



AUTHORIZED DISTRIBUTOR TERMS & CONDITIONS

(Effective 11/01/16)

To qualify and remain a KWA Authorized Distributor, your business must adhere to this KWA Authorized Distributor Policy at all times:

PLEASE READ THE FOLLOWING DISTRIBUTOR TERMS AND CONDITIONS CAREFULLY (and all agreements incorporated herein by reference), as it is a legal agreement between you, the purchaser of KWA product(s) ("Product" or "Products") and KWA Performance Industries, Inc. ("KWA").

No variation of these Standard Terms shall be binding unless agreed in writing between KWA and Distributor.

KWA is a manufacturer of Airsoft Products. Authorized Distributor is a retailer with a physical location or online store and wishes to market and sell the KWA family of products to end-users, other retailers, outlets, and authorized dealers.

This Agreement sets out the terms and conditions on which: (a) KWA authorizes Distributors to resell certain designated KWA products; and (b) KWA will sell such products to Distributor in order to allow Distributor to re-sell and distribute such products to customers as expressly authorized in this Agreement.

In consideration of the mutual covenants herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Authorization:** Subject to and in accordance with the terms and conditions of this Agreement, KWA hereby authorizes Distributor; and Distributor hereby accepts such authorization to market and resell only those KWA Products purchased pursuant to the Order. "Products" means the KWA products identified in the Order. "Designated Channel" means other authorized dealers or other approved resellers ("Resellers") who are buying for resale and not for their own use and, if the Distributor has been designated an Authorized Online Distributor (AOR) by KWA, to all customers via online sales.
2. **In regards to all Distributors, regardless of their geographic location:** Distributor's authorization is non-transferable and non-exclusive. Distributor acknowledges that KWA reserves the unrestricted right to directly sell, market and distribute, or to grant to others the right to sell, market and distribute the Products. Distributor further acknowledges that KWA also reserves the unrestricted right to grant exclusivity to a particular country or countries outside of the United States.
3. **Pricing:** Product pricing is reflected in the Order. All amounts are in U.S. Dollars, unless otherwise stated by KWA. Prices for future orders are subject to change without notice, at KWA's sole discretion. Distributor will pay, in addition to the stated price, all charges for transportation, freight and handling of the Products and all taxes howsoever designated, levied or based on the purchase price of the Products or their use including federal, state, provincial and local, excise, sales, use, privilege, excise, personal property or other taxes, and all other rates, levies, fees, assessments or

other charges imposed by any government (municipal, provincial or federal) on or in respect of this Agreement or the Products or their purchase, delivery, possession, use or operation.

