

# UP DOWN AIR SYSTEMS, LLC

## 2018 Reseller Agreement



1. **Acceptance.** Up Down Air Systems, LLC has published this Reseller Agreement (“Agreement”) on its website after you have signed in as a direct account, located at [www.UpDownAir.com](http://www.UpDownAir.com). Any entity that purchases Up Down Air Systems, LLC products for resale to others (“Reseller”) anywhere in the chain of product distribution (i.e., warehouse distributor, dealer, and/or direct reseller, or any combination thereof) are expected to carefully review this Agreement. Resellers clicking on the **“I ACCEPT”** button at the bottom of this Agreement, executing this Agreement in writing or by electronic acknowledgement, such as through email or facsimile, and/or failing to object to any term or condition upon receipt of this Agreement, as called for by this Agreement, is its indication that reseller has reviewed, understands and consents to the terms and conditions of this Agreement.

### **YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.**

Acceptance of this Agreement by Reseller is expressly limited to the exact terms contained herein and any attempt to alter or omit any of such terms shall be deemed a counteroffer which may be rejected by Up Down Air Systems, LLC. It is a condition of this Agreement that any provisions printed or otherwise contained in any acknowledgment hereof, purchase order or other document which is submitted by Reseller which are inconsistent with or in addition to the terms and conditions herein stated, and any alteration in this Agreement, shall have no force or effect, and that Reseller agrees that any such provision therein or any such alterations in this Agreement shall not constitute any part of this Agreement unless specifically agreed to in writing by an Up Down Air Systems, LLC officer via handwritten signature. No alteration of Up Down Air Systems, LLC rights or obligations stated herein shall be binding unless agreed to in writing by a Up Down Air Systems, LLC officer.

2. **Price; Payment; Delivery.** Price is as quoted in the sales order referring to this Agreement and is Net 30 days from date of shipment, which is Up Down Air Systems, LLC date of invoice. Except for drop ship orders or as otherwise agreed by Up Down Air Systems, LLC and Reseller, terms are Up Down Air Systems, LLC dock, at which point title and risk of loss transfer to Reseller. For drop ship orders, terms are Up Down Air Systems, LLC point of manufacture, at which point title and risk of loss transfer to Reseller.
3. **Late Payment.** All amounts not paid in full within 60 days after the date due shall bear interest from the date due until paid at an annual rate of eighteen percent (15%) compounded monthly. Payments received by Up Down Air Systems, LLC shall be first applied to interest accrued and unpaid as to any account of Reseller and then to any amount overdue on such accounts as Up Down Air Systems, LLC shall determine in its sole discretion.
4. **Cancellation:** To cancel any order, Reseller must telephone or email Up Down Air Systems, LLC by the end of the business day on which Reseller’s order was received and must receive written confirmation from Up Down Air Systems, LLC of cancellation. Orders for Products are otherwise not cancellable.
5. **Purchase Money Security Interest.** Notwithstanding Paragraph 2 above, which relates to transfer of title and risk of loss, until the price shall have been paid in full to Up Down Air Systems, LLC for any Products, Up Down Air Systems, LLC shall retain a purchase money security interest in the inventory of the Products presently in the possession of or hereafter acquired by Reseller, and if Reseller shall have sold the Products to any third party, the proceeds of resale (or claim thereto) shall belong to Up Down Air Systems, LLC. Reseller hereby appoints Up Down Air Systems, LLC as its attorney in fact to file any document, with any state or other governmental authority, as is necessary or desirable to perfect, continue, modify or terminate this security interest. Failure on the part of Reseller to pay the price when due shall give Up Down Air Systems, LLC the right (without prejudice to any other remedies):
  - a. those in possession of the goods that are still owned by Up Down Air Systems, LLC, because they have not been paid for, agree not to contest or object to a court order allowing Up Down Air Systems, LLC to repossess said goods; and
  - b. to prevent Reseller from reselling or parting with possession of the Products until the price there for shall have been paid in full.
6. **Taxes.** The price of the Products is exclusive of all city, state, and federal excise taxes, including, without limitation, taxes on manufacture, sales, receipts, gross income, occupation, use and similar taxes. Wherever applicable, any tax or taxes will be added to the invoice as a separate charge to be paid by Reseller.
7. **Co-Op Advertising Allowance:** Up Down Air Systems, LLC may establish every new Reseller account with a Co-Op Advertising Allowance (“Co-Op”).
8. **Inventory Stock Adjustments:**

