



DEFIANT

DEFIANT BICYCLES, LLC 2014-2015 DEALER AGREEMENT

PLEASE NEATLY PRINT OR TYPE ALL INFORMATION, IN EACH SECTION AND RETURN WITH ATTACHMENTS BY EMAIL TO HEATH@DEFIANTBICYCLES.COM

This Dealer Agreement is entered into this ___ day of ___, 20___ by and between DEFIANT BICYCLES, LLC, a limited liability company organized under the laws of Minnesota, with its principle office located at 585 Mount Curve Blvd., Saint Paul, Minnesota 55116 (hereinafter referred to as DEFIANT) and _____ with its principle place of business located at _____ (hereinafter referred to as the Dealer and collectively with DEFIANT referred to as the Parties).

RECITALS:

- A. DEFIANT is a distributor of electric bicycles and related accessories, and desires to market its products.
- B. Dealer has expressed its willingness to become an authorized DEFIANT dealer for resale, in accordance with the terms and conditions set forth in this Agreement.
- C. Dealer has provided DEFIANT with a Dealer Credit Application (hereinafter referred to as the Application) delivered with this Agreement.
- D. Dealer must provide DEFIANT a copy of the dealer's State Resale Certificate, if applicable
- E. DEFIANT has offered to appoint Dealer as an authorized DEFIANT dealer for certain products, in accordance with the terms and conditions set forth in this Agreement.

AGREEMENT:

For and in consideration of the matters described above, and of the mutual benefits and obligations set forth in this Agreement, the Parties agree as follows:

1. Purpose. The purpose of this Agreement is to set forth the terms and conditions under which a dealer may be appointed to sell DEFIANT bicycles and other products distributed by DEFIANT (collectively referred to as DEFIANT Products) and the financial arrangement between the Parties, in accordance with the terms and conditions of this Agreement.
2. Grant of Authority. DEFIANT hereby grants to Dealer the non-exclusive right to sell and service DEFIANT Products in a retail establishment, and to use DEFIANT's trademark, trade name and service mark in advertising and in the sale and service of DEFIANT Products. Dealer is authorized to operate such retail establishment at the location set forth in the Application submitted with this Agreement to DEFIANT to become a dealer (hereinafter referred to as the Approved Location). Dealer accepts such dealer appointment on the terms and conditions set forth herein.

3. Ordering of DEFIANT Products. All orders for DEFIANT Products placed by Dealer shall be by telephone, fax or e-mail. All orders shall be subject to acceptance by DEFIANT at Saint Paul, Minnesota.

4. Prices. Dealer shall purchase DEFIANT Products at the prices in effect at the time of the order. DEFIANT may implement price changes at any time during the term of this Agreement upon thirty (30) days prior written or electronic (e-mail) notice thereof to Dealer. In addition to the purchase price, Dealer shall pay to DEFIANT the amount of all taxes, excises or other governmental charges (except taxes on or measured by net income) that DEFIANT may be required to pay on the sale or delivery of any DEFIANT Products sold and delivered to Dealer, except where the law otherwise provides.

5. Delivery. All DEFIANT Products shall be shipped FOB shipping point, with title and risk of loss passing at such point. The shipment destination must be Dealer's Approved Location or some other mutually agreed location. Any taxes, administrative or governmental charges incurred as a result of the purchase of DEFIANT Products are the sole responsibility of Dealer.

Please check one of the following:

New Dealer.

Renewing Dealer.

6. Payment. DEFIANT will invoice Dealer for the DEFIANT Products at the time of shipment and Dealer will pay such invoices on a net thirty (30) days from the invoice date unless otherwise approved by DEFIANT, in writing, prior to shipment. If Dealer fails to pay the invoice by the due date(s) set out in the invoice, then the Dealer will be charged an interest rate of 1.5% per month (or maximum allowed by law) calculated on simple basis on the amount of the invoice.

(a) All returned checks and disallowed ACH payments will be assessed an administrative fee of \$50.00 (USD) per occurrence.

(b) Dealer discounts and freight incentives will not be allowed if dealer is making payments by Credit Card.

(c) ACH prepay discount may only be taken if ACH payment is made at or before the time of shipment.

7. Reservation of Rights by DEFIANT. DEFIANT reserves the right to take the following actions: (i) to appoint or be represented by other dealers; (ii) to make sales directly to any or all customers it deems appropriate, regardless of the location of the purchaser; (iii) any and all rights not otherwise expressly granted to Dealer by the terms of this Agreement.