4. **Sales Restrictions.** Company will not sell or transfer inventory to any other distributor for the purpose of online or cross-border resale, aka “transshipping” on any third party websites/webstores (such as, but not exclusive to, Amazon.com, ebay.com, etc.) without expressed written notification to KWA.
5. **Report Sell-Thru for Physical Retail Location(s) and E-Commerce Sites:** Dealer must be able to provide sell-thru information by SKU and approved retail location upon request.
6. **Purchase Orders:** KWA reserves the right to decline to accept any Order entirely at its discretion and for any reason. KWA agrees that it shall use commercially reasonable efforts to promptly notify Distributor of its intention to reject any Orders. Once the Order has been accepted, KWA may make partial shipments if some items are on backorder.
7. **Minimum Orders.** Distributor Order may be subject to any minimum order requirements specified by KWA from time to time and such minimum order requirements may be adjusted by KWA at any time in its discretion with or without notice to Distributor.
8. **Minimum Advertised Price Policy:** Distributor shall have sole discretion as to the selling price of Product to its customers. Although the Distributor shall have sole discretion as to the selling price of Product, Distributor agrees to adhere to any Minimum Advertised Price Policy provided by KWA. You can read the updated MAP Policy in its entirety here: <https://store.kwausa.com/authorized-dealers>.
9. **Terms of Payment:** Payment in full is due prior to shipment via credit card unless otherwise agreed in writing by KWA. KWA may on receipt of Distributor's signed Order, pre-authorize the charges specified on the Order to the credit card specified on the Order and will process the charges to such credit card prior to shipment. In certain circumstances, KWA may elect to invoice Distributor and any such invoice shall, unless otherwise specified on a particular Order, be due and payable within 30 days of receipt thereof. KWA shall be entitled to interest at a rate of twelve percent (12%) per annum on any overdue amounts outstanding. In the event that Distributor presents an NSF check to KWA, KWA shall be entitled to an additional charge of \$35.00. Distributor shall indemnify KWA for all of KWA's reasonable costs and expenses (including without limitation, reasonable legal fees) associated with the collection of any unpaid amounts due and payable hereunder. Time for payment by Distributor shall be of the essence. Distributor will not have the right to claim compensation or to set-off against any amounts which become payable to KWA herein or otherwise.
10. **Risk:** Distributor hereby assumes all risk regarding the Products, including without limitation, risk of loss, theft, damage or destruction (and whether or not insured against) upon delivery of the Products by KWA to a carrier. The carrier shall be the agent of Distributor.
11. **Manner of Transportation and Delivery Date:** KWA will ship Products according to the selected shipping instructions Distributor selected on the Order; if shipping instructions are not specified by Distributor, KWA may ship in any manner convenient to KWA. Any delivery date quoted by KWA is its best estimate and is based upon the conditions in its works at the time, and therefore such date shall be interpreted as being estimated only and in no event shall time be of the essence regarding such date or shall KWA be liable for any failure to do so. If KWA learns it cannot ship within the estimated times, KWA will use commercially reasonable efforts to advise Distributor of the new estimated shipment date. For items on backorder, KWA may ship whenever the Product becomes available without any notice to Distributor.
12. **Cancellation / Delay by Buyer:** Distributor may not cancel Orders that have been scheduled for shipment with carrier. Distributor may, on written notice of cancellation received by KWA no less

than five (5) business days prior to actual scheduled shipment date cancel Orders for pre-ordered Products or Products on backorder.

