel.

**10. Insurance.** During the Term and for a period continuing through the warranty period on all items in the Authorized Product Line sold pursuant hereto, the Retailer will maintain at its expense insurance policies meeting the requirements set forth in this Section. Each of the Retailer'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 Retailer shall provide certificate(s) of insurance that list MDV and its parents, affiliates and subsidiaries as additional insured parties (the **"MDV Insured Parties"**). The Retailer shall cause MDV to receive thirty (30) days written notice prior to any material change in, or cancellation of, such insurance policies. Each of the Retailer's insurance policies required herein shall contain provisions that the insurers shall have no right of recovery or subrogation against MDV Insured Parties or their 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 Retailer. All of the Retailer's insurance required herein shall be primary to, and shall receive no contribution from, any other insurance maintained by, on behalf of, or benefiting MDV. The Retailer 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 Retailer's warranty period for all products in the Authorized Product Line sold pursuant to this Agreement.

**11. Orders.** All Authorized Product Line orders by Retailer shall be subject to (i) the terms and conditions of this Agreement, as executed by the parties or, if there is no executed agreement as available at [extranet.voekl.com](http://extranet.voekl.com), (ii) the then current Terms and Conditions, (iii) the then current Price and Terms document issued by MDV (the **"Price List"**); and (iv) (as applicable) the Manual, each of which is hereby incorporated by this reference. The Price List sets forth the current prices for Authorized Product Line and other related terms. Orders shall only be placed on MDV order forms or via the MDV purchase order process. In the event non-complying Retailer orders are placed, the terms and conditions of such orders, other than to the extent of identifying quantities the Authorized Product Line which MDV has otherwise confirmed or shipped, shall not be applicable. Retailer expressly agrees and acknowledges that all preseason orders are firm and shall only be cancelable with MDV's express prior written consent. All reorders may be modified or cancelled by Retailer not later than four (4) weeks prior to the first scheduled ship date so long as Retailer immediately pays to MDV the then-current Cancellation Fee (as set forth in the Terms and Conditions, as amended).

**12. Credit.** MDV's obligations and the Retailer's rights under this Agreement are hereby expressly made subject to the complete and continued compliance by the Retailer with all credit terms, as set forth below and as reflected in MDV's shipping and sales documents. Such compliance will be reviewed by MDV prior to filling each order submitted by the Retailer and no such order will be filled unless it is satisfied MDV, in its sole discretion, as to such compliance. All invoices from MDV shall be paid in accordance to 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. The Retailer agrees to pay all costs of collection, including reasonable attorneys' fees incurred by MDV as a result of the failure of the Retailer to make payments to MDV when due. MDV has the right to obtain, and the Retailer shall execute upon request, sufficient security agreements and financing statements on inventory and equipment of the Retailer in order to protect MDV's interests. All amounts payable at any time to MDV by the Retailer shall, at the option of MDV and upon written notification to the Retailer, become immediately due and payable in the event of: insolvency or commencement of a proceeding in bankruptcy or reorganization by or against the Retailer; assignment for the benefit of creditors by the Retailer; any statement or representation made to MDV by the Retailer pertinent to its financial condition which is determined by MDV to be false or misleading; or Retailer is past due in any payments. The provisions of this Section shall survive the termination of this Agreement.

**13. Termination.** Either party may terminate this Agreement with or without cause at any time on thirty (30) days written notice to the other party; provided, however, that MDV may terminate this Agreement immediately upon the Retailer's breach of this Agreement. In the event of termination by either party for any reason, MDV shall be entitled to immediately cancel any orders that have been placed by the Retailer. In the event of termination by Retailer without cause, Retailer shall on the effective date of such termination pay to MDV an amount equal to all outstanding orders pending at the time of termination as liquidated damages and not as a penalty. In addition, the Retailer shall immediately discontinue and abandon the use of all MDV Trademarks and shall immediately cease to advertise or represent itself as an authorized retailer or seller of MDV Products and hereby agrees not to sell or otherwise deal in any way with any MDV Products (including without limitation, any products in the Authorized Product Line). In addition, the Retailer shall no longer be authorized to accept returns of any MDV Products for any reason, including without limitation, pursuant to a warranty claim. In the event a consumer attempts to return a MDV Product to the Retailer after termination, the Retailer shall direct such consumer to a duly authorized MDV retailer. Notwithstanding the foregoing, with the prior written consent of MDV, the Retailer may be permitted to sell off existing inventory of the Authorized Product Line. Notwithstanding, MDV may, in its sole discretion, require that the Retailer return all or any portion of such inventory at any time following termination. Upon such return, MDV shall reimburse the Retailer the Retailer's cost for such inventory (net of any discounts or other allowances) less fifteen percent (15%) to cover restocking charges.