8. Discontinuance and Modification of DEFIANT Products. DEFIANT will have the right at any time to introduce new DEFIANT Products, discontinue the sale of any of its DEFIANT Products without incurring any obligation or liability whatsoever.

9. Promotional Materials. During the term of this Agreement, DEFIANT will take reasonable action, in its sole business judgment, to assist Dealer in Dealer's efforts to promote and sell DEFIANT Products, including providing reasonable quantities of support materials such as product information, sales promotional literature, displays, store fixtures, and service tools which DEFIANT determines, in its sole business judgment, are appropriate to offer to Dealer.



10. Advertising. DEFIANT and Dealer agree to promote the DEFIANT brand and products. Dealer agrees to use the DEFIANT trademark only as permitted by the terms of this Agreement. Dealer will, at all times, display a sign identifying the store as a dealer of DEFIANT Products. Dealer will use reasonable efforts to promote service and sell DEFIANT Products.

11. Dealer's Requirements.

- (a) Dealer agrees to maintain a retail store (the Store) for the sale of DEFIANT Products at the Approved Location.
- (b) Dealer agrees to use its best efforts to vigorously and actively promote the sale of DEFIANT Products at the Store.
- (c) The Store will have adequate facilities for the display, sales, and service of DEFIANT Products.
- (d) Dealer will sell all DEFIANT Products, especially bicycles, fully assembled and adjusted.
- (e) Dealer will continuously maintain, to the satisfaction of DEFIANT, a general reputation for honesty, integrity and good credit standing, and shall maintain the highest quality of standards.
- (f) Dealer will comply with all laws, ordinances, and regulations, both state and federal, applicable to Dealer's business.
- (g) Dealer shall pay and discharge, and DEFIANT will have no obligation to pay for, any expenses or costs of any kind or nature incurred by Dealer in connection with its sale of DEFIANT Products, including, without limitation, any expenses or costs involved in marketing DEFIANT Products.
- (h) Dealer will keep orderly and timely records of each sale of DEFIANT Products, including the purchaser's name and address, and to otherwise provide such records to DEFIANT on a not-less-than monthly basis.
- (i) Dealer will provide each purchaser of an DEFIANT bicycle with an owner's manual and any other consumer documents that accompany the DEFIANT bicycle.
- (j) Dealer will provide and perform all repairs covered by warranty, to DEFIANT Products.
- (k) Dealer agrees to notify DEFIANT of any personal injury involving an DEFIANT Products within ten (10) days of the occurrence or Dealer's receipt of information of such injury.

12. Restrictions. Dealer agrees that it will not engage in any illegal activity, including but not limited to, activity involving any illegal, deceptive, misleading, or unethical business conduct. Dealer may only sell DEFIANT Products at the Approved Location and at a retail price no lower than the DEFIANT minimum suggested retail price. Dealer further agrees that it will not engage in any telephone, mail order, or internet sales of DEFIANT Products without prior written consent of DEFIANT. Sales and advertising of DEFIANT branded product are strictly prohibited from the Amazon and eBay platforms without written consent of DEFIANT.

13. Dealer's Remedies. If DEFIANT, for any reason whatsoever, fails or is unable to deliver any DEFIANT Products ordered by Dealer, the Dealer's sole and exclusive remedy will be the recovery of the purchase price, if any, paid by Dealer to DEFIANT for such DEFIANT Products. DEFIANT will not incur any liability whatsoever for any delay in the delivery to the designated delivery location of the DEFIANT Products. In no event will DEFIANT be liable for any incidental, consequential, or other damages arising out of any failure to deliver any DEFIANT Products to Dealer or any delay in the delivery thereof.



14. Use of Trademark. Dealer is granted the non-exclusive right, only for the limited term of this Agreement, to use DEFIANT's trademarks as identified by DEFIANT from time to time to identify the Dealer's retail Store as an DEFIANT dealership. Dealer agrees and acknowledges that DEFIANT's trademarks, trade names, and service marks are owned exclusively by DEFIANT, and nothing in this Agreement is meant to create any ownership interest in or by Dealer in such trademarks, trade names, or service marks. Dealer otherwise acknowledges that it has no ownership rights, title, or interest in any DEFIANT trademark, trade name or service mark, nor does Dealer have any right or interest to use any such mark as a part of Dealer internet domain, as a part of Dealer's business name, or for any other purpose not expressly set forth and identified herein. DEFIANT agrees to hold Dealer harmless from any claim that Dealer's proper use of such trademark infringes upon the rights of any third party. Any other use by Dealer of a trademark owned by DEFIANT must be in a form and format approved by DEFIANT in advance of such usage.

