



## Authorized Dealer Agreement

This Non-Exclusive Dealer Agreement ("Agreement") is entered into by and between **TO EXTREME OFF ROAD™**, having its principal place of business at 2001 West Grand Ave., Salina, KS 67401, as supplier/manufacturer and the Dealer described below. This Agreement concerns Dealer's sale of **TO EXTREME OFF ROAD™** Products within the United States to the Dealer's customers and the public.

Dealer Legal Company Name: \_\_\_\_\_

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

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

FAX: \_\_\_\_\_

Contacts Primary: \_\_\_\_\_

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

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

Secondary: \_\_\_\_\_

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

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

Established Payment Terms: \_\_\_\_\_

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

This Agreement (including all of the terms and conditions attached as pages 2 through 8 hereto) constitutes the entire agreement between **TO EXTREME OFF ROAD™** and Dealer regarding the subject matter hereof and all prior agreements, correspondence, discussions and understandings of the parties (whether oral or written) are superseded hereby, it being the express intention of the parties that this Agreement shall serve as the complete and exclusive statement of the terms of their agreement together. No amendment, waiver or other modification to all or any portion of this Agreement or the rights and obligations of the parties hereunder shall be valid unless in writing and signed by the parties. The parties acknowledge that they have read the following terms and conditions and are agreeable thereto. Neither party has relied upon any statements, representations, or other communications that are not contained in this Agreement.

TO EXTREME OFF ROAD™

DEALER

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

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

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

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

## TERMS AND CONDITIONS OF AGREEMENT

1. **Dealer Qualifications; Appointment:** In order to qualify as a TO EXTREME OFF ROAD™ Non-exclusive Dealer, at all times during this Agreement Dealer must (i) possess and be in compliance with all requisite business licenses in accordance with all local, state, and federal laws. (ii) own and operate a legally registered business in the United States (iii) possess commercial premises to conduct dealership related activities. (iv) Dealer shall submit a copy of its business license to TO EXTREME OFF ROAD™ within ten (10) business days after signing of this Agreement.
2. **Territory:** The appointment of Dealer hereunder is strictly limited to the distribution of the Products to Customers in State of: \_\_\_\_\_ only ("Territory"). Dealer covenants and agrees that it will not directly or indirectly distribute, ship, sell for trans-shipment, solicit the sale of, take orders (whether by telephone or otherwise) for, establish a branch, maintain any distribution depot for, sell, lease or otherwise distribute the Products from or to any customers or locations outside the Territory. In the event Dealer receives an inquiry, an offer to purchase, or a request for quotation regarding the Products from outside the Territory, Dealer agrees to promptly, and without compensation of any kind, forward all information regarding such matter to the Manufacturer.
3. **Term of Agreement:** This Agreement shall commence as of the date first written above and expire one (1) year from said date. This Agreement will automatically renew for successive one year periods unless either party submits a written termination notice to the other party not later than thirty (30) days prior to the automatic renewal date, and as provided below.
4. **Products:** Dealer shall not manufacture, duplicate, modify, add to, or alter the Products or the Product warranties (or obliterate, alter, modify, change, or add to any packaging, promotional material or labels accompanying same or affixed thereto), except as may be authorized in writing by Manufacturer from time to time.
5. **Additions, Discontinuations and Modifications:** TO EXTREME OFF ROAD™, in its sole discretion, shall have the immediate right, without prior notice and without liability, to modify, alter, improve, or change the design and/or specifications of, or discontinue the sale of and/or the manufacture of any particular model of any Product. If any such alteration, improvement, modification, or change is made, there will be no obligation on the part of Manufacturer to: (a) repurchase or replace any such Products previously sold to Dealer; (b) make such modification, alteration, improvement, or change on any Products to be shipped or sold to Dealer; (c) make or offer a similar modification, alteration, improvement, or change on any Product or parts previously shipped to Dealer; or (d) install or furnish any other or different parts than were on Products when shipment was made. Any purchase order modification by Dealer must be completed by giving written notice to TO EXTREME OFF ROAD™ at least seven (7) days prior to the scheduled shipping date, provided that any notice to decrease the order quantity or price must be submitted and accepted at least fourteen (14) days prior to the scheduled shipment date, subject to the terms of paragraph 15 below.
6. **Rebate, Discount, and Other Incentive Programs:** TO EXTREME OFF ROAD™, in its sole discretion, may at different times, and from time to time, offer or publish to Dealer certain rebate, discount or other incentive programs. TO EXTREME OFF ROAD™ reserves the right to withdraw such rebate programs prior to commencement thereof, and, unless otherwise provided, any and all rebate programs shall be subject to the terms and conditions of this Agreement.
7. **Orders:** This agreement is contingent upon Dealer (a) initially purchasing no less than [two (2) base trailer units] of TO EXTREME OFF ROAD™ for scheduled shipment. (the "Minimum Initial Order") and (b) purchasing not less than [two (2) base trailer units] from TO EXTREME OFF ROAD™ during each renewal term (the "Minimum Annual Order"); provided, however, that if Dealer's account is idle for more than twelve (12) consecutive months, Dealer will be required to execute another Minimum Initial Order to reactivate its Dealer status hereunder. In each case, Dealer shall issue purchase orders for Products in form provided or acceptable to TO EXTREME OFF ROAD™. Dealer's purchase orders shall not be effective until acceptance is