**14. Assignment.** This Agreement may not be assigned in whole or in part by the Retailer without the written approval of MDV. It is agreed by the parties that an assignment shall include a change of ownership or control. MDV may assign this Agreement in whole or in part to an affiliate or to a third party who acquires all or substantially all of its assets without the consent of the Retailer.

**15. Special Terms Relating to Permitted Remote Sales.** In any marketing, promotion or sale of the Authorized Product Line or any reference to any MDV Products on a Website, or any use of any MDV Trademarks that the Retailer is permitted to use hereunder for the purposes contemplated by this Agreement, the Retailer will comply with all applicable requirements set forth on the attached **Exhibit "C"**, in addition to complying with the other terms set forth in this Agreement.

**16. Sole Agreement.** The terms of this Agreement shall supersede any and all other documents, agreements, representations, whether written or oral, including, without limitation, any set forth or referenced in any purchase orders or other documents issued by either party heretofore or from time to time. This Agreement shall constitute the entire understanding of the parties and supersedes any prior agreements, written or oral, and shall be construed in accordance with the laws of the State of Washington, without regard to any conflict of laws principles. The parties consent and hereby submit to the exclusive jurisdiction of the state and federal courts of Washington, for the determination of any and all issues between the parties related to this Agreement. Nothing in this clause limits the right of MDV to bring proceedings in any other jurisdiction, whether concurrently or otherwise. The Retailer irrevocably submits to the jurisdiction of the state and federal courts located in 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. Notwithstanding anything to the contrary set forth in any other document, in the event of any conflict between the terms of this Agreement and the terms of (i) any purchase order or similar document, (ii) any addendum to this Agreement that may be entered into by the parties from time to time, or (iii) the Manual, the terms of this Agreement shall govern. 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.

**17. Notices.** Any notice or demand required or permitted to be given hereunder shall be in writing and shall be effective upon the personal delivery thereof, if delivered, or, if mailed, seventy-two (72) hours after having been deposited in the United States mail, postage prepaid, registered or certified, return receipt requested and addressed as follows, or by electronic transmission with confirmation of receipt: (i) if to MDV, to the address set forth at the top of this Agreement with a copy sent via certified mail to: MDV Legal, 413 Pine Street, Suite 300, Seattle, WA 98101 and (ii) if to the Retailer, to the address set forth at the top of this Agreement.

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

**MDV:**

Marker Volkl USA, Inc.

**RETAILER:**

\_\_\_\_\_  
(full legal name)