13. **Returns:** Distributor must accept all Products tendered under this Agreement. Under no circumstances is Distributor permitted to reject Products tendered or to return Products without KWA's prior written consent, unless otherwise specified on a particular Order. Defective Products shipped to Distributor may be returned only with a "Product Return Authorization" or ("PRA") provided by KWA prior to return, and must comply with KWA's policies and procedures then in effect. Approved returns must be accompanied by a Product Return Authorization (PRA) number issued in advance. Credit for returns complying with PRA procedures will be issued by KWA only upon receipt and inspection of returned Product as follows: (i) in case Distributor paid by credit card, to the Distributor credit card used to make payment, and (ii) in all other cases, by check. All returns must be in the original KWA packaging and contain all items provided with the Product. Distributor must prepay freight and all related transportation costs for all returns; risk of loss passes upon delivery to KWA.
14. **Distributor Obligations:** Distributor represents, warrants and agrees that it shall, at all times in the performance of, and in accordance with the terms and conditions of, this Agreement, comply with the following obligations, responsibilities and terms and conditions: (a) employ personnel reasonably familiar with the operation of the Products; (b) devote such time and effort that is reasonable to sell and promote, market, advertise and extend, in good faith, sales of Products to dealers; (c) provide interested dealers with all information and material at the disposal of Distributor relating to the Products and their operation, function or otherwise; (d) conduct business in its own name and, except to the extent expressly provided in this Agreement, without representing, in any manner and to any extent, that Distributor or its representatives are either affiliated with, or is a part of, KWA, provided that Distributor may designate itself as an "Authorized KWA Distributor" in relation to all such business; (e) render to KWA, at its expense, all reasonable assistance in any connection with Product problems, warranty service or other matters arising as a result of Distributor sales of Products; (f) comply with all applicable laws; (g) not in any manner or to any extent whatsoever: (i) engage in deceptive, illegal, misleading, or unethical practices that are or might be detrimental to KWA, Products, customers or the public; (ii) engage in the publication or utilization of any misleading or deceptive advertising material with respect to any Product or concerning KWA (iii) make any representations, warranties, covenants, or guarantees whatsoever to anyone with respect to any Products or concerning KWA, that are, in any manner or to any extent, inconsistent with those provided directly by KWA to Distributor or that otherwise have not been expressly authorized in writing by KWA; (iv) not sell Products to anyone outside of the authorized Designated Channel and Territory nor export the Products; (v) incur any expenses on behalf of KWA without KWA's prior written consent. All costs and expenses incurred by Distributor in any connection with this Agreement shall, except to the extent otherwise agreed to by the parties in writing or as is otherwise expressly set forth herein, be the sole responsibility and liability of, and shall be paid by, Distributor.
15. **Marketing and Trademarks:** (a) Use of Marks. Distributor recognizes KWA's ownership and title to its trademarks, service marks and trade names whether or not registered (collectively "KWA Marks"). Distributor shall not acquire any rights in KWA Marks nor will it act to impair the rights of KWA in and to such KWA Marks. Distributor is hereby granted a limited, non-exclusive and revocable at any time permission to reproduce the KWA Marks associated with the Products that are identified and approved by KWA from time to time to the extent reasonably necessary in carrying out Distributor's Product marketing, advertising, servicing and sales activities authorized hereunder, subject to any directions, guidelines or policies communicated by KWA to Distributor. Distributor agrees: to display any and all such notices in respect of the use of any KWA Marks as KWA may reasonably request, including notices indicating that such marks are used under license or are registered in the name of KWA (or other persons); that any and all goodwill associated with the KWA Marks, including Distributor's reproduction and advertising of the KWA Marks and sale of Products as permitted hereunder, shall ensure exclusively to the benefit of KWA or its licensors; not ever, in

any jurisdiction, dispute or contest for any reason whatsoever, directly or indirectly, the validity, ownership or enforceability of the KWA Marks, nor to take any actions or do anything that may infringe or impede on KWA's or its licensors rights in and to the KWA Marks. Any unauthorized use or modification of the KWA Marks is expressly prohibited. (b) Marketing Collateral. KWA may, in its discretion, provide available data, images, photos, and other varieties of information regarding Products and services that is intended to support marketing and sale of Products (collectively "Information"). KWA hereby grants Distributor a royalty-free, non-exclusive and revocable license to distribute, display and promote the Information solely for the purpose of advertising, promoting and selling the Products on the terms hereof. KWA may revoke such license at any time if, in the determination of KWA, Distributor's use, marketing, distribution, display or promotion is detrimental to the Product and/ or the business and affairs of KWA. KWA does not warrant that Information will be current or error-free. Distributor may not adapt or change any Information without written permission of KWA.