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acknowledged in writing by TO EXTREME OFF ROAD™. Purchase orders will be accepted by TO EXTREME OFF ROAD™ only in accordance with the terms and conditions of this Agreement. Orders shall be made by Dealer in writing only (i) by mail to TO EXTREME OFF ROAD™ at 2001 West Grand Ave., Salina, KS 67401; (ii) by facsimile at 785-827-1777; (iii) by email to [tesales@twino.com](mailto:tesales@twino.com); or (iv) by way of TO EXTREME OFF ROAD™ website at [www.to-extreme.com](http://www.to-extreme.com). Any telephone request to purchase, or to modify an existing order, shall not be considered an order unless and until followed up in writing to TO EXTREME OFF ROAD™. All orders shall be subject to written acceptance by TO EXTREME OFF ROAD™. Dealer acknowledges and agrees that this Agreement supersedes any inconsistent terms or conditions set forth in Dealer's purchase orders. Accordingly, if there is any conflict between the terms and conditions contained in Dealer's purchase order and the terms and conditions contained in this Agreement, this Agreement shall control and govern in all respects.

8. **Pricing:** Products will be sold to Dealer at Dealer Price. **[Dealer Price is a term defined and used for each product in the Price Guide; not otherwise defined in this Agreement.]** The current Dealer's price list sets out the prices for the Products covered by this Agreement, FOB Manufacturer's facility in Salina, Kansas, United States. Manufacturer reserves the right to and may change its prices, discounts, or terms of sale at any time and from time to time upon thirty (30) days' prior written notice to the Dealer. Products that are sold to Dealer by Manufacturer under the terms of this Agreement shall be sold to Dealer at the prices that shall be established by Manufacturer and in effect at the time of order. All deliveries of Products covered by this Agreement will be on the credit of Dealer and will constitute sales made directly to Dealer. The Manufacturer reserves the right to offer volume or other discounts to the Dealer, other distributors, dealers or agents, or to end user customers. The Manufacturer, in its sole and absolute discretion, may from time to time advance credit or cash repayments to the Dealer based on large orders and/or annual volumes of sales of Products.

