



DUNLOP "PRO DEALER" RETAILER Terms and Conditions

1. **NONEXCLUSIVE, INDEPENDENT RETAILER; BENEFITS OF PROGRAM.** Subject to the terms and conditions stated in this Agreement, Dunlop acknowledges that Retailer is a non-exclusive, independent authorized retailer in motorcycle products and may, from time to time, purchase and sell certain Dunlop branded motorcycle tires ("**Products**") to end user customers. Retailer acknowledges and agrees that it is an independent contractor and nothing contained in this Agreement shall be construed as creating any agency, partnership, franchise, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties. Neither party, by virtue of this Agreement, will have any right, power nor authority to act or create an obligation, express or implied, on behalf of the other party.
2. **MINIMUM ON-HAND STOCK REQUIREMENT AND PRODUCT PROMOTION.** Retailer shall stock an on-hand minimum inventory of thirty (30) Products at all times at each of its physical United States locations. Retailer agrees to use its best efforts to diligently promote and solicit sales of such Products. This minimum requirement may be amended from time to time by Dunlop under the Dunlop "Pro Dealer" Network Program Benefits and Guidelines, a reference copy of which is attached hereto as Exhibit A (the "**Guidelines**").
3. **PROGRAM BENEFITS.** To the extent Retailer complies with the terms and conditions of this Agreement, Dunlop agrees to provide Retailer with the benefits and programs set forth hereunder and in the Guidelines, as modified by Dunlop from time to time.
4. **POLICIES.** Retailer must comply with all the terms, conditions and provisions of any and all Dunlop program requirements, agreements and/or other documents to which Retailer is or becomes a party or to which Retailer is or becomes a participant in the related Dunlop program, all of which terms, conditions and provisions, as from time to time may be in effect, are incorporated in this Agreement. This includes, without limitation, compliance with the Guidelines and other applicable Dunlop program requirements and documents from time to time in effect (collectively, the "**Dunlop Requirements**"). Dunlop may, from time to time, amend and/or modify any of the Dunlop Requirements without prior notice to Retailer. The most current versions of the Dunlop Requirements are available upon Retailer request. Retailer also agrees that it shall comply with all applicable Dunlop policies and guidelines, including, without limitation, Dunlop's privacy policy and Information Management and Security Policy Regarding Credit Card Info (copies of which are available upon Retailer request). From time to time, Retailer may have access to collect, transmit or store personally identifiable information from or relating to purchasers of Products or their households ("**PII**"). PII includes, but is not limited to, a purchaser's name, address, telephone number, email address, social security number or tax identification number, vehicle identification number (VIN), vehicle registration number (license plate number), driver's license number and/or credit card information. Retailer shall take any and all security measures reasonably necessary to protect such PII from unauthorized access, use, dissemination or disclosure.
5. **PASS-THROUGH WARRANTIES AND WARRANTY CLAIMS.** Dunlop agrees to provide its standard limited warranty for Products which shall pass through to, and be enforceable by, Retailer's end user customers. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, DUNLOP MAKES NO WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY FOR THE SELECTION OF TIRES FOR VEHICLES, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. IN NO EVENT SHALL DUNLOP BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING ANY DAMAGES FOR LOSS OF REVENUE OR PROFITS.
6. **TRADE NAMES, TRADEMARKS AND SERVICE MARKS.** The Retailer is permitted to use Product trademarks, service marks, logotypes, trade names, or any confusingly similar terms ("**Trademarks**") only in the normal course of

selling Products to its end user customers, subject to the limitations set forth in this Agreement. Retailer will not use any of the Trademarks: (i) in any corporate titles, trade styles, business names, trade names, domain names or URL's (i.e., for example, "Joe's Dunlop" or "johnsdunlop.com"); and/or (ii) when answering telephone calls or other customer communications; and/or (iii) in connection with any service or repairs offered or performed by Retailer; and/or (iv) in any telephone or business directories, or other directories, whether electronic or printed. Any other usage of the Trademarks requires the express written consent of Dunlop, in its sole discretion. Retailer expressly acknowledges that it has no right or interest in or to the Trademarks except as granted under this Agreement, and that it will not in any way infringe or contribute to the infringement by others of the Trademarks or other trademarks, brands or trade names of Dunlop or its affiliates. Upon termination of this Agreement, Retailer will promptly and permanently remove all signs and other advertising material in and about Retailer's place or places of business that refer to or identify Retailer as a "Pro Dealer" in Products or otherwise refer to Dunlop or use Products' Trademarks, whether such signs and advertising were acquired at Retailer's expense or otherwise.