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- a. Up Down Air Systems, LLC offers to Resellers a once-annual stock adjustment of 4% of the previous year's net purchases with a 2 – 1 offsetting order.
  - b. To obtain a stock adjustment, a Reseller must notify Up Down Air Systems, LLC thirty days in advance, and must obtain a Return Goods Authorization (RGA) number from Up Down Air Systems, LLC. Reseller must pay the freight for returning the goods back to Up Down Air Systems, LLC
  - c. Stock adjustments will only be accepted from March through August, inclusive.
  - d. Up Down Air Systems, LLC will issue an RGA only for Products identified with the Up Down Air Systems, LLC trademark. Products which are manufactured exclusively for a Reseller or which are private-labeled are nonreturnable. Products which are more than twelve months old, and Products which have been discontinued by Up Down Air Systems, LLC for more than six months, are nonreturnable to Up Down Air Systems, LLC
  - e. Products manufactured exclusively for the international market and/or exclusively for re-saleable Products adapted for use on US domestic vehicles are non-returnable to Up Down Air Systems, LLC.
  - f. Credit will only be issued for returned Products which are in pristine and re-sellable condition. Up Down Air Systems, LLC reserves the right to discard any returned Product that Up Down Air Systems, LLC deems, in its sole opinion, to not be in a pristine and unsaleable condition, without any credit to be issued in this event to the Reseller making the return and without any further liability to un-saleable.
  - g. If a credit is generated by returned Products, un-saleable will apply the credit to the Reseller's account and will transmit a credit memo to the Reseller. Credits cannot be used as payment for outstanding balances for orders placed prior to the issue of a credit. Such credits are applicable to subsequent orders only.
  - h. Up Down Air Systems, LLC does not participate in buy-backs or in inventory lifts of other manufacturers' products.
  - i. Up Down Air Systems, LLC does not offer pay-downs on a Reseller's previously purchased inventory should a future pricing decrease occur.
  - j. Where the stock adjustment requested by the Reseller is considered "large", Up Down Air Systems, LLC may direct the Reseller to make the return over two or more successive months and will notify the Reseller concerning the volume of each monthly return.
  - k. Requests for stock adjustment which do not comply with the above guidelines may be made, at Up Down Air Systems, LLC sole discretion, but Up Down Air Systems, LLC will charge a restock fee, of no less than 10% of the price of the relevant purchase order.
  - l. Non-palletized or damaged packaging returns will be charged an additional \$4.00 restock fee per part number.
  - m. A Reseller may not count any order that was given additional discounts for promotional considerations against the sales total when calculating the return.
9. **Provisions Applicable to Up Down Air Systems, LLC Warehouse Distributors (WDs):**
- a. **Qualifications for WDs:** Up Down Air Systems, LLC in its sole discretion may appoint Reseller as a Up Down Air Systems, LLC Warehouse Distributor. To qualify for WD status, a firm must be an established wholesale three-step automotive accessory distributor. The firm must maintain a representative and diverse inventory of Products to efficiently and quickly fill customer needs. A minimum annual sales volume of Products for Reseller should be proportionate to Reseller's annual turnover, which provides proof that Reseller is making a sufficient effort to represent and promote the Products. Up Down Air Systems, LLC may revoke a Reseller's WD status at any time, with or without cause. To continue to enjoy WD status, Reseller must comply with Up Down Air Systems, LLC unilaterally imposed Minimum Advertised Price ("MAP") Policy, published separately and apart from this Agreement.
  - b. **Freight:** Unless otherwise agreed, Warehouse Distributor prepaid freight on all orders is \$2000 \$ 2500 Canada for any and all Up Down Air Systems, LLC Products (hereinafter: "Products"), to one location only. WDs who take possession of the Products at Up Down Air Systems, LLC dock, or who assent to Up Down Air Systems, LLC shipping freight collect, will be quoted a downwardly adjusted wholesale price for the Products.
  - c. **Drop Ship Orders:** Up Down Air Systems, LLC does not expect the WD to stock any Product representing 10% or less of the total annual sales volume of Up Down Air Systems, LLC product sales by the WD. At the WD's request Up Down Air Systems, LLC will drop ship any such Product (a "Special Order") to the WD's customer, for the Minimum Advertised Shipping fee (MAS; refer to MAP policy issued separately).
10. **Use by Reseller of Up Down Air Systems, LLC Intellectual Property.** Reseller agrees to conform to Up Down Air Systems, LLC policy as set forth herein regarding the use of its intellectual property ("IP"). If Up Down Air Systems, LLC does provide authorization to use Up Down Air Systems, LLC IP, the authorized IP will not be altered from the original provided, or used in combination with any non-authorized material not related to Up Down Air Systems, LLC to market Up Down Air Systems, LLC products. Up Down Air Systems, LLC IP includes but is not limited to 8. trademarks, trade dress and copyrights in the images and text Up Down Air Systems, LLC uses to describe and market