9. **Delivery, Freight and Pickup:** Shipping and other transport, transfer and delivery charges will be invoiced to the Dealer for all Products ordered from TO EXTREME OFF ROAD™ at the prevailing rates to TO EXTREME OFF ROAD™ through common carriers. All orders are shipped from the point of manufacture. Products may be picked up at TO EXTREME OFF ROAD™ by authorized representatives of Dealer at 2001 West Grand Ave, Salina, KS 67401. Shipping charges may be added to the Dealer's invoice. Orders will be shipped UPS Ground, Federal Express, or other acceptable common carrier in accordance with shipping regulations, unless other arrangements are made in advance and agreed to in writing by both the Dealer and TO EXTREME OFF ROAD™. As part of any rebate, discount or other incentive programs, TO EXTREME OFF ROAD™ may at different times, and from time to time, at its sole discretion, offer reduced shipping rates and other incentives based upon Dealer meeting certain criteria.
10. **Dealer's Remedies:** If TO EXTREME OFF ROAD™, for any reason whatsoever, fails or is unable to deliver any Products ordered by the Dealer, the Dealer's sole and exclusive remedy shall be the recovery of the purchase price, if any, actually paid by the Dealer to TO EXTREME OFF ROAD™ for such Products. TO EXTREME OFF ROAD™ shall not incur any liability whatsoever for any delay in the delivery of any Products. In no event shall TO EXTREME OFF ROAD™ be liable for any incidental, consequential or other damages arising out of any failure of TO EXTREME OFF ROAD™ under this Agreement.
11. **Payment Terms/Authorized Credit Checks:**  
Payment Terms are as follows:  
**Dealer credit account:** Upon TO EXTREME OFF ROAD™ credit approval (based on submitted credit application) TO EXTREME OFF ROAD™ will invoice (Net Due 15 days) the Dealer for the Products at the time of shipment.  
**Dealer Cash Account:** TO EXTREME OFF ROAD™ shall require a non-refundable down payment equal to **\$250.00 prior to production. Prior to delivery,** the remaining balance due shall be payable with purchase order via (i) Certified Check (ii) Cashier's Check or (iii) Prepaid wire transfer. In special, pre-

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approved cases (iv) COD – Certified Check collected on delivery may be accepted.

Dealers established method of payment, either credit (net due 15 days) or cash will be listed on the first page of the Agreement.

In the event the Dealer fails to pay in accordance with such terms, the Dealer hereby agrees to pay a monthly service charge equal to one percent (1%) per month or (12% APR). In addition to the initial credit check conducted prior to entering this Agreement, Dealer authorizes TO EXTREME OFF ROAD™ to run complete credit checks of Dealer at any time and from time to time during the term of this Agreement as TO EXTREME OFF ROAD™ deems necessary or prudent in its sole discretion. Dealer agrees that it shall complete all necessary forms to authorize and otherwise to accommodate such credit checks with ten (10) days following TO EXTREME OFF ROAD™ written request. Dealer further agrees to provide TO EXTREME OFF ROAD™ with financial statements in such form as TO EXTREME OFF ROAD™ may reasonably require at any time and from time to time for credit purposes.

12. **Sales and Marketing:** TO EXTREME OFF ROAD™ publishes two series of prices to Dealer (i) Manufacturer Suggested Retail Price (MSRP). Dealer may advertise and sell greater than Manufacturer Suggested Retail Price (MSRP). (ii) Minimum Advertised Price (MAP). Dealer shall not sell or advertise any Product for less than the Minimum Advertised Price ("MAP"). The MAP for each Product shall be as indicated in the most recent Price Guide published by TO EXTREME OFF ROAD™. The TO EXTREME OFF ROAD™ Price Guide may be revised at any time and from time to time without notice. TO EXTREME OFF ROAD™ must approve in advance all advertising, advertisements and marketing materials used by Dealer in connection with the sale and marketing of the Products. Advertising, for the purposes of this Agreement, shall include any presentation, offer, or solicitation for purposes of sale to the general public of TO EXTREME OFF ROAD™ products by Dealer, whether within or external to Dealer's place(s) of business. Advertising shall also include, but is not limited to: price lists, newspaper and magazine advertisements, catalogs, flyers, direct mailings, mass mailings, signs,

billboards, and/or banners. These advertising standards also apply to promotions or advertising in conjunction with off premise events (e.g., trade shows, events, auctions, flea markets, user groups, etc.) at or in which the Dealer participates for the purpose of selling TO EXTREME OFF ROAD™ brand or distributed products. It is also understood that this Agreement covers any and all forms of electronic sales promotions to the general public to include, but not limited to, radio, television, facsimiles, electronic mail, Internet (including online auctions, user groups, trade shows, events, etc.) websites, and other media. TO EXTREME OFF ROAD™ may at different times, and from time to time, at its sole discretion, provide Dealer with merchandising assistance in the form of advertising programs and Product and sales training. Dealer agrees to fully utilize such assistance in carrying out TO EXTREME OFF ROAD™ merchandising policies.