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

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



## Exhibit A

### GENERAL TERMS & CONDITIONS

**2020-2021**

- 1. APPLICABILITY.** These General Terms and Conditions ("Terms and Conditions") and the terms of the Authorized Retailer Agreement ("Agreement"), as executed by MDV and the Retailer or, if there is no executed version between the parties as available at [extranet.voelkl.com](http://extranet.voelkl.com), are applicable to and incorporated into any purchase order issued by Retailer to MDV for the purchase of any MDV Products. Retailer's issuance of any purchase order to MDV will be Retailer's unqualified acceptance of the Terms and Conditions and the terms of the Agreement. All capitalized terms, where not otherwise defined in these Terms and Conditions, will have the meanings set forth in the Agreement.
- 2. FREIGHT.** All orders will be shipped freight collect, FOB Claremont, NH or other locations as specified by MDV.
- 3. REQUESTED SHIP DATES.** Without a previous written agreement, MDV reserves the right to ship up to one (1) week prior to the Retailer's requested ship date without prior notification.
- 4. PAYMENT OF INVOICES.** Three (3) points of each discount is a cash discount and as such will be available only for payment by the due date as specified on the MDV invoice. This means that failure to pay on time carries a three (3) point cash discount forfeiture. For example, if the Retailer's available discount is 7% and the Retailer pays after the due date, the Retailer will only be entitled to take 4%. Net prices listed include the cash discount. Finance charges of 1.5% per month, or the maximum allowed by law (whichever is lower) will be added to all past due invoices.
- 5. DATING.**
- |             |                         |                         |
|-------------|-------------------------|-------------------------|
| City Shops  | 50% - December 10, 2020 | 50% - January 1, 2021   |
| Area Shops* | 50% - January 10, 2021  | 50% - February 10, 2021 |
- \*Area Shop defined as a shop in close proximity to a ski area and as dependent on a ski area's operation for the majority of the shop's business.
- 6. SHIPMENT OF ORDERS.** All shipments are subject to credit approval and will be made only if the Retailer's credit status is satisfactory to MDV, in MDV's sole discretion. Past due accounts, incomplete credit information or non-conforming purchase orders will cause delays in shipments. If credit requirements are not met by **August 15, 2021**, product will not be reserved and will be used to fill other orders.
- 7. PURCHASE ORDERS.** MDV's acceptance of purchase orders are expressly limited to, and expressly made conditional on, Retailer's acceptance of MDV's then-current Terms and Conditions of sale. In the event orders are placed on non-MDV forms, the terms and conditions of such orders, other than to the extent of identifying quantities the Authorized Product Line which MDV has otherwise confirmed or shipped, shall not be applicable. MDV EXPRESSLY OBJECTS TO ANY ADDITIONAL OR DIFFERENT TERMS INCLUDED IN ANY PURCHASE ORDER OR OTHER RETAILER COMMUNICATION TO MDV.
- 8. MODIFICATIONS.** All preseason orders are firm and shall only be cancelable with MDV's express prior written consent. All reorders may be modified or cancelled by Retailer not later than four (4) weeks prior to the first scheduled ship date so long as Retailer immediately pays to MDV a cancellation fee equal to fifteen percent (15%) of the value of the cancelled orders ("Cancellation Fee").
- 9. RETURNS.** No returns will be accepted without prior written authorization from MDV. Goods returned to stock with authorization are subject to a fifteen percent (15%) restocking charge. All freight must be prepaid by the Retailer.
- 10. CLAIMS.** All claims of shipping error must be filed within five (5) days of receipt of merchandise. Transportation claims (damage, etc.) must be filed directly with the carrier with a copy of such notice provided to MDV at the same time.
- 11. LIMITED WARRANTY.** The Retailer acknowledges that the following terms reflect the sole limited warranty that MDV extends to any consumer purchaser of any MDV Products:

## **MARKER**

Marker Bindings are warranted for three (3) years after date of the consumer's purchase. Helmets and goggles are warranted for one (1) year after date of the consumer's purchase against defective workmanship and material when used for the purpose intended, under normal conditions, and providing they receive proper care. Merchandise covered under this warranty must be returned to an authorized Marker retailer (with proof of the consumer's purchase date). The authorized Marker retailer will then send the product to MDV (transportation prepaid by the Retailer). Marker will inspect returned merchandise for evidence of misuse and will determine whether repair, replacement, or adjustment is due. MDV will return merchandise to Retailer with transportation cost prepaid.

## **DALBELLO**

Dalbello products are warranted for one (1) year after date of purchase against defective workmanship and material when used for the purpose intended, under normal conditions, and providing they receive proper care. Merchandise covered under this warranty must be returned to an authorized Dalbello retailer (with proof of consumer's purchase date) who will then send it to MDV (transportation prepaid by Retailer). MDV will inspect returned merchandise for evidence of misuse and will determine whether repair, replacement, or adjustment is due. MDV will return merchandise to Retailer with transportation cost prepaid.

## **VÖKL**

Vökl products are warranted for one (1) year after date of purchase against defective workmanship and material when used for the purpose intended, under normal conditions, and providing they receive proper care. Merchandise covered under this warranty must be returned to an authorized Vökl retailer (with proof of purchase date) who will then send it to MDV (transportation prepaid by Retailer). MDV will inspect returned merchandise for evidence of misuse and will determine whether repair, replacement, or adjustment is due. MDV will return merchandise to Retailer with transportation cost prepaid.

**THESE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

MDV's liability under these warranties shall be limited to the repair, replacement, or adjustment of MDV Products, and MDV shall not be liable for incidental or consequential damages incurred as a result of any breach of this warranty. Additionally, as between the Retailer and MDV, the Retailer acknowledges that MDV's warranty obligations to any customer of the Retailer shall be subject to the Terms and Conditions and the Agreement.

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## Exhibit B

### INDEMNIFICATION OF RETAILER

The terms of this Retailer Indemnification set forth in this **Exhibit “B”** (this “**Retailer Indemnification**”) shall only apply if all conditions and requirements set forth herein shall be satisfied by Retailer.