15. Location. Dealer may only sell and/or service DEFIANT Products at the Approved Location, unless otherwise permitted by prior written consent. The Approved Location may not be moved without the prior written consent of DEFIANT, even if Dealer intends to open a temporary display.

16. Warranty. DEFIANT warrants DEFIANT Products for the period of time set out in the warranty that accompanies DEFIANT Products. DEFIANT makes no warranty beyond the warranty that accompanies DEFIANT Products. If defects occur within the warranty period, Dealer will notify DEFIANT immediately and, upon confirmation by an authorized DEFIANT sales representative of the defects, DEFIANT's sole responsibility shall be to replace the defective item if it cannot be repaired. This warranty does not apply to defects not caused by DEFIANT (for example, accidents or abuse while in Dealer's possession). DEFIANT shall not have any liability of any kind under this warranty unless Dealer gives DEFIANT notice of its claim within thirty (30) days after the Dealer knows, or should know, of its claim. EXCEPT AS SET FORTH HEREIN, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO DEFIANT PRODUCTS. DEFIANT EXPRESSLY EXCLUDES AND DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY AND ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, APPLICATION OR USE. UNDER NO CIRCUMSTANCES WILL DEFIANT BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE SOUGHT IN CONTRACT, IN TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, AND DEFIANT'S LIABILITY SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE DEFIANT PRODUCT ON WHICH SUCH LIABILITY IS BASED.

17. Repairs under Warranty . Dealer agrees to perform all warranty work for all DEFIANT Products sold by such Dealer. Dealer is not otherwise obligated to, but may, provide warranty service, if such Dealer decides to do so, for DEFIANT Products which were not sold by Dealer.

18. Terms of Agreement.

(a) The term of this agreement shall begin on the _____ day of _____, 20____ and end on the 30th day of June 2016. In the absence of the execution of new agreement, the terms will be month-to-month.

(b) This Agreement does not automatically renew. DEFIANT may condition its renewal upon Dealer entering into DEFIANT's then-current Dealer Agreement.



(c) Either party may terminate this Agreement at any time by providing the other with not less than thirty (30) days written notice of its election to terminate. The Parties may also mutually consent to terminate this Agreement at any time.

(d) DEFIANT may terminate this Agreement by written notice to Dealer under any of the following circumstances:

(i) If Dealer breaches the terms and conditions of this Agreement;

(ii) Immediately upon the sale, transfer, or liquidation of Dealer's business not in accord with terms of this Agreement; or upon the sale of all or substantially all of Dealer's assets; or upon Dealer's loss of right to occupy the Approved Location; or if Dealer moves to a new location without DEFIANT's prior authorization;

(iii) Immediately upon the filing of a petition of bankruptcy against Dealer which is not dismissed within sixty (60) days, or if Dealer files a petition of bankruptcy, or upon the insolvency of Dealer's business;

(iv) Immediately if Dealer fails to pay any sums due to DEFIANT and does not cure such failure within (20) days upon receipt of written notice of such nonpayment;

(v) If Dealer fails to sell the minimum quantity of DEFIANT Products according to Dealer Level, DEFIANT has the option of terminating the Agreement on a date that is not less than thirty (30) days from the date of written notice sent by DEFIANT to Dealer.

(e) Upon the effective date of termination of this Agreement, all outstanding orders from Dealer to DEFIANT will be deemed cancelled, to the extent DEFIANT's Products have not yet been shipped by DEFIANT.

(f) Upon termination of this Agreement, for any reason, DEFIANT shall have the option, within sixty (60) days after the effective date of such termination, to purchase Dealer's inventory which was purchased by Dealer within the past twelve (12) months prior to the date of termination. If DEFIANT exercises such option, Dealer will sell and release to DEFIANT such inventory at a price equal to the price initially paid by Dealer for the DEFIANT Products, provided the DEFIANT Products have been properly stored and are in good and saleable condition.

