

Metabolic Maintenance Products, LLC
Reseller Product Purchase Terms & Conditions

The following terms and conditions, the attached reseller application (“**Application**”) and the Privacy Policy and Terms of Use, available at www.metabolicmaintenance.com (collectively, the “**Agreement**”) shall govern the purchase of products (“**Product**”) from Metabolic Maintenance Products, LLC, an Oregon limited liability company (“**MM**”) by the person or entity identified in the accompanying Application (“**Reseller**”).

1. **Terms and Acceptance.** Submission of the Application and/or purchase of Product indicates Reseller’s agreement to this Agreement. This Agreement contains the entire agreement of the parties. Failure of either party to enforce any of its rights under this Agreement shall not constitute a waiver of such rights or any other rights. No amendment to this Agreement shall be binding unless approved in writing by MM. MM may approve or reject Reseller’s Application, or any Product order, for any or no reason, in its sole and absolute discretion.
2. **Representations.** Reseller’s representations made in the Application and this Agreement are true and correct. Reseller shall promptly (within 24 hours) advise MM if those representations are no longer true and correct.
3. **Taxes.** Any taxes (excluding income or excess profits taxes but including interest and penalties) imposed by any taxing authority arising from the sale of Products for which MM is ultimately responsible for collection or payment (whether on its own behalf or on behalf of the Reseller), shall be paid by Reseller to MM immediately upon demand.
4. **Delivery.** MM shall deliver Product by common carrier F.O.B. MM’s warehouse. Title and risk of loss shall transfer from MM to Reseller upon delivery of the Product by MM to a common carrier.
5. **Internet Resale Prohibited.** Reseller shall not advertise, list, offer for sale, sell or distribute any Product via the Internet, except through Reseller’s wholly-owned website. Without limiting the generality of the foregoing, Reseller shall not sell any Product via any third-party websites, mobile applications, or online marketplaces including Amazon.com and Ebay.com, and shall not advertise Product on the Internet except on Reseller’s own website. Reseller shall not advertise using banner or pop-up advertisements, or using sponsored searches (e.g., Google AdWords, Yahoo! Search Marketing, or Bing Search Marketing). Subject to the foregoing requirements and prohibitions, Reseller may promote and advertise Products on its website and social media accounts provided there is no “click to buy” option or display pricing, with MM’s prior written approval, in its sole and absolute discretion.
6. **Reseller/Distributor Resale Prohibited.** Reseller shall not sell Product to anyone who Reseller suspects, knows, or reasonably should know, intends to re-sell or re-distribute the Product. Reseller shall only sell the Product in bona fide retail transactions. Without limiting the generality of the foregoing, distribution of Product for resale is strictly prohibited.
7. **Minimum Advertised Pricing.** Reseller is aware of MM’s minimum advertised pricing policy, as may be updated from time to time, available at www.metabolicmaintenance.com/map and understands that although Reseller is free to set the price at which Reseller sells Product to customers, MM’s policy is to discontinue sales to resellers who violate the policy.
8. **Quality Control.** Reseller shall comply with all MM’s quality controls, protocols, and instructions with respect to the Product, in order to maintain the quality of the Product, as may be updated from time-to-time by MM.
9. **Injunctive Relief.** The parties agree that breach of Sections 2, 5, 6, 8 and 21 hereof (“**Sections**”) will irreparably harm MM’s brand reputation and goodwill. Accordingly, MM shall have the right to seek injunctive or other equitable relief to prevent a breach or threatened breach of those Sections, without the necessity of posting a bond or other security.