1. **Products Subject to Retailer Indemnification.** Retailer may claim indemnification hereunder only for those Marker Bindings (the “**Indemnified Products**”) that were: (i) originally sold by MDV to the Retailer pursuant to this Agreement during the Term and (ii) identified in the then-current edition of the Manual as a currently offered product as of the date of purchase by the Retailer; and (iii) were purchased by the customer purely for personal use and not for resale.
2. **MDV Responsibilities.** Subject to the terms and conditions stated in this Agreement and in the Manual, MDV will indemnify and may defend a Retailer against a Claim made by a customer of the Retailer in connection with bodily injuries caused by the customer’s proper use of an Indemnified Product sold, rented or serviced by the Retailer. The Retailer’s full cooperation and strict compliance with all requirements of the terms of this Agreement and the Manual are absolute conditions precedent to consideration for any defense, indemnity or other benefit.
3. **Retailer Acknowledgment.** Retailer acknowledges that this Retailer Indemnification provides the sole remedy of the Retailer against MDV and all MDV affiliates and related individuals in the event of a Claim against the Retailer, its owners, agents or employees involving any Indemnified Product.
4. **Required Notice.** In the event of a threatened or actual Claim against a Retailer with respect to an Indemnified Product, MDV must be notified in writing within ten (10) days of Retailer first learning of same. The Retailer must cooperate with MDV, its attorneys and insurers, and must use legal counsel selected by MDV. Written notice must be sent to the addresses for notice set forth in Section 16, above, of this Agreement.
5. **Exclusions.** This Retailer Indemnification specifically excludes any defense, indemnity or other benefits in the event of any failure by the Authorized Retailer to meet its obligations and abide by the terms and conditions of this Agreement and/ or the Manual. Additionally:
  - 5.1. MDV will have full authority to control the defense of any indemnified claims, including settlement, trial and appeal. Under no circumstances will Authorized Retailer admit any liability on behalf of MDV without MDV’s prior written consent.
  - 5.2. MDV’s obligation to the Authorized Retailer shall not exceed the limits of any insurance covering such obligations, as may be maintained by MDV.
  - 5.3. The Indemnified Product that is the subject of the Claim must have been used solely for its intended use and manner and not for any other use or in any other manner.
  - 5.4. Marker Bindings which are worn out or otherwise unsuitable for use, such as those which fail the inspections described in the Manual, will not be indemnified.
6. **Additional Conditions.** The following additional conditions apply to the Retailer Indemnification:
  - 6.1. MDV sales and technical representatives are not authorized to modify or interpret the terms of this Agreement, including, without limitation, this Retailer Indemnification, and any statement by such representatives shall not be binding on MDV.
  - 6.2. If MDV grants indemnification and later learns of facts that would preclude it, MDV may withdraw any defense or indemnity upon written notice to the Retailer.
  - 6.3. Retailer will, at all times, cooperate in the defense of any and all Claims and must follow the procedure set forth in **Section 8**, below, of this **Exhibit “B”**, concerning the handling of potential, actual or threatened Claims related to Indemnified Products and information to provide when providing notice of Claims related to Indemnified Products.
7. **Survival.** The terms of this is Retailer Indemnification shall survive the expiration of this Agreement for the period of the stated warranty extended to the Retailer’s customers by MDV on the relevant Indemnified Product. Notwithstanding, however, this Retailer Indemnification shall not survive and shall terminate immediately upon the termination of this Agreement due to any breach of the terms of this Agreement by Retailer or the discontinuance of the Retailer Indemnification pursuant to **Section 6.2**, above, of this **Exhibit “B”**.
8. **Instructions for Handling Claims.** Injuries are inherent in the sport of skiing, and legal claims often follow injuries. If a customer reports an injury or makes or threatens a Claim to the Retailer, be sympathetic and polite. Do not create a confrontation, apologize, or discuss fault or legal responsibility. Do not admit to any fault or wrongdoing, and do not volunteer information. If a customer, family member or representative asks for details or compensation, simply state that the Retailer is not authorized to discuss accidents or legal situations without first seeking professional advice. This is very important, as comments made without professional advice and before an investigation is completed may lead to misunderstandings. The Retailer should gather information concerning any potential, actual or threatened

Claim. If the Retailer receives notice of an injury, complaint, claim or potential claim from a skier or someone acting on behalf of a skier, involving an Indemnified Product, the Retailer must:

- 8.1.** Attempt to get as many details and documents as possible about the complaint or claim, including, but not limited to:
  - 8.1.1** Full name and address of the injured skier;
  - 8.1.2** Date that the accident or injury occurred;
  - 8.1.3** Specific details of the accident or injury;
  - 8.1.4** At what resort the accident or injury occurred;
  - 8.1.5** What ski equipment was involved, in as much detail as possible (binding, ski and boot model, boot sole type, etc.);
  - 8.1.6** All workshop tickets, rental agreements, test reports and other documents and information relating to the equipment.
  - 8.1.7** If you cannot locate a workshop form for this equipment and skier, try to obtain as much information about the skier as you can (height, weight, age, skier type and boot sole length, etc.) in order to recalculate the recommended binding visual indicator setting.
  - 8.1.8** If possible, inspect and collect the information on the Indemnified Product involved in the accident or injury giving rise to the Claim.
  - 8.1.9** Post-Accident Information Instructions are available from MDV on request. Retailer must completely fill out the Post Accident Ski Equipment Inspection Form.
- 8.2** Advise the skier or his or her representative that the Retailer is sending the complaint to the Retailer's insurance company, as well as forwarding it to MDV. MDV and/or Retailer's insurance company will contact the skier or his or her representative and conduct an investigation.
- 8.3** Notify MDV of any potential, actual or threatened Claim related to an Indemnified Product in writing within ten (10) days of receipt of such Claim or of first learning of any such potential, actual or threatened Claim. Notification must include copies of all Claim notice documents (including any letters or legal papers), any Post Accident Ski Equipment Inspection Forms, and any workshop tickets, rental agreements and other written materials pertaining to the Claim. Retailer must notify its insurance company at the same time it provides notice to MDV.
- 8.4** Retain and properly secure any and all Indemnified Products or other products or materials subject or related to any Claim.



## Exhibit C

### **SPECIAL TERMS FOR PERMITTED REMOTE SALES**

- 1. Authorized Web Partner Sales and Website Obligations.** The Retailer shall maintain its proprietary Website and online sales channels using the URL(s) or seller information (as applicable) first listed above on which it shall sell the Authorized Product Line. The Retailer shall sell the Authorized Product Line only to purchasers who are consumers or end users of MDV Products. The Retailer shall maintain on the Website at all times during the relevant selling season a complete and representative display of current MDV Products in the Authorized Product Line. The display of the Authorized Product Line shall be maintained in an attractive manner, as determined by MDV in its reasonable discretion, in an effort to maximize sales. The Website shall provide internal brand and key word search capabilities for the Authorized Product Line. The Retailer agrees that, except as otherwise expressly provided in this paragraph, it will not sell any MDV Products through "Associate Programs" or other "Front-end Internet Stores" involving third parties or through internet sales on any third party web sites (e.g. eBay, Amazon, etc.) without written approval from MDV. Further, internet sales on any third party websites (e.g. eBay, Amazon, etc.) that are expressly permitted hereunder shall only be sold: (a) at a set, non- auction price and (b) through clearly identifiable retailer storefronts which meet all minimum requirements as listed in this Agreement.
- 2. Brick and Mortar Location.** The Retailer agrees that, at all times during the Term, it shall continue to operate at least one authorized "brick and mortar" retail location at a location to be approved by MDV in writing in advance.
- 3. Product Offering.** The Retailer must display on the Website the full model year of the advertised product from the Authorized Product Line. For instance, the "2020/2021 Griffon" or the "2021/2022 Griffon" would be considered correct. Furthermore, the MDV Product image shown must depict what is actually for sale. When a product from the Authorized Product Line is sold out, the Retailer must promptly remove its image from the Website. The Retailer can only advertise the models and sizes of products from the Authorized Product Line that it currently has in stock on any given day.
- 4. Web Content.** For avoidance of doubt, the Retailer shall be required to provide to MDV a preview of all MDV related web material prior to said material appearing "live" on the Internet for review pursuant to Section 5 of the Agreement, above. Further, the Retailer hereby acknowledges that any sales through a URL (or, if applicable, Amazon or eBay seller identity) not included in the definition of "Website", above, in this Agreement, shall be considered a material breach of this Agreement. The Retailer agrees that all MDV Products featured the Website will be limited to the Authorized Product Line and will include complete and accurate product specifications and a presentation that is consistent with graphic design standards presented on MDV's and its affiliates' websites and in MDV's and its affiliates' printed communications materials for same.
- 5. Internet Auctions.** For avoidance of doubt, the Authorized Web Partner acknowledges that the terms of this Agreement do not allow the offering or sale of any MDV Product (regardless of whether from current year product line or from a prior year) via online auctions, either by the Retailer or, with the Retailer's knowledge, by a commercial customer of the Retailer, whether such auction is live, silent, in-person, online or otherwise.
- 6. Customer Service.** The Retailer agrees that all persons, either employed by the Retailer or a third party contracted by the Retailer, who provide online or telephone support to Website consumers shall acquaint themselves with materials and clinics as provided by the Retailer, shall be familiar with MDV Products, and shall have the knowledge and training necessary to properly advise consumers for proper use and post-sale service to promote maximum effective marketing of MDV Products, customer safety and satisfaction, and protection against product liability claims. The Retailer further agrees to provide dedicated (24/7) customer service support for its consumers and that all Website consumer inquiries will be answered within 24 hours via phone, e-mail, or facsimile.
- 7. Satisfaction Guarantee.** The Retailer shall provide a 100% consumer satisfaction guarantee to consumers visiting or shopping on its Website.
- 8. Warranty Service.** The Retailer shall provide warranty service in accordance with the same procedures in effect for "brick and mortar" retail sales of MDV Products. MDV will communicate exclusively with the Retailer, and never with consumers, for all aspects of return authorizations. The Retailer agrees that a printable copy of the Retailer's return and guarantee policy shall be available to consumers online at the Website. The Retailer agrees that consumers may return any MDV Product purchased online at any of the Retailer's "brick and mortar" locations (regardless of whether Retailer sells such MDV Product at any or all of its Authorized Locations), in accordance with the Retailer's return and guarantee policy. The Retailer agrees that a printable copy of MDV's warranty policies or MDV Products will be available to consumers online at the Website.
- 9. Authorized Models.** MDV reserves the right to select which current year models are authorized to be sold on the Website (and, in the case of sales through third party sites such as eBay or Amazon, MDV reserves the right to further restrict or exclude from sale any models or types which the Retailer is otherwise permitted to sell through a Website listed above that the Retailer operates as a proprietary URL online storefront). The Retailer agrees to offer for online sale only models which are authorized in writing for Website sale by MDV, in accordance with the terms of such written authorization.