7. NOTICES. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (c) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth in the introductory paragraph to this Agreement (or at such other address for a party as shall be specified in a notice given in accordance with this [Section 7](#)).

8. TERM AND TERMINATION. Dunlop may terminate this Agreement immediately by serving written notice upon Retailer in the event Retailer has failed or refused to comply with any of the terms or conditions of this Agreement (including the Guidelines) or has falsified any claim, certification, report or other document sent to Dunlop. Upon termination or expiration of this Agreement, Retailer will cooperate with Dunlop regarding removal of signs or advertising material as set forth in [Section 6](#) above. The parties have considered in advance the possibility or necessity of expenditures to be incurred in preparing for performance of this Agreement and the possible loss of or reduction in the benefit thereof in the event of expiration or termination and have nevertheless mutually agreed that neither party shall be liable to the other for damages in any form by reason of the expiration or termination of this Agreement pursuant to its terms.

9. CONFIDENTIALITY. From time to time during the Term and in furtherance of this Agreement, Dunlop may disclose or make available to Retailer information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information and other sensitive or proprietary information, whether orally or in written, electronic or other form or media], and whether or not marked, designated or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Retailer shall: (i) protect and safeguard the confidentiality of Dunlop's Confidential Information with at least the same degree of care as Retailer would protect its own confidential information, but in no event with less than a commercially reasonable degree of care; (ii) not use Dunlop's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise Retailer's rights or perform its obligations under this Agreement; and (iii) not disclose any such Confidential Information to any person or entity, except to Retailer's representatives who need to know the Confidential Information to assist Retailer, or act on its behalf, to exercise its rights or perform its obligations under the Agreement. Retailer shall be responsible for any breach of this [Section 9](#) caused by any of its representatives. Upon the expiration or termination of this Agreement and/or at any time during or after the term of this Agreement at Dunlop's request, Retailer shall promptly return, and shall require its representatives to return to Dunlop all copies, whether in written, electronic or other form or media, of the Confidential Information. In addition to all other remedies available at law, Dunlop may seek equitable relief (including injunctive relief) against Retailer and its representatives to prevent the breach or threatened breach of this [Section 9](#) and to secure its enforcement.

10. MISCELLANEOUS. Neither this Agreement, nor any right under or interest in this Agreement, may be assigned by Retailer. This Agreement shall terminate automatically without notice or further action in the event of any attempted assignment by Retailer of this Agreement or any right or interest arising from this Agreement. No failure of Dunlop to enforce or exercise any of its rights with respect to any provisions hereof shall operate or be construed as a waiver of those rights nor shall it in any way affect the validity of this Agreement or act as a bar to Dunlop's subsequent enforcement or exercise of any right created by this Agreement. The exercise or enforcement by Dunlop of any of its rights under this Agreement shall not preclude or prejudice Dunlop from later exercising the same or any other right that it may have under the Agreement. It is understood that this Agreement constitutes all understandings of the parties and was entered into without reliance on any oral or written representations or promises previously or currently made

Common Owner: Enter Common Owner
Customer Number: Enter Customer Number

Effective Date: CLICK DATE
Expiration Date: CLICK DATE

by either party and shall supersede any other agreement now in effect between the parties concerning the sale by Dunlop to Retailer of any Products covered by this Agreement, and no other obligations or promises by either party are to be inferred by reference to any oral or written statements by the parties or their representatives. This Agreement may not be amended, changed, modified, altered or supplemented in any manner, including, without limitation, any electronic transmission or purchase order, unless in writing and signed in hard copy by the party against whom enforcement is sought. No handwritten change to this Agreement shall be effective between the parties unless initialed by an authorized Dunlop representative directly next to such handwritten change. If any provision of this Agreement is held to be illegal or invalid, the validity of the remaining portions of the Agreement shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be illegal or invalid. This Agreement may be signed in counterparts, each of which shall be deemed an original, and all of which together will be deemed a single document. The parties acknowledge and agree that this Agreement may be executed or accepted using electronic, stamped or facsimile signatures, and that such a signature shall be legally binding to the same extent as a written or cursive signature by Retailer's or Dunlop's authorized representative. Each party waives any legal requirement that this Agreement be embodied, stored or reproduced in a tangible media and agrees that an electronic reproduction shall be given the same legal force and effect as a signed writing.

11. **VENUE AND JURISDICTION.** Any legal suit, action or proceeding arising out of or relating to this Agreement, shall be instituted in the federal courts of the United States of America or the courts of the State of New York in each case located in the City of Buffalo and County of Erie, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by certified mail in accordance with Section 7 shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. This Section shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement through their authorized representatives as of the Effective Date.