Liquidated Damages. Reseller acknowledges that the Sections are necessary and proper in order to protect MM’s brand reputation and goodwill, and to preserve authorized resellers’ (including Reseller’s) ability to make a reasonable margin on Product sales. Reseller agrees that if it violates the Sections, MM will be damaged in an amount that will be difficult or

impossible to ascertain. Accordingly, Reseller agrees to pay liquidated damages to compensate MM for damages resulting from Reseller’s breach of the Sections (the “**Liquidated Damages**”). The parties have made advance provision for Liquidated Damages to avoid controversy, delay and expense in the event of any breach of the Sections. Liquidated Damages shall be an amount equal to \$500.00 for each separate breach for each day of breach. Each breach with respect to a Product shall be considered a separate breach for the purposes of this Section. For example, if Reseller is in breach with respect to three different Product for a period of 10 days, Reseller will be deemed to have committed 30 breaches and be subject to Liquidated Damages of \$15,000.00. The Liquidated Damages are estimated based on the various damages that MM expects to suffer upon any breach of the Sections, including lost sales; infringement of MM’s trademarks and other intellectual property; irreparable harm to MM’s business, customer relationships, goodwill and quality control procedures; and costs of investigating breaches. Reseller agrees that the Liquidated Damages are not a penalty and are reasonably estimated in light of the anticipated or actual harm that would be caused by a breach and the difficulty of proving the amount of loss and otherwise providing an adequate remedy to MM. Reseller hereby waives any defense to MM’s right to obtain liquidated damages on the basis that actual damages are calculable or that the liquidated damages do not represent a reasonable determination of our damages or otherwise constitute a penalty.

10. **Independent Contractors.** MM’s relationship with Reseller is that of an independent contractor, and nothing in this Agreement is intended to create any partnership, agency, joint venture, franchise or employee relationship. Reseller does not have the authority to bind MM or represent to any person that Reseller is an agent of MM.
11. **Intellectual Property.** All trademarks, tradenames, copyright and goodwill as they relate to the Product, as well as the packaging, image, merchandising and advertising materials remain the sole and exclusive property of MM and no rights thereto are granted to Reseller by virtue of this Agreement except as provided under this Section 11. Any use of the MM name, logo or other marks must be in accordance with MM provided artwork and graphics, which may be modified from time-to-time by MM as deemed necessary, and used specifically in conjunction with the authorized distributed products. Any other use of the MM brand name or trademarks, service marks, or patents (including patents pending), must have the prior written approval of MM. Any other use of the MM logo without written approval and/or any use of the MM’s intellectual property in general beyond the scope of this Agreement are strictly prohibited.
12. **Disclaimer; Limitation of Liability.** MM WARRANTS THAT THE PRODUCT IS MANUFACTURED IN ACCORDANCE WITH GOOD MANUFACTURING PRACTICES. OTHERWISE, MM MAKES NO WARRANTIES WHATSOEVER, AND PRODUCT IS PROVIDED “AS IS” WITHOUT ANY WARRANTIES WHATSOEVER, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER STATUTORY OR COMMON LAW WARRANTY.

EXCEPT AS EXPLICITLY SET FORTH HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, EXEMPLARY OR SPECIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY SUCH DAMAGES ARISING FROM OR RELATING TO THE PRODUCT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MM’S TOTAL LIABILITY ARISING OUT OF THIS AGREEMENT, REGARDLESS OF THEORY OF LIABILITY, SHALL BE LIMITED TO THE AMOUNT PAID BY RESELLER FOR THE PRODUCT AT ISSUE, OR IF NO PRODUCT IS AT ISSUE, IN THE 12 MONTHS PRECEDING THE CLAIM.

13. **Indemnification.** Reseller will defend and indemnify MM and each present and future shareholder, director, member, manager, partner, officer, and authorized representative of MM for, from, and against any and all claims, actions, proceedings, damages, liabilities, and expenses of every kind, whether known or unknown, including but not limited to reasonable attorney’s fees, resulting from or arising out of (a) Reseller’s failure to pay any tax arising out of or resulting from the sale of the Product; or (b)

Reseller's breach of any representation, warranty, or covenant in this Agreement.