16. **Use KWA Supplied Core Product Data in Feeds:** Dealer must be able to use standard set of KWA supplied data in product data feeds that you distribute to 3rd party advertising vehicles unless prior written permission is obtained from KWA.
17. **Product Warranty:** KWA shall provide its standard Product limited warranty statement with the Product for end user customer benefit ("Customer Warranty"). Distributor agrees to provide its customers with notice of the KWA Customer Warranty. EXCEPT AS SET OUT IN THIS SECTION, KWA PROVIDES NO WARRANTIES TO DISTRIBUTOR AND EXPRESSLY DISCLAIMS AND EXCLUDES, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL WARRANTIES, REPRESENTATIONS, PROMISES OR CONDITIONS, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, AND WHETHER ARISING BY STATUTE OR OTHERWISE IN LAW, FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ANY WARRANTY WITH RESPECT TO THE FUNCTIONALITY, DURABILITY, COMPATIBILITY, OPERATION OR USE OF THE PRODUCTS OR THAT THE PRODUCTS WILL MEET ANY PERSON'S REQUIREMENTS OR THAT ANY OR ALL DEFECTS WILL BE CORRECTABLE.
18. **Warranty Service:** In the event of a failure of a Product sold by Distributor to comply with the Customer Warranty, Distributor customers may, subject to the terms and conditions of the Customer Warranty: (a) contact KWA for service assistance at 1-626-581-1777; and (b) KWA will make the determination whether a replacement product can be sent to the customer or whether the Product should be returned to KWA for repair. All costs of shipment shall be borne solely by the end-user customer.
19. **Distributor Warranty:** Distributor represents and warrants to KWA that: (a) it shall use reasonable care in relation to the performance of its obligations hereunder and in providing services to dealers and such performance shall be in a diligent and workmanlike manner consistent with standards generally observed in the industry for similar services; and (b) it has all necessary skill, experience and competence required to perform this Agreement and provide necessary services to its dealers.
20. **Limitation:** IN NO EVENT AND TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW SHALL KWA, ITS SHAREHOLDERS, AFFILIATES, CONTRACTORS, SUPPLIERS AND AGENTS AND THEIR RESPECTIVE DIRECTORS, OFFICERS AND EMPLOYEES (COLLECTIVELY THE "KWA PARTIES") BE LIABLE TO DISTRIBUTOR OR ANY THIRD PARTY FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, INCIDENTAL OR INDIRECT DAMAGES OR ANY OTHER COMMERCIAL OR ECONOMIC LOSS OR DAMAGES OF ANY KIND OR NATURE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, IN RESPECT OF LOSS OF PROFIT OR REVENUE, COSTS OF DELAY, LOSS OF TIME OR INCONVENIENCE OR COSTS

OF PROCURING SUBSTITUTE PRODUCTS) EVEN IF SUCH DAMAGES ARE FORESEEABLE OR THE KWA PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. KWA PARTIES' TOTAL LIABILITY AND OBLIGATION IN THE AGGREGATE FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN ANY CONNECTION WITH THIS AGREEMENT, WITH RESPECT TO ANY EXPENSE, DAMAGE, LOSS, INJURY, OR LIABILITY OF ANY KIND, REGARDLESS OF THE CAUSE OR FORM OF ACTION OR THEORY OF LIABILITY (INCLUDING FOR BREACH OF CONTRACT, TORT, NEGLIGENCE, BY STATUTE OR OTHERWISE) SHALL BE LIMITED TO THE ACTUAL DIRECT DAMAGES SUFFERED AND SHALL NOT EXCEED THE ACTUAL AMOUNTS PAID BY DISTRIBUTOR TO KWA UNDER THE APPLICABLE ORDER IN RESPECT OF THE PRODUCTS SUBJECT TO THE CLAIM. All disclaimers and limitations set forth herein shall apply regardless of the nature of any cause of action or demand (including, but not limited to breach of contract, breach of warranty, negligence, strict liability, tort or any other cause of action) and shall survive a fundamental breach or breaches and/or failure of the essential purpose of this Agreement or any remedy contained herein.