**10. Online Consumer Transactions.** The Retailer warrants that all online credit transactions will be processed using secured, encrypted, online shopping basket technology meeting then current industry standards. The Retailer agrees that a printable transaction security policy and a printable privacy policy for the Website will be available to consumers online at the Website.

**11. International Shipping.** The Retailer agrees that it will not sell or ship any MDV Products outside of the United States of America and/or to freight forwarders within the United States of America.

**12. Website Compliance, Operation and Indemnity.** The Retailer represents and warrants that the Website, including, without limitation, its transaction security policy and the privacy policy, complies with all applicable laws and does not infringe the rights of any third party. The Retailer shall indemnify and hold harmless MDV and its parents, affiliates and subsidiaries from any claims arising out of the Retailer's operation of and/or activities on the Website.

**13. Web Partner Progressive Discipline Policy.** The policy set forth in this Section 13 of this Exhibit "C" is intended for guidance in the event that a Retailer violates any terms of this Agreement relating to any marketing, promotion or sale of products on the Website, or otherwise online or through other channels outside of the Authorized Locations and does not entitle the Retailer to progressive discipline or any other disciplinary procedures in any particular case. MDV does not promise or imply that progressive discipline will be followed in all circumstances. The facts of each particular situation are unique and, therefore, may lead to different responses by MDV. Depending on the nature of the violation, MDV may, and expressly reserves the right to, choose to suspend or immediately discharge the Retailer for the first, or any, violation. Accordingly, MDV may, in its sole and absolute discretion, employ the following progressive discipline for any violations of this Agreement.

**a. First Violation:** MDV will send a written warning via email to the Retailer, setting forth the violation.

- i. The Retailer will acknowledge the violation via return email, signifying awareness and comprehension of violation.
- ii. The Retailer will correct the offending violation immediately.

**b. Second Violation:** MDV will impose a sixty (60) day ordering suspension on the Retailer's account.

- i. MDV will inform the Retailer in writing of the sixty (60) day ordering suspension, which begins the day such written notice is sent by MDV.
- ii. Except as expressly provided in subclause (iii), below, the Retailer will remove all references to the MDV Trade-marks from the Website (which, for avoidance of doubt, includes all third party Websites and will cease all sales of any MDV Products on same for the entire duration of the sixty (60) day ordering suspension.
- iii. The Retailer may be permitted to continue to show the official MDV logo(s) (if so designated in writing in MDV's written notice) on the Website that it operates as a proprietary URL and may continue to communicate its authorized retailer status to the public.

**c. Third Violation:** The Retailer's account will be suspended indefinitely until further review by MDV.

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