13. **Use of Trademarks and Intellectual Property:** Dealer acknowledges TO EXTREME OFF ROAD™ exclusive right, title, and interest to its trademarks, trade names, trade-dress, service marks, patents and other intellectual property (collectively referred to as "Intellectual Property") belonging to TO EXTREME OFF ROAD™, and will not at any time, be responsible for any act or thing contesting or in any way impairing or tending to impair any part of TO EXTREME OFF ROAD™ rights to its Intellectual Property. Dealer is permitted to use the trademarks, service marks, brand identification and trade names to promote the sale of TO EXTREME OFF ROAD™ Products only in accordance with this Agreement and TO EXTREME OFF ROAD™'s prior written instructions. Dealer does not have the right to sublicense or otherwise designate the right to use any Intellectual Property belonging to TO EXTREME OFF ROAD™. If the Dealer wishes to advertise a TO EXTREME OFF ROAD™ Product in conjunction with its own products, a separate written Trademark License Agreement will be required. Upon termination of this Agreement for any reason, Dealer shall immediately discontinue all use of all Intellectual Property belonging to TO EXTREME OFF ROAD™ and shall not use any such Intellectual Property or such other matters that could cause confusion therewith.

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14. **Compliance with Laws:** Dealer hereby covenants, warrants and represents during the term of this Agreement as follows: (a) Dealer is duly organized, validly existing and in good standing under the laws of its place and organization. (b) Dealer has the power and authority to enter into this Agreement and to carry out its obligations hereunder. (c) No consent or approval is required from any governmental organization or other third party for the execution or performance of this Agreement, provided, however, that certain approvals may be needed for the execution or performance of definitive agreements that may be entered into pursuant hereto. (d) Dealer agrees to comply with any and all applicable laws and regulations, and shall require all of its employees, representatives and any other business associates retained in conjunction with the activities described in this Agreement to do likewise. Any such failure to effect compliance shall be a breach of this Agreement.
15. **Termination of this Agreement (without cause):** Either TO EXTREME OFF ROAD™ or Dealer may terminate this Agreement in its entirety at any time, with or without cause, by giving written notice to the other party effective thirty (30) days after the date of receipt, provided, however, that in any event, Dealer is required to pay, fulfill and otherwise comply with any purchase orders regarding Products that would be shipped within ninety (90) days after the termination notice is received by TO EXTREME OFF ROAD™, regardless of whether such shipment actually occurs within said ninety (90) days, so long as TO EXTREME OFF ROAD™ has commenced manufacturing said Products during said ninety (90) day period.
16. **Termination of this Agreement (for cause):** Notwithstanding anything herein to the contrary, TO EXTREME OFF ROAD™, at its sole discretion, may suspend or deny shipments of Products to the Dealer, and/or terminate this Agreement, for any of the following reasons:
- (a) Dealer's breach of this Agreement;
  - (b) Insolvency of the Dealer; filing of a voluntary petition in bankruptcy by Dealer; appointment of a receiver or a trustee for the Dealer; execution by the Dealer for the benefit of creditors; sale or transfer by operation of law or otherwise, to any third party, assets of the Dealer that are required for the conduct of its business;
  - (c) Failure to pay the Dealer's obligations to TO EXTREME OFF ROAD™ according to any credit terms granted by TO EXTREME OFF ROAD™; providing inaccurate or misleading financial information upon which TO EXTREME OFF ROAD™ has relied in granting credit;
  - (d) Submission by the Dealer of any false or fraudulent application or claim for reimbursement, warranty compensation or other discount or allowance under any TO EXTREME OFF ROAD™ program;
  - (e) Dealer's promoting, selling or dealing in any products manufactured by other companies which, in any way infringes TO EXTREME OFF ROAD™ Intellectual Property or in any way erodes or diminishes the TO EXTREME OFF ROAD™ brand;
  - (f) Dealer's failure to comply with the TO EXTREME OFF ROAD™ MAP guidelines;
  - (g) If Dealer degrades or places in bad repute the name and reputation of TO EXTREME OFF ROAD™ expressly or by virtue of its methods of handling and/or promoting the Products;
  - (h) TO EXTREME OFF ROAD™ determines that Dealer's credit is insufficient or inadequate;
  - (i) Failure of Dealer for any reason to function in the ordinary course of business;
  - (j) Occurrence of an act or circumstance impacting Dealer that in the opinion of TO EXTREME OFF ROAD™ has or will have an adverse effect or cause and adverse change on Dealer; or,
  - (k) Conviction of or allegations or charges brought against Dealer, or a manager, partner, principal officer, owner, or major stockholder of Dealer for any violation of law tending, in the sole opinion of TO EXTREME OFF ROAD™, to affect adversely the operation or business of Dealer or the good name, goodwill, or reputation of TO EXTREME OFF ROAD™, products of TO EXTREME OFF ROAD™, or Dealer.
- Termination of this Agreement, by either party, will not release the Dealer from the obligation to timely pay outstanding invoices to TOEXTREME OFF