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the Products, including but not limited to Up Down Air Systems, LLC video, graphics, box designs, marketing materials and/or copyrighted print advertising. Up Down Air Systems, LLC trademarks include the following, and are regularly updated at [www.Up\\_DownAir-ip.com](http://www.Up_DownAir-ip.com). All trademarks listed at this website are hereby Up Down Air Systems, LLC's "IP" and are hereby incorporated by reference.

Reseller may not use UP DOWN AIR SYSTEMS, LLC IP or resell Up Down Air Systems, LLC products without Up Down Air Systems, LLC prior written authorization, executed in handwriting by a Up Down Air Systems, LLC officer, including but not limited to any of the following situations:

- a. Magazine and newspaper advertising
- b. Television, radio, billboard
- c. Over the Internet, including but not limited to the following ways:
  - i. Any paid advertising allowing persons to bid on any Up Down Air Systems, LLC trademark as a search term entered by a visitor to the search engine site, alone or in combination with other words, including but not limited to:
    1. Google AdWords Program
    2. Bing Ads
    3. Yahoo/Bing/MSN Network
  - ii. Online stores and marketplaces, including but not limited to
    1. Amazon.com
    2. eBay.com
    3. Google Shopping
      - a. PLA (Negative match Up Down Air Systems, LLC trademarked terms)
    4. BestBuy
    5. Shopzilla.com
    6. Walmart
    7. Target
    8. Sears
    9. Rakuten
    10. Overstock
    11. Newegg
    12. jet.com
  - iii. Display Advertising
  - iv. Email Advertising
  - v. Social Networking Sites, including but not limited to
    1. Facebook
    2. Twitter
    3. Pinterest
    4. Google +

Reseller may use Up Down Air Systems, LLC IP in the following situations:

- a. Resellers may use Up Down Air Systems, LLC IP as previously approved by Up Down Air Systems, LLC per the terms of this Agreement.
- b. Resellers may elicit internet search results displaying Up Down Air Systems, LLC IP as the result of organic search results from reseller web sites that have been previously, expressly approved by a Up Down Air Systems, LLC officer in writing.
- c. Use by a Reseller of Up Down Air Systems, LLC trademarks in the Reseller Site's Product description content, if and only if that Product is offered for sale by the Reseller under the conditions of this Agreement.

Up Down Air Systems, LLC will provide authorized images and text for Up Down Air Systems, LLC approved uses thereof upon request of Resellers who are in good standing. Reseller may not redistribute such images and text to others without Up Down Air Systems, LLC prior written authorization, executed in handwriting by a Up Down Air Systems, LLC officer.

Any unauthorized use of Up Down Air Systems, LLC IP is a material breach of this Agreement, may at Up Down Air Systems, LLC sole discretion result in the loss of any Co-Op Allowance granted by Up Down Air Systems, LLC to

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Reseller, and may result in Up Down Air Systems, LLC institution of legal action. Up Down Air Systems, LLC also may, at its sole discretion, refuse to supply Reseller with any further Up Down Air Systems, LLC product.