14. **Termination; Survival.** This Agreement may be terminated by either party at any time, with or without cause by giving written notice. Those provisions that by their nature are intended to survive termination of this Agreement shall so survive, including without limitation the Sections and Section 13 hereof.
15. **Governing Law; Disputes.** The laws of Oregon, without giving effect to its principles of conflicts of law, govern any dispute arising in connection with this Agreement. Any proceeding arising out of or relating to this Agreement may be brought only in the state or federal courts of Oregon sitting in Deschutes County, and each party hereby submits to the exclusive jurisdiction of, and venue in, those courts for purposes of any such proceeding; except that MM may commence an action in any court of law ascertain the identity of any unauthorized seller of Products. Reseller shall pay MM's legal fees in connection with enforcing this Agreement.
16. **Attorneys' Fees.** If any arbitration or litigation is instituted to interpret, enforce, or rescind this Agreement, including but not limited to any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs, and expenses of every kind incurred in connection with the arbitration, the litigation, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.
17. **Notices.** All notices hereunder shall be in writing and shall be deemed to have been given when delivered by registered or certified mail, to the address set forth on the Application, or to such addresses as the parties shall designate.
18. **Authority.** Reseller represents that it has the power and authority to enter into and be bound by this Agreement in accordance with its terms.
19. **Severability.** If any provision of this Agreement is found unenforceable, the provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permitted its original intent.
20. **Assignment; Binding Effect.** Reseller's rights and/or obligations under this Agreement may not be transferred or assigned in any manner without MM's written consent, which consent MM may withhold or grant in MM's sole and absolute discretion. Subject to the foregoing, this Agreement will be binding on the parties and their respective heirs, representatives, successors, and permitted assigns, and will inure to their benefit.
21. **Confidential Information.** Reseller acknowledges and agrees that MM possesses certain Confidential Information that constitutes a valuable, special, and unique asset. As used herein, the term "Confidential Information" includes but is not limited to all information and materials belonging to, used by, or in the possession of MM relating to its products, processes, services, technology, inventions, patents pending and otherwise, ideas, contracts, financial information, developments, business strategies, costs, pricing, customer lists, vendor sources, marketing plans, and trade secrets of every kind and character, but shall not include (a) information that was already within the public domain at the time the information is acquired by Reseller, or (b) information that subsequently becomes public through no act or omission of the Reseller. Reseller agrees that the Confidential Information is and shall continue to be the exclusive property of MM, whether or not prepared in whole or in part by Reseller and whether or not disclosed to or entrusted to Reseller's custody. Reseller agrees that Reseller shall not, at any time following the execution of this Agreement, use or disclose in any manner any Confidential Information of MM.
22. **Work Made for Hire.** To the extent any inventions, technologies, patents pending or otherwise, reports, memoranda, studies, writings, articles, plans, designs, specifications, exhibits, software code, or other materials prepared by Reseller in the performance of the transactions contemplated under this Agreement include material subject to copyright protection, such materials have been specially commissioned by MM and they shall be deemed "work made for hire" as such term is defined under U.S.

copyright law. To the extent any such materials do not qualify as "work made for hire" under applicable law, and to the extent they include material subject to copyright, patent, trade secret, or other proprietary rights protection, Reseller hereby irrevocably and exclusively assigns to MM, its successors, and assigns, all right, title, and interest in and to all such materials. To the extent any of Reseller rights in the same, including without limitation any moral rights, are not subject to assignment hereunder, Reseller hereby irrevocably and unconditionally waives all enforcement of such rights. Reseller shall execute and deliver such instruments and take such other actions as may be required to carry out and confirm the assignments contemplated by this paragraph and the remainder of this Agreement. All documents, magnetically or optically encoded media, and other tangible materials created by Reseller as part of the transactions contemplated under this Agreement shall be owned by MM.

AGREED AND ACCEPTED BY RESELLER:

By: _____

Name:

Title:

Reseller's Name: _____

Date: _____