

HORSEPOWER

AUTOMOTIVE GROUP



HORSEPOWER AUTOMOTIVE GROUP NORTH AMERICA AUTHORIZED INTERNET RESELLER AGREEMENT

THIS INTERNET RESELLER AGREEMENT (the "Agreement") is made effective the date of its execution (the "Effective Date"), by and between **Horsepower Automotive Group, LLC** and its Brands, including, but not limited to, **Addictive Desert Designs, DV8 Off-Road, Rago Fabrication, and Flatline Van Co.**, with principal offices at 555A E. Queen Creek Rd., Chandler, AZ 85286 ("Horsepower Automotive"), and the authorized Internet reseller that has executed this Agreement ("Reseller"). HORSEPOWER AUTOMOTIVE and Reseller are each sometimes referred to herein as a "party" or collectively as the "parties." The parties agree as follows:

Definitions.

- Products: The ("Product(s)") shall mean the approved HORSEPOWER AUTOMOTIVE products and related accessories approved by HORSEPOWER AUTOMOTIVE and listed in Schedule A.
- Territory: The ("Territory") shall mean the countries listed and approved by HORSEPOWER AUTOMOTIVE in Schedule B.
- End-User: An ("End-User") shall mean any purchaser of the Product(s) from the Reseller who is the ultimate consumer for whom the Product is designed and who does not intend to resell the Product(s) to a third-party.
- Licensed IP: The ("Licensed IP") shall mean the trademarks, tradenames, product images, and/or marketing banners provided by HORSEPOWER AUTOMOTIVE in writing in the approved image or form provided by HORSEPOWER AUTOMOTIVE.
- Transship: ("Transship") shall mean the sale of Product(s) to any entity other than an End-User.
- Term: The ("Term") of this Agreement shall begin on the Effective Date and, unless sooner terminated as provided herein, continue in full force and effect for one (1) year from the Effective Date. This Agreement will automatically renew for consecutive one (1) year Terms thereafter.

1. Internet Appointment. HORSEPOWER AUTOMOTIVE grants to the Reseller and the Reseller accepts the non-exclusive right to fulfill orders and to market, sell, and distribute the Products to End-Users located in the Territory only in brick and mortar locations and on the Internet URL locations listed in the then-current Internet Reseller Profile attached hereto as Schedule C and approved by HORSEPOWER AUTOMOTIVE.

2. Third-Party Internet Marketplaces. Reseller, *ONLY if listed and approved by HORSEPOWER AUTOMOTIVE in Schedule C*, shall be allowed to sell or advertise Products on certain approved third-party Internet marketplaces under certain approved names.

3. Transshipping. Reseller shall not knowingly transship the Products. Specifically, Reseller shall not sell or transfer any of the Products to any person or entity for resale. Reseller agrees to restrict, cease, or limit the sale of Products to anyone at the request of HORSEPOWER AUTOMOTIVE. Reseller shall not sell or offer for sale any product bearing a trademark, copyright, patent, or name associated with HORSEPOWER AUTOMOTIVE that Reseller purchased or obtained from a source other than directly from HORSEPOWER AUTOMOTIVE or an HORSEPOWER AUTOMOTIVE Authorized Distributor. Reseller shall not obscure or alter any Product or its packaging in any fashion.

4. Geographic Sales Boundary. Reseller may only sell and advertise for sale the Products within the Territory. HORSEPOWER AUTOMOTIVE hereby expressly prohibits the Reseller from soliciting or consummating sales outside the Territory.

5. Commingle Inventory. Unless approved in writing by HORSEPOWER AUTOMOTIVE, Reseller shall not cause or allow the Products to be sold anywhere or in any manner, including a third-party Internet marketplace, where the Reseller is unable to certify that all Products purchased from Reseller are fulfilled with Products that the

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Reseller purchased from HORSEPOWER AUTOMOTIVE or an HORSEPOWER AUTOMOTIVE Authorized Distributor.

6. **Bundling.** Reseller shall not offer for sale any product bundles containing any Product(s) without prior written permission from HORSEPOWER AUTOMOTIVE.

7. **Sales by Auction.** Sales by the Reseller of Product(s) by way of online auction are prohibited without prior written permission from HORSEPOWER AUTOMOTIVE.