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ROAD™, nor release the Dealer from performing any obligations required by this Agreement subsequent to termination.

TO EXTREME OFF ROAD™ shall have no liability to Dealer by any reason of any termination or cancellation of this Agreement, including without limitation, liability for direct or indirect damages on account of loss of income arising from anticipated sales, compensation, or for expenditures, investments, leases or other commitments or for loss of goodwill or business opportunity or otherwise.

17. **Relationship of the Parties:** The relationship of the parties established by this Agreement is that of vendor and vendee, and all work and duties to be performed by the Dealer as contemplated by this Agreement shall be performed by it as an independent contractor. The full cost and responsibility for hiring, firing and compensating employees of the Dealer shall be borne by the Dealer. Nothing in this Agreement or otherwise shall be construed as constituting an appointment of the Dealer as an agent, legal representative, joint venture, partner, employee or servant of TO EXTREME OFF ROAD™ for any purpose whatsoever or establishing a franchise under any applicable law. The Dealer is not authorized to transact business, incur obligations, sell goods, solicit orders, or assign or create any obligation of any kind, express or implied, on behalf of TO EXTREME OFF ROAD™, or to bind it in any way whatsoever, or to make any contract, promise, warranty or representation on TO EXTREME OFF ROAD™'s behalf with respect to Products sold by TO EXTREME OFF ROAD™ or any other matter, or to accept any service of process upon TO EXTREME OFF ROAD™ or receive any notice of any nature whatsoever on TO EXTREME OFF ROAD™'s behalf.

18. **Return of TO EXTREME OFF ROAD™ Property:** At TO EXTREME OFF ROAD™'s request, Dealer agrees to promptly return to TO EXTREME OFF ROAD™ any and all product samples, sales and marketing materials, and other proprietary documents, manuals and information of or belonging to TO EXTREME OFF ROAD™, following the termination of this Agreement or for any other reason or purpose,

in TO EXTREME OFF ROAD™'s sole discretion. Upon any such request, Dealer further agrees to refrain from making or retaining any copies or extracts of such property or materials.

19. **Warranty: One (1) year Limited Warranty**

TO EXTREME OFF ROAD™ makes the following warranty to the *original purchaser* only;

The Trailer is warranted for one (1) year from the date of delivery on all material and workmanship. If the Purchaser discovers within this warranty period a defect in materials or workmanship.

- Purchaser must promptly notify his/her TO EXTREME OFF ROAD™ Authorized Dealer or the factory of the defect. In no event shall such notification be received later than thirteen (13) months from the date of delivery.
- Within a reasonable time after such notification, TO EXTREME OFF ROAD™ will correct any defect in material or workmanship by repairing or replacing part(s) with either new or used replacement parts.
- Such repair, including parts and labor shall be covered at the expense of TO EXTREME OFF ROAD™.

20. **Warranty Service:**

All warranty service will be performed by the TO EXTREME OFF ROAD™ Authorized Dealer or the factory.

Warranty service must be pre-authorized prior to repairs by TO EXTREME OFF ROAD™.