11. **Delays.** Up Down Air Systems, LLC will not be liable for any delay in the performance of orders or contracts, or in the delivery or shipment of the Products, or for any damages suffered by Reseller by reason of such delay, if such delay is, directly or indirectly, caused by, or in any manner arises from, fires, floods, accidents, civil unrest, acts of God, war, government interference or embargoes, strikes, labor difficulties, shortage of labor, fuel, power, materials, or supplies, transportation delays, third party non-performance, or any other cause or causes (whether or not similar nature to any of these hereinbefore specified) beyond the control of Up Down Air Systems, LLC.
12. **Warranty.** Up Down Air Systems, LLC warrants the Products, as manufactured, to be free from defects in material and workmanship. Up Down Air Systems, LLC does not warrant damage occurring during shipment nor which is the result of faulty handling by Reseller or its downstream customers, nor which is the result of improper installation and/or misuse by the consumer or end user. Up Down Air Systems, LLC's warranty can be found at [www.UpDownAir.com](http://www.UpDownAir.com). As Reseller's sole remedy hereunder, Up Down Air Systems, LLC agrees at its cost to replace, on an exact-same product basis, any Product returned by Reseller to Up Down Air Systems, LLC, with proof that the Reseller purchased the Product directly from Up Down Air Systems, LLC. Reseller must exercise its remedy, if at all, electronically or in writing and within the warranty period published for the Product, as counted from the date that Up Down Air Systems, LLC delivers the Product to its dock or when received by Reseller, whichever event happens first. Up Down Air Systems, LLC reserves the right to discard any Product returned by Reseller to Up Down Air Systems, LLC, even if the returned Product is determined by Up Down Air Systems, LLC to be non-warrantable and Reseller consents to Up Down Air Systems, LLC's right to immediately discard any returned product at Up Down Air Systems, LLC's sole and absolute discretion.
13. **DISCLAIMER.** EXCEPT AS SET FORTH IN THE PARAGRAPH IMMEDIATELY ABOVE, ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY EXCLUDED.
14. **LIMITATION OF LIABILITY.** UP DOWN AIR SYSTEMS, LLC SHALL NOT BE LIABLE TO RESELLER FOR ANY DAMAGES RESULTING FROM OR RELATED TO THE GOODS, INCLUDING, BUT NOT LIMITED TO, ANY USE, MISUSE OR MODIFICATION OF THE GOODS (UNLESS SUCH MODIFICATION IS MADE ACCORDING TO THE INSTRUCTIONS ACCOMPANYING THE PRODUCT), MALFUNCTIONS AND DEFECTS IN THE GOODS, OR DELAY OF UP DOWN AIR SYSTEMS, PERFORMING HERE UNDER. IN NO EVENT SHALL UP DOWN AIR SYSTEMS, LLC BE LIABLE TO RESELLER FOR ANY REASON, INCLUDING, BUT NOT LIMITED TO, ANY ALLEGED BREACH, ALLEGED NON-PERFORMANCE, AND/OR ALLEGED PRODUCT DEFECT, FOR ANY INDIRECT, SPECIAL, PUNITIVE AND/OR CONSEQUENTIAL DAMAGES OR LOST PROFITS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PARTIES' BUSINESS DEALINGS, EVEN IF UP DOWN AIR SYSTEMS HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES OR KNEW OR SHOULD HAVE KNOWN THERE OF LIABILITY HEREUNDER TO RESELLER, IF ANY, SHALL IN NO EVENT EXCEED THE PRICE PAID TO UP DOWN AIR SYSTEMS UNDER BY RESELLER.
15. **Default.** Upon the happening of any one or more of the following events, Up Down Air Systems, LLC shall have the unrestricted right to cancel and terminate this Agreement without cost or liability to Up Down Air Systems, LLC: (1) Reseller's insolvency or inability to meet obligations as they become due; (2) filing of voluntary or involuntary petition of bankruptcy by or against Reseller; (3) institution of legal proceedings against Reseller by creditors or stockholders; (4) appointment of a receiver for Reseller by any court of competent jurisdiction; (5) any breach of any agreement or Up Down Air Systems, LLC policy by Reseller. The acceptance of Products or performance after the occurrence of any of the events above enumerated shall not affect the right of Up Down Air Systems, LLC to cancel any additional obligations. In the event of a default hereunder by Reseller, Up Down Air Systems, LLC shall be entitled to collect as damages, in addition to all other damages allowed by law, the following amounts related to the Products: the actual cost of all goods, services, or materials purchased or contracted for and the cost of all tooling acquired by Up Down Air Systems, LLC in connection with the Products, plus 17% of the reseller's purchase Price to cover Up Down Air Systems, LLC design, purchasing and materials and tooling handling services.