21. **Indemnity:** Distributor hereby agrees to indemnify and hold harmless the KWA Parties and their successors and assigns from and against all liabilities, obligations, costs, losses, demands, actions, proceedings, claims, damages and penalties (including, without limitation, all legal costs and costs of enforcement) incurred or suffered by any of the KWA Parties and arising out of or relating to Distributor's performance or breach of this Agreement.
22. **Title:** If Distributor makes payment in advance title to and ownership of the Products shall pass to Distributor on delivery of Product by KWA to a carrier, otherwise title to and ownership of Products shall not pass to Distributor and shall remain with KWA until Distributor has paid all payments and other amounts owing to KWA under this Agreement in full and has performed all obligations under this Agreement in full; thereupon, title to and ownership of the Products shall vest in Distributor without further act.
23. **Publicity:** Distributor may, subject to the terms hereof, generally publicly disclose that Distributor is an "Authorized KWA Distributor". Any other public statements or releases by Distributor regarding the relationship between the parties shall require the prior written approval of KWA.
24. **Term:** This Agreement shall commence on the Effective Date and remain in full force and effect for such period of time as Distributor is engaged in the resale of Products purchased pursuant to this Agreement. Once all Products purchased pursuant to the Order have been sold by Distributor all of the rights and licenses granted to Distributor hereunder shall terminate. Sections 6, 7, 12-23 and 25-33 shall survive any completion or termination of this Agreement.
25. **Specifications:** Product features, dimensions and other specifications set forth by KWA sales literature or Information are subject to change. KWA may, without affecting its obligations under an accepted Order, make changes in the specifications of the Products delivered under an Order from those contained in sales literature or Information.
26. **Entire Agreement and Amendment:** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, proposals, promises, inducements, representations, conditions, warranties, understandings, purchase or sales orders, negotiations and discussions, whether oral or written, of the parties. As used herein, the term "Agreement" shall include any such future modifications, amendments, supplements or other changes hereto. No terms or conditions which may be contained in Distributor's order forms, purchase orders or any other document not agreed to in writing by KWA shall bind KWA. This Agreement will ensure to the benefit of and be binding upon the parties and their respective successors, heirs and permitted assigns. KWA reserves the right to change the terms and conditions of this Agreement at any time and without notice and Distributor is responsible to review this Agreement each time Distributor submits an Order.

27. **Intervening Events:** KWA shall not be liable for delay or failure in performance resulting from acts or events beyond the control of KWA, including but not limited to, strikes or labor or industrial disturbances, civil disturbances, acts, orders, legislation, regulations or directives of any government or other public authorities, acts of public enemies, riots, sabotage, blockages, embargoes, shortages of labor, materials and suppliers, delays or failures of suppliers, lightning, earthquakes, fire, storms, hurricanes, floods, washouts, explosions and acts of God.
28. **No Assignment:** Neither this Agreement nor any right granted hereby is assignable by Distributor without KWA's prior written consent. KWA may assign this Agreement at any time without notice to Distributor.
29. **Severability / Waiver:** Any provision of this Agreement which is unenforceable in any jurisdiction shall, in such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. No delay or omission by a party to exercise any right or power it has under this Agreement or to object to the failure of any covenant of the other party to be performed in a timely and complete manner, shall impair any such right or power or be construed as a waiver of any succeeding breach or any other covenant. All waivers must be in writing and signed by the party waiving its rights.
30. **Governing Law:** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of California, without regard to conflict of laws principles. Any and all disputes arising under this Agreement, whether as to interpretation, performance or otherwise, shall be subject to the jurisdiction of the courts of the State of California and each of the parties hereto hereby irrevocably attorney to the jurisdiction of the Courts of the State of California. The parties expressly exclude the application of The United Nations Convention on Contracts for the International Sale of Goods to this Agreement.
31. **Independent Parties:** The parties are acting hereunder as independent contractors and nothing contained herein shall be construed as creating any partnership, joint venture, manufacturer-distributor, or agency relationship between the parties. Neither party shall have any right, power or authority to bind or obligate the other.
32. **Inconsistencies:** In the event of any inconsistencies or conflicts between the terms of this Agreement and the terms of any schedules or other documents attached to or relating to this Agreement, the terms of this Agreement will prevail, unless otherwise expressly stated and agreed to in a signed writing by the parties.
33. **Notices:** Any notice or other communications given under this Agreement shall be in writing and shall be given by delivery in person, by mail or by electronic communication to the address specified for Distributor on the Order.
34. **Language:** It is the expressed wish of the parties that this Agreement and any related documents be drawn up in the English language. Les parties confirment qu'il est de leur volonté expresse et réciproque que cette convention et tout document qui s'y rattache soient rédigés en anglais.

Acknowledgement

Authorized Distributor Representative (Print Name): _____

Authorized Distributor Representative Signature: _____

Title: _____

Date: _____