(g) Upon termination of this Agreement for any reason, Dealer will promptly return to DEFIANT any property of DEFIANT, including without limitation, all sales and marketing documents, manuals and other records and proprietary of DEFIANT. Dealer agrees that it will not make or retain any copy of, or extract from, such property or materials. DEFIANT agrees to compensate Dealer for the cost of any returned sales materials that were authorized by DEFIANT and purchased by Dealer within twelve (12) months of the date of termination.

19. Dealer Credit Application. Dealer shall submit a completed DEFIANT Dealer Application and Guaranty, which shall be incorporated and become a part of this Agreement as though set forth herein word for word. Dealer represents and warrants that all information provided in such Dealer Application and Guaranty is true and correct.

20. Governing Law: This Agreement shall be governed by the laws of the State of Minnesota.

21. Force Majeure. DEFIANT shall be excused from delay or non-performance in the delivery of an order and Dealer shall have no claim for damage if and to the extent such delay or failure is caused by occurrences beyond the control of DEFIANT including, but not limited to, market conditions; acts of God; war, acts of terrorism, riots and civil disturbances; expropriation or confiscation of facilities or compliance with any order or request of governmental authority; strikes, labor or employment difficulties whether direct or indirect; or any cause whatsoever which is not within the reasonable control of DEFIANT. DEFIANT will immediately notify



Dealer of the existence of any such force majeure condition and the anticipated extent of the delay or non-delivery. DEFIANT will, in such event, have the right to allocate available DEFIANT Products among its customers and dealers in its sole discretion.

22. Entire Agreement: This Dealer Agreement, when executed by both DEFIANT and Dealer, shall contain the entire understanding and agreement between DEFIANT and Dealer with respect to all matters referred to herein, and shall supersede all prior or contemporaneous agreements, representations, discussions, and understandings, oral or written, with respect to such matters.

23. Relationship of Parties.

(a) The relationship of the Parties established by this Agreement is that of vendor and vendee, and all work and duties to be performed by the Dealer as contemplated by this Agreement will be performed by it as an independent contractor.

(b) Nothing in this Agreement or otherwise shall be construed as constituting an appointment of Dealer as an agent, legal representative, joint venture, partner, employee or servant of DEFIANT for any purpose whatsoever. Dealer is not authorized to transact business, incur obligations, sell goods, solicit orders, or assign or create any obligation of any kind, express or implied, on behalf of DEFIANT, or to bind DEFIANT in any way, or to make any contract, promise, warranty or representation on DEFIANT's behalf with respect to DEFIANT Products or any other matter, or to accept any service of process upon DEFIANT or receive any notice of any nature whatsoever on DEFIANT's behalf.

(c) Under no circumstances will DEFIANT be liable for any act, omission, contract, debt or other obligation of any kind of Dealer or any salesman, employee, agent, or other person acting for or on behalf of Dealer. Dealer will indemnify and hold DEFIANT harmless from any and all claims, liabilities, losses, damages, or expenses (including reasonable attorneys, fees and costs) arising directly or indirectly from, as a result of, or in connection with, Dealer's operation of Dealer's business. The terms of this indemnity shall survive the termination of this Agreement.

24. Assignment: This Dealer Agreement may not be assigned by Dealer unless the consent of DEFIANT is obtained, and such consent is not to be unreasonably withheld. It shall not be considered unreasonable for DEFIANT to withhold consent if DEFIANT is to provide financing for Dealer in any amount.

25. Time: DEFIANT and Dealer agree time is expressly of the essence with regard to all times and dates set forth in this Dealer Agreement. Further, all times and dates set forth in this Dealer Agreement.

26. Attorney Fees: Should DEFIANT or Dealer initiate any type of administrative proceeding, arbitration, mediation, or litigation against the other (or against an agent for the initiating party or agent for the non-initiating party), it is agreed by DEFIANT and Dealer that all prevailing parties shall be entitled to an award of their respective attorney's fees and costs incurred in defense of such initiated action against the non-prevailing party.

27. Notices. Except as specifically set out in this Agreement, any notice or other communication related to this Agreement shall be effective if sent by first class mail. Postage prepaid, to the address set forth in this Agreement or Dealer Application, or to such other address as may be designated in writing to the other party.



28. Counterparts: This Dealer Agreement may be executed in multiple counterparts, each of which shall be regarded as an original hereof, but all of which together shall constitute one in the same.

The Parties, by their signatures below, hereby enter into this Agreement.

DEFIANT BICYCLES, LLC:

Signature: _____

Name: _____

Title: _____

DEALER: _____

Signature: _____

Name: _____

Title: _____