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16. **Reseller responsibilities.** Except as otherwise approved in writing by an officer of Up Down Air Systems, LLC, Reseller will do each of the following: (a) promote the sale and use of the products; (b) promptly and effectively respond to questions and service requests from customers and prospective customers; (c) represent the products in an ethical and professional manner and refrain from any conduct that is or could be detrimental to the reputation or integrity of the dealer and/or Up Down Air Systems, LLC; (d) use the Up Down Air Systems, LLC IP only as permitted by Up Down Air Systems, LLC as described in this Agreement; (e) refrain from questioning or challenging the rights claimed by Up Down Air Systems, LLC or any of its affiliates or related entities in the intellectual property or assisting in any way other(s) in doing so; (f) entirely abstain from publishing comments, orally or in writing, that disparage, undermine or question the quality of the Products, Up Down Air Systems, LLC, or any of Up Down Air Systems employees or officers, (g) comply with all laws, regulations and all of Up Down Air Systems, LLC's policies; and (h) promptly and in a timely fashion comply with whatever request may be made by Up Down Air Systems, LLC relating to any law, regulation or expectation thereof or the modification or recall of any or all of the products.
17. **Consumer safety.** Reseller acknowledges that many of Up Down Air Systems, LLC's products are application specific dependent upon the specific make, model and year of vehicle in question. Consumer safety is a paramount concern for Up Down Air Systems, LLC. Authorized Resellers have access to all of Up Down Air Systems, LLC's up-to-date, accurate vehicle application data and safety instructions. Use of Up Down Air Systems, LLC's data and safety instructions and information are crucial to ensuring proper consumer use of Up Down Air Systems, LLC products and that a specific Up Down Air Systems, LLC product is appropriate for any specific vehicle application. Reseller shall review Up Down Air Systems, LLC's safety policy, training materials and instructions and follow the instructions provided therein to train and educate Reseller's employees in accordance with these instructions and to ensure that Reseller is familiar with all of the data necessary to determine whether any particular Up Down Air Systems, LLC product is appropriate for a specific vehicle application. Reseller agrees that it will not install the Up Down Air Systems, LLC Product until it has trained its employees on the proper installation. Reseller agrees to implement an appropriate continuing education program with its employees to ensure that all of Up Down Air Systems, LLC's safety instructions are followed and that its employees are adequately trained. Reseller agrees that its employees shall follow Up Down Air Systems, LLC's safety policy and instructions and that Reseller shall train and educate its employees on Up Down Air's safety policy and data no less than once every three months.
18. **Indemnification:** Reseller expressly agrees to indemnify fully Up Down Air Systems, LLC for any liability incurred by Up Down Air Systems, LLC for Reseller's failure to comply with Paragraph 17 and/or any action brought by any purchaser of Up Down Air Systems, LLC product that in any way implicates a failure by Reseller to properly use any Up Down Air Systems, LLC data and/or safety instructions or information, including Up Down Air Systems, LLC reasonable attorney fees and costs, and Reseller expressly agrees to allow Up Down Air Systems, LLC to employ its own counsel of Up Down Air Systems, LLC's choice with regard to any such action.
19. **Unauthorized Resellers.** Upon Reseller receiving written notice from Up Down Air Systems, LLC that Up Down Air Systems, LLC has reason to believe that Reseller is selling Up Down Air Systems, LLC product to an unauthorized party that is reselling Up Down Air Systems, LLC products to third parties and/or that Reseller is selling Up Down Air Systems, LLC product to a party that is reselling Up Down Air Systems, LLC products in violation of any Up Down Air Systems, LLC policy, Reseller expressly agrees to cooperate fully with any investigation by Up Down Air Systems, LLC such activity, including allowing Up Down Air Systems, LLC to audit Reseller's books, records, purchase orders and communications, in addition to any other relevant sources of information, in order to ascertain the identity of the unauthorized or violating reseller. Reseller shall provide Up Down Air Systems, LLC with all requested information within seven (7) calendar days of Up Down Air Systems, LLC's request for said information and shall provide Up Down Air Systems, LLC with Reseller's good faith best efforts to establish the identity and all necessary information related to said unauthorized and/or violating reseller. Reseller expressly agrees that, in such circumstances, Up Down Air Systems, LLC does not have an adequate remedy at law, and that Up Down Air Systems, LLC may pursue mandatory injunctive relief in the agreed-upon jurisdictions referenced in paragraph 21(f) to obtain this information if, in Up Down Air Systems, LLC's sole and absolute discretion, Reseller has not adequately responded to Up Down Air Systems, LLC's request for information with regard to any unauthorized reseller and/or reseller operating in violation of any Up Down Air Systems, LLC policy.
20. **Bundling Policy/"In Cart" Policy:** Under no circumstances may any Up Down Air Systems, LLC products be bundled, combined, packaged and/or associated with any product or products from any other manufacturer or source for any reason whatsoever when any consumer purchases a Up Down Air Systems, LLC product from reseller. Under no circumstances may any Up Down Air Systems, LLC products be discounted below MSRP in conjunction or relation to any reseller gift cards, advertisement or promotional activity by any reseller. Under no circumstances may any Up Down Air Systems, LLC products be, either in isolation or in combination with other Up Down Air Systems, LLC products, be

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advertised and/or sold at an "in cart" price that would be below MSRP. Under no circumstances may any Up Down Air Systems, LLC products be combined or sold as a package and/or bundle that would result in the purchase of such a combination, package and/or bundle at a discount to what said products would be priced at on an aggregate basis under MSRP. A reseller that violates this policy risks the loss of their standard co-op advertising allowance and special discounts, among other actions by Up Down Air Systems, LLC.