8. **Liquidated Damages.** For each occasion that Reseller breaches Sections 1, 2, 3, 4, 5, 6, or 7 of this Agreement by engaging in the unauthorized advertising, distribution, offering for sale, or sale of Products, in addition to all other remedies available to HORSEPOWER AUTOMOTIVE under this Agreement and at law, Reseller agrees to pay HORSEPOWER AUTOMOTIVE, as liquidated damages and not as a penalty, the greater of the following amounts: (i) the costs and fees associated with HORSEPOWER AUTOMOTIVE's investigation and enforcement regarding the unauthorized conduct, including, but not limited to, attorney's fees; or (ii) five times (5X) the MSRP of the Product(s) per unit of Product. The parties agree that these damages are not punitive.

When seeking Liquidated Damages under this provision, HORSEPOWER AUTOMOTIVE will provide Reseller evidence of the breach and give Reseller an opportunity to provide any counterevidence or explanation which HORSEPOWER AUTOMOTIVE agrees to review and consider in determining whether it will seek Liquidated Damages.

9. **Intellectual Property and Website Content.** Reseller is granted a limited, non-exclusive, non-transferable, revocable license to use the Licensed IP for the sole purpose of advertising and promoting the sale of Products to End-Users within the Territory, subject to the restrictions and limitations announced by HORSEPOWER AUTOMOTIVE.

10. **Reseller Obligations.** During the Term of this Agreement, Reseller shall:

- a. promote, market, and sell the Products;
- b. maintain qualified personnel with knowledge of the specifications, features, and use of the Products;
- c. provide quality post-sale return support for all customers, including End-Users that purchase the Products;
- d. agree to restrict, cease, or limit sales to any customer at the request of HORSEPOWER AUTOMOTIVE;
- e. preserve the reputation and goodwill of HORSEPOWER AUTOMOTIVE and the Products and avoid any illegal or unethical actions, including, but not limited to, false advertising and "bait and switch" practices;
- f. comply with all quality control standards, including, but not limited to, advertising, storage, and shipping requirements, as announced from time to time by HORSEPOWER AUTOMOTIVE;
- g. not bid on any current or future trademarks used or owned by HORSEPOWER AUTOMOTIVE as keywords on Google Ads or similar paid search engine, including Internet marketplace paid search programs, without prior written permission from HORSEPOWER AUTOMOTIVE;
- h. only use those Product images, descriptions, logos, marketing banners, and video clips provided or authorized in writing by HORSEPOWER AUTOMOTIVE on any website, advertisement, sponsored link, or any other on-line marketing used, paid for, or associated with Reseller;
- i. conduct and maintain at all times its operation in compliance with all applicable federal and state laws and regulations, FTC consent orders, county and city ordinances and regulations, and any other applicable law, regulation, or ordinance; and