Warranty repairs can be made by the end user, with pre-approval and under a special agreement made with TO EXTREME OFF ROAD™.

Shipping/Transportation expense of the Trailer to and from the TO EXTREME OFF ROAD™ Authorized Dealer or factory for warranty repairs will be the sole responsibility of the Trailer owner.

21. **Warranty Exclusions:**

TO EXTREME OFF ROAD™ does not warranty:

- Repairs made by unauthorized persons
- Damage caused by use of this trailer for purposes other than that for which it was designed for.
- Damages caused by disasters such as fire, flood, wind, rockslides and lightning.
- Damages caused by neglect, abuse, abnormal use, improper or unreasonable use, accident, negligence or misuse.
- Repairs or replacements as a result of the use of unauthorized parts, accessories or attachments.

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- Repairs or replacements due to alterations or modifications made to the trailer.
- Depreciation or damage caused by normal wear, or lack of reasonable and proper maintenance.
- Normal maintenance parts and service (wear items) including, but not limited to tires, brake pads and wheel bearings.

### **22. Disclaimer of Warranty**

THE FOREGOING OF WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. HOWEVER, IF THE TO EXTREME OFF ROAD™ EQUIPMENT IS PURCHASED AS A CONSUMER PRODUCT, ANY IMPLIED WARRANTY OF MERCHANTABILITY OF FITNESS FOR A PARTICULAR PURPOSE IS LIMITED TO THE DURATION OF THIS LIMITED WARRANTY. Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you. This warranty gives you specific legal rights, and you may also have other rights which vary from state to state.

### **23. Limitations of Warranties:**

IN NO CASE SHALL TO EXTREME OFF ROAD™, BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT, OR ANY OTHER LEGAL THEORY.

Such damages include, but are not limited to:

- Loss of profits
- Loss of savings or revenue
- Loss of use
- Cost of capital
- Cost of any substitute equipment, facilities, services or downtime
- Claims of third parties including customers, and injury to property.

Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

### **24. No Other Warranties:**

Unless modified in writing, signed by both parties, and approved by the President of TO EXTREME OFF ROAD™, this agreement is understood to be the complete and exclusive agreement between the

parties, superseding all prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this agreement. No employee of TO EXTREME OFF ROAD™, or any other party is authorized to make any warranty in addition to those made in this agreement.

**25. Insurance:** Dealer must maintain comprehensive commercial general liability insurance, covering both personal injury and property damage, including "contractual" coverage for Dealer's indemnity obligations hereunder, and having limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate liability per policy. Dealer shall also maintain employer's liability insurance, with minimum limits of \$1,000,000 liability per occurrence. Each carrier providing any such insurance, or portion thereof, shall be licensed to do business in the jurisdiction where the Dealer is located, and unless otherwise agreed by TO EXTREME OFF ROAD™ in writing, shall have a claims paying ability rating by Best's Guide of not less than "A Minus, VII" or better. At TO EXTREME OFF ROAD™'s request, at any time and from time to time during the term hereof, Dealer shall provide TO EXTREME OFF ROAD™ a current certificate of insurance demonstrating the coverage described above.

**26. Indemnification:** Under no circumstances shall TO EXTREME OFF ROAD™ be liable for any act, omission, contract, debt or other obligation of any kind of the Dealer or any salesperson, employee, agent or other person acting for or on behalf of the Dealer. Dealer shall indemnify and hold TO EXTREME OFF ROAD™ harmless from any and all claims, liabilities, losses, damages or expenses (including reasonable attorneys fees and cost) arising directly or indirectly from, as a result of, or in connection with, the Dealer's operation of the Dealer's business. TO EXTREME OFF ROAD™ shall indemnify and hold Dealer harmless from any and all claims, liabilities, losses, damages or expenses (including reasonable attorneys fees and costs) arising directly or indirectly from, as a result of, or in connection with, TO EXTREME OFF ROAD™'s operation of TO EXTREME OFF ROAD™'s business. The terms of this indemnity shall survive the termination of this Agreement.