### 21. Miscellaneous.

- a. Any term or provision of this Agreement may be waived in writing, executed in handwriting, at any time by an officer of the party entitled to the benefit thereof. Any failure to enforce any provision hereof shall not constitute a waiver of such provision or of any subsequent failure to perform any obligation hereunder.
- b. Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.
- c. All notices, disclosures, or other communications which are required or permitted hereunder shall be in writing and shall be delivered in person, or by facsimile or sent by U.S. registered or certified mail, postage prepaid, if to Up Down Air Systems, LLC, to Up Down Air Systems, LLC, 1051 Olsen Street, Bldg. # 3911 Henderson, NV 89011, USA; and if to Reseller, to the address set forth on Reseller's credit application. Notice may be sent by e-mail to the e-mail address of Up Down Air Systems, LLC at [info@UpDownAir.com](mailto:info@UpDownAir.com) and to the e-mail address of Reseller as set forth on Reseller's credit application. Notice delivered personally shall be deemed received upon delivery. Notice delivered by facsimile shall be deemed received upon delivery, provided that the original copy of such notice, properly executed by the sender (if required) shall be sent by U.S. Mail, postage prepaid, and received by the addressee within three (3) business days after delivery of the facsimile copy. Notice delivered by registered or certified mail shall be deemed received on the third (3rd) business day after posting. Notice by e-mail shall be deemed received on the day upon which such notice is sent. Any party may change the address to which notices for such party may be sent by writ ten or electronic notice to the other party. Any notice or communication objecting to, seeking a change from, or re questing any alteration of the terms and conditions of this Agreement by Reseller, or any Reseller questions as to the scope or import of any Up Down Air Systems, LLC policy and/or this Agreement shall also copy to Aaron P. Bradford, Esq. by email, at [aaron@apb-law.com](mailto:aaron@apb-law.com); or by mail at BRADFORD, LTD, 2701 Lawrence Street, Suite 104 Denver, Colorado 80205.
- d. This Agreement contains the entire agreement of the parties and supersedes and incorporates all prior and contemporaneous agreements, representations and negotiations between the parties with respect to the subject matter hereof. This Agreement may be altered or amended only by written instrument executed by both parties in handwriting, and on Up Down Air Systems, LLC's part, said signature must be of a Up Down Air Systems, LLC officer. No agreement or representation by any representative of Up Down Air Systems, LLC or contained in any proposal by or communication from Up Down Air Systems, LLC shall be binding upon Up Down Air Systems, LLC unless specifically set forth in this Agreement or a Sales Order referencing this Agreement and signed by an Officer of Up Down Air Systems, LLC. Up Down Air Systems, LLC Minimum Advertised Pricing ("MAP") Policy is unilaterally issued by Up Down Air Systems, LLC separately from this Agreement, forms no portion of this Agreement and is not modified by this Agreement.
- e. Neither this Agreement nor any rights thereunder may be assigned by Reseller without the prior written consent of Up Down Air Systems, LLC, executed in handwriting by a Up Down Air Systems, LLC officer.
- f. Actions to enforce this Agreement shall be brought in a court of competent jurisdiction located in Clark County, Nevada, or if applicable, the Federal District Court for the Clark County Nevada. The parties hereby agree that these two jurisdictions shall be the exclusive jurisdictions and venue with regard to any action related to the parties' business dealings and this Agreement. Reseller hereby expressly agrees to waive any objection to proceeding in these jurisdictions based on any argument that personal jurisdiction is not proper over Reseller, or any other objection, and Reseller expressly agrees to waive any argument that these jurisdictions and venues are in any way an inconvenient forum in which to hear any dispute between the parties. If Up Down Air Systems, LLC shall be the prevailing party in any action, Up Down Air Systems, LLC shall be entitled to recover its reasonable attorney fees and costs, including an appeal, from Reseller. The parties agree that the transaction embodied in this Agreement has a substantial connection to these jurisdictions, submit to the jurisdiction of such courts and agrees to the service of summons by mail in the same manner as notices may be served hereunder.
- g. We each agree that any dispute resolution proceedings and/or litigation will be conducted only on an individual basis and not in a class action, class arbitration, or a consolidated or representative action. Reseller expressly agrees not to, and waives any right to, proceed as or participate in a class, consolidated or representative action in any capacity. If for any reason a claim proceeds in court, Reseller expressly waives any right to a jury trial.
- h. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Nevada, without regard to its principles of conflicts of laws. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. Where Reseller is located in the province of Quebec, Canada, or