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- j. comply with additional terms of sale as otherwise provided by HORSEPOWER AUTOMOTIVE and as such terms may change from time to time by HORSEPOWER AUTOMOTIVE in its sole discretion.
11. **Breach.** Any violation of the terms of this Agreement shall be deemed a breach of the Agreement, entitling HORSEPOWER AUTOMOTIVE to terminate the Agreement immediately or take any other action allowed under the law.
12. **Termination.** This Agreement may be terminated as follows:
- a. by HORSEPOWER AUTOMOTIVE immediately upon notice to Reseller in the event of a breach of any of the terms of this Agreement; or
 - b. by HORSEPOWER AUTOMOTIVE or Reseller, without cause or liability, upon thirty (30) days' prior written notice to the other party.
13. **Obligations Upon Expiration/Termination.** Upon expiration or termination of this Agreement for any reason, Reseller agrees to immediately remove any and all Internet listings of HORSEPOWER AUTOMOTIVE products and Reseller may be added to HORSEPOWER AUTOMOTIVE's Do Not Sell List. Reseller shall immediately cease to purchase, advertise, and/or sell HORSEPOWER AUTOMOTIVE products; cease to represent itself as an authorized reseller of HORSEPOWER AUTOMOTIVE products; cease all use of HORSEPOWER AUTOMOTIVE's intellectual property; and return to HORSEPOWER AUTOMOTIVE all advertising, promotional, display, and other materials that have been furnished to Reseller by HORSEPOWER AUTOMOTIVE. HORSEPOWER AUTOMOTIVE, at its option, will have the right to repurchase from Reseller any or all saleable HORSEPOWER AUTOMOTIVE products in Reseller's inventory at net invoice prices at which the Products were originally purchased by Reseller.
14. **Amendments & Waivers.** Except as otherwise set forth in this Section of this Agreement, this Agreement may be amended, waived, or modified only by a written instrument signed by an authorized officer of both parties stating specifically that it is an amendment, waiver, or modification. HORSEPOWER AUTOMOTIVE may amend any Schedule in this Agreement by providing notice to the Reseller, and any such amendment shall become effective immediately upon delivery of such notice.
15. **Entire Agreement.** This Agreement, the Schedules, any additional terms and conditions of HORSEPOWER AUTOMOTIVE, HORSEPOWER AUTOMOTIVE's written invoices, and any and all personal guarantees or assurances of payment by Reseller set forth the entire understanding and agreement of the parties, and supersede any and all oral or written agreements or understandings between the parties as to the subject matter of this Agreement.
16. **Limitation on Liability.** RESELLER ACKNOWLEDGES AND AGREES THAT HORSEPOWER AUTOMOTIVE SHALL NOT BE RESPONSIBLE FOR ANY DAMAGES THAT RESELLER MAY INCUR FROM DELAYED SHIPMENT, NON-SHIPMENT, OR PRODUCT SELECTION, WHETHER LIABILITY IS ASSERTED IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT PRODUCT LIABILITY), WARRANTY, OR OTHERWISE. IN NO EVENT SHALL HORSEPOWER AUTOMOTIVE BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS OR LOSS OF USE), WHETHER OR NOT HORSEPOWER AUTOMOTIVE SHALL BE OR SHOULD BE AWARE OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. THIS SECTION SHALL SURVIVE EXPIRATION OR TERMINATION OF THIS AGREEMENT.
17. **Law and Forum.** This Agreement shall be deemed to have been entered into and fully performed in the State of Arizona and shall be governed by and construed in accordance with the laws of the State of Arizona without regard for the conflicts of laws rules thereof. Reseller agrees that all controversies, disputes, and claims arising out of this Agreement shall be adjudicated exclusively by a court of competent jurisdiction within Maricopa County or the United States District Court for the District of Arizona, except that any judgment in any such action may be enforced in other jurisdictions by suit or in any other permitted manner. Reseller irrevocably consents to the jurisdiction and venue of the state and federal courts of Arizona and waives any rights to seek a transfer of venue for any reason or to claim that the forum is inconvenient.

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18. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

19. Electronic Execution. In accordance with the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 *et seq.* ("ESIGN"), the Personal Information Protection Electronic Documents Act, SC 2000, c. 5 ("PIPEDA"), the Uniform Electronic Commerce Act ("UECA"), and the Quebec Act to Establish a Legal Framework for Information Technology, SQ 2001, c. 32, the parties hereby agree they may execute this Agreement using electronic means including the use of electronic signatures by the parties, which the parties agree shall have the full force and legal effect as if the electronic signatures were traditional hand-written signatures. Reseller acknowledges that it has the ability to retain this Agreement either by printing or saving it.

Reseller: _____

HORSEPOWER AUTOMOTIVE GROUP, LLC

Signed by: _____

Signed by: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

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SCHEDULE A

Products

BRAND	Approved by HORSEPOWER AUTOMOTIVE
Addictive Desert Designs	<input type="checkbox"/>
DV8 Off-Road	<input type="checkbox"/>
Rago Fabrication	<input type="checkbox"/>
Flat Line Van Co.	<input type="checkbox"/>

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SCHEDULE B

Territory

Territory	Approved by HORSEPOWER AUTOMOTIVE
United States	<input data-bbox="1084 600 1156 632" type="checkbox"/>
Canada	<input data-bbox="1084 699 1156 730" type="checkbox"/>

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SCHEDULE C

URLs and/or Internet Marketplace and Seller ID

Internet URL or Marketplace/ Seller Name ID	Approved by HORSEPOWER AUTOMOTIVE
	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>