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27. **Confidential Information:** As used in this Section, "Proprietary Information" means information developed by or for TO EXTREME OFF ROAD™ which is not otherwise generally known in any industry in which TO EXTREME OFF ROAD™ is or may become engaged and includes, but is not limited to, information developed by or for TO EXTREME OFF ROAD™, whether now owned or hereafter obtained, concerning plans, marketing and sales methods, materials, processes, procedures, devices utilized by TO EXTREME OFF ROAD™, prices, quotes, suppliers, manufacturers, customers with whom TO EXTREME OFF ROAD™ deals (or organizations or other entities or persons associated with such customers), trade secrets and other confidential information of any type, together with all written, graphic and other materials relating to all or any part of the same. Except as authorized in writing by TO EXTREME OFF ROAD™, the Dealer shall not at any time, either during or after the term of this Agreement, disclose or use, directly or indirectly, any Proprietary Information of which the Dealer gains knowledge during or by reason of this Agreement and the Dealer shall retain all such information in trust in a fiduciary capacity for the sole use and benefit of TO EXTREME OFF ROAD™.
28. **Additional Terms and Conditions:**
- (a) **Entire Agreement; Modification.** This agreement and any purchase orders accepted by TO EXTREME OFF ROAD™ in accordance herewith constitute the entire agreement between the parties relating to the subject matter hereof and all prior agreements, correspondence and understandings of the parties (whether oral or written) are superseded hereby, it being the express intention of the parties that this Agreement and any purchase orders accepted by TO EXTREME OFF ROAD™ in accordance herewith shall serve as the complete and exclusive statement of the terms of their agreement together. No amendment, waiver or other modification to all or any portion of this Agreement or the rights and obligations of the parties hereunder shall be valid unless in writing and signed by the parties. Neither party has relied upon any statements, representations, or other communications that are not contained in this Agreement.
- (b) **Governing Law; Venue.** This agreement shall be governed by and construed in accordance with the laws of the State of Kansas, without application of any conflicts of law principles. In the event of any litigation involving this Agreement, all such matters will be resolved exclusively in the state or federal courts seated in Saline County, Kansas, and the Dealer consents to such venue and jurisdiction.
- (c) **Notices:** All notices required or permitted to be given under this Agreement shall be in writing and shall be considered to be given and received in all respects when (i) personally delivered; (ii) one (1) business day after sent by reputable overnight delivery service; (iii) same day if delivered by facsimile to the facsimile numbers indicated below, including proof of delivery by electronic confirmation; or (iv) three (3) business days after being deposited in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to the parties at their respective addresses set forth below, or to such other address as may be designated by like notice duly given.
- (d) **Severability.** The parties agree that if any provision of this Agreement is under any circumstances considered invalid or inoperative by any court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to render it enforceable and the rights and obligations of the parties hereunder shall be construed and enforced accordingly, or, failing which, such provision shall be stricken and the remainder of this Agreement shall remain in full force and effect.
- (e) **Assignment.** This Agreement may not be transferred or assigned in whole or in part by operation of law or otherwise by the Dealer without the prior written consent of TO EXTREME OFF ROAD™. Upon thirty (30) days prior written notice to the Dealer, TO EXTREME OFF ROAD™ may assign its rights, duties and obligations under this Agreement. Without written notice, TO EXTREME OFF ROAD™ may assign its rights, duties and obligations under



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this Agreement to any parent, subsidiary or other affiliated corporation of TO EXTREME OFF ROAD™.

- (f) Waiver. Failure of either party at any time to require performance by the other party of any provision hereof shall not be deemed to be a continuing waiver of that provision, or a waiver of its rights under any other provision of this Agreement, regardless of whether such provision is of the same or a similar nature.
- (g) Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the successors and assigns of TO EXTREME OFF ROAD™ and the permitted successors and assigns of the Distributor.
- (h) No Third Party Beneficiaries. No person or entity other than the parties hereto shall have any rights by virtue of or under this Agreement.
- (i) Counterparts. The parties may execute this Agreement in one or more counterparts, each of which will constitute an original and all of which, when taken together, will constitute one and the same agreement.
- (j) Titles and Headings. The title of and headings used in this Agreement are used for convenience of reference only and are not intended to, and shall not in any way, affect construction of this Agreement.