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in any foreign jurisdiction where English is not a primary language, Up Down Air Systems, LLC and Reseller confirm that they have requested that this Agreement and all related documents be drafted in English and understand all provisions and terms of this Agreement as drafted in English.

- i. In any action by Up Down Air Systems, LLC to enforce the provisions of this Agreement, Up Down Air Systems, LLC shall be entitled to collect as damages from Reseller, in addition to the service charge provided for above, all damages provided by law and this Agreement, Up Down Air Systems, LLC court costs and reasonable attorneys' fees through the appellate level.
  - j. The remedies of Up Down Air Systems, LLC hereunder shall be cumulative.
  - k. If any term, condition, restriction or covenant contained in this Agreement shall be deemed illegal or unenforceable, all of the other terms, conditions, restrictions and covenants and the application thereof to all persons and circumstances subject hereto shall remain in effect to the extent permitted by law; and if any application of any term, condition, restriction or covenant to any person or circumstance shall be deemed illegal, the application or such term, condition, restriction or covenant to other persons or circumstances shall remain in effect to the extent permitted by law.
  - l. As used herein, all pronouns shall include the masculine, feminine, neuter, singular and plural thereof wherever the context and facts require such construction.
  - m. If this Agreement and any Sales Order referencing this Agreement cannot be interpreted to be consistent with each other, this Agreement shall control.
22. This Agreement and any and all duties and obligations hereunder may not be delegated, transferred and/or assigned by the reseller without the express written consent of Up Down Air Systems, LLC, executed in handwriting by a Up Down Air Systems, LLC officer. Each delegation, transfer and/or assignment without such consent shall be null and void. The relationship between Up Down Air Systems, LLC and Reseller shall be that of independent contractors, and nothing in this Agreement shall constitute or be deemed to constitute a partnership, joint venture or franchise between Up Down Air Systems, LLC and Reseller or shall constitute or be deemed to constitute the reseller as agent for Up Down Air Systems, LLC for any purpose. The Reseller shall have no authority or power to bind Up Down Air Systems, LLC or to contract in the name of and/or create a liability against Up Down Air Systems, LLC in any way for any purpose. Up Down Air Systems, LLC may assign its rights and obligations to a third party under this Agreement in its sole and absolute discretion.
23. At any time and without prior notice Up Down Air Systems, LLC may modify any or all of the Up Down Air Systems, LLC policies.
24. A full copy of this Agreement and its terms and conditions will be provided with each shipment of product by Up Down Air Systems, LLC. If you object to any term or condition of this Agreement or otherwise do not wish to be bound by this Agreement, please return all products purchased, in an unused and new condition in the original packaging, to Up Down Air Systems, LLC for a full refund, including any return shipping costs. **IF YOU DO NOT RETURN THE PRODUCT(S) YOU PURCHASED FROM UP DOWN AIR SYSTEMS, LLC OR ANY UP DOWN AIR SYSTEMS, LLC AUTHORIZED RESELLER WITHIN 14 DAYS OF RECEIVING SAID PRODUCTS, THEN YOU AGREE TO BE BOUND BY, AND ACCEPT, THE TERMS AND CONDITIONS OF THIS AGREEMENT.**



## **Manufacturer Suggested Retail Price (MSRP) Reseller Minimum Advertised Pricing Policy**

The business relationship between Up Down Air Systems, LLC and each of its Resellers is an “at will” business relationship and Up Down Air Systems, LLC reserves the right to terminate such business relationship without cause and at any time. Additionally, the potential reseller has the right to disagree with the Up Down Air Systems, LLC Minimum Advertised Pricing Policy (MSRP) (the “Policy”) as stated herein and may choose to not do business with Up Down Air Systems, LLC after reading these guidelines. Up Down Air Systems, LLC will not entertain reseller-proposed changes to this Policy for any reason. However Up Down Air Systems, LLC reserves the right to make ongoing changes to this Policy without prior notice. If Up Down Air Systems, LLC reseller disagrees with any changes to this Policy the reseller may choose not to deal with Up Down Air Systems, LLC the future.

**Manufactures Suggested Retail Price (MSRP):** Up Down Air Systems, LLC minimum advertised price (“MSRP”) is defined as the price that is charged for product to a retail buyer (typically, the consumer or end user of the product).

**Reseller:** A Reseller, as used herein, is any entity which buys Up Down Air Systems, LLC products and sells them either to end users or for resale to any third party for any purpose. Resellers include but are not limited to wholesalers, warehouse distributors, e-tailers, and automotive dealers.

**E-Tailer:** An e-tailer is defined as an internet marketing company, online shop, e-shop, e-store, internet shop, webshop, web-store, online store, or virtual store that sells goods to consumers electronically. E-tailers (“free rider” resellers) do not have warehouses and/or brick-and-mortar facilities, and cannot stock product. Jobber MAP is supplied as a guideline and is NOT discountable for resellers to quote e-tailers, unless otherwise approved by Up Down Air Systems, LLC. Up Down Air Systems, LLC reserves the right to immediately terminate the business relationship with WDs that intentionally disregard and/or circumvent this Jobber MAP guideline by discounting and/or rebating on the backside resulting in pricing being listed below Jobber MAP.

**Prices and Discounts:** All prices and discounts are quoted specifically for each individual reseller account. Minimum Advertised Price (MSRP) must be adhered to for all advertising and promotional media, whether electronic or printed. Jobber MAP is supplied as a guideline for resellers to quote to their customers. Up Down Air Systems, LLC prefers that Jobber MAP is not discountable by more than 5%

Up Down Air Systems, LLC acknowledges that customers and downstream resellers are free to advertise and sell to whomever and at whatever prices it chooses, but by selling below MSRP a reseller risks losing discounts, among other actions by Up Down Air Systems, LLC

Pricing is subject to change without notice.

Up Down Air Systems, LLC designs, manufactures and markets products under the Up Down Air Systems, LLC premium brand, which identifies those products to consumers as having characteristics of excellence and high quality. Up Down Air Systems, LLC will be investing significant resources in product innovation, development and marketing to build and maintain its reputation for high quality and to generate goodwill in the Up Down Air Systems, LLC brand. Up Down Air Systems, LLC’s continued and considerable investment in manufacturing causes us to expect a reciprocal level of exclusiveness and loyalty from its direct Resellers. A Reseller that violates MSRP risks the loss of their discounts, among other actions by Up Down Air Systems, LLC. Up Down Air Systems, LLC prohibits the distribution of its parts (SKU) data, images and/or marketing materials without express written consent from Up Down Air Systems, LLC. In general, Up Down Air Systems, LLC pricing is set to recover the costs associated with its extensive product development and marketing activities and the extensive support Up Down Air Systems, LLC provides to its authorized resellers. Through its MAP, Up Down Air Systems, LLC seeks to discourage “free rider” resellers who take unfair advantage of Up Down Air Systems, LLC efforts. Up Down Air Systems, LLC further has unilaterally adopted this Policy to prevent price-based advertising that tends to degrade or cheapen the image of Up Down Air Systems, LLC products in the marketplace, thus eroding its goodwill and brand reputation.

This policy is binding and will remain in effect up until a newly revised version is posted and/or is made available. Any corporate name, address or identity change must be forwarded to Up Down Air Systems, LLC in written form, and a newly



# UP DOWN AIR SYSTEMS, LLC 2018 Reseller Agreement



submitted credit application must be approved to maintain active account status.

Up Down Air Systems, LLC therefore asks that each Reseller of its products follow its MSRP policy and sell at full Retail when shipping directly to the customer. Full MSRP is defined as the Manufactures Suggested Retail Price, and should exclude additional discounts, coupon codes, promotions, etc., that can be added "In-Cart" and would cause merchandise to fall below full MSRP. Direct accounts and resellers selling and/or advertising below MSRP, risk losing Standard Co-Op advertising allowances and Special Discounts, and Up Down Air Systems, LLC reserves the right to raise acquisition costs or terminate the business relationship.

This Policy does not determine the price at which resellers can advertise products or offer products for sale, as it does not establish maximum advertised prices. Up Down Air Systems, LLC does not restrict any reseller from offering competitive products for sale, at pricing which may be less than, the same as or more than the MSRP for a similar Up Down Air Systems, LLC product.

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SIGNED \_\_\_\_\_  
TITLE \_\_\_\_\_

DATE: \_\_\_\_\_

