



PKB™ Terms & Conditions

WHEREAS, PKB Fit, LLC (PKB) is the owner, developer and manufacturer of certain proprietary products which may be modified without notice from time to time, and some services (The “Products and Services”);
WHEREAS, Wholesale Distributor or Sales Representative (collectively (REP)) is engaged in the business of representing, reselling and supporting the Product and desires to offer its customers such Products as manufactured, distributed and provided by PKB;

WHEREAS, PKB desires to engaged REP to act as its representative to offer Products to customers of REP, under the terms and conditions set forth herein; and,

WHEREAS, REP desires to accept such appointment upon such terms and conditions.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Definitions:

1. Appointment

PKB hereby appoints REP as its representative to offer, sell and distribute the Products listed during the term of this Agreement and subject to its terms and conditions.

2. REP's Duties

In order to maintain its status as, and the benefits of, a representative, hereunder, during the term of this agreement, REP shall:

- a) Adhere to the Minimum Advertised Price Policy (MAPP)
- b) Use its best efforts to promote sales of the Product in an effective manner and to maintain and promote the goodwill of PKB and its Products;
- c) Maintain a sales force and staff sufficient to perform all of its duties hereunder;
- d) Promptly advise PKB of any change in REP's ownership, management or financial condition;
- e) Not sell, or offer to sell a non-PKB supplied product that has an appearance, or packaged appearance that the product is associated with PKB. Such an appearance of association of the non-PKB supplied product will be determined if the product could confuse a customer as to the source of the non-PKB supplied product.

3. PKB Duties

During the term hereof, but only if REP fulfills its obligations hereunder, as set forth in Section 2, above, including specifically but without limitation Section 2(a) above, PKB shall:

- a) Make PKB marketing literature and approved sales aids available to REP

4. Reserved Rights

PKB may take any of the following actions, without limitation, at any time and from time to time, in its sole and absolute discretion, without incurring any liability to REP or otherwise affecting the terms of this agreement.

- a) Modify, discontinue and/or introduce new Product(s) or Service(s), such changes to be made by addendum to PKB Price List;
- b) Reduce, limit and/or cancel any order sold by REP because of shortages in material(s) or manpower, other circumstances beyond PKB's reasonable control and/or acts of God; and,
- c) Establish and/or adjust pricing for its current Product(s) which PKB may introduce, with thirty (30) days prior notice to REP of such a change.

5. Intellectual Property Rights

- a) REP recognizes that the right to use the PKB trademarks, trade names, trade dress, logos and other intellectual property rights (the IPRs) hereunder is the sole right and privileges of PKB. REP gains no license or proprietary rights to such IPRs hereunder and shall not infringe upon, dilute or harm PKB's rights in its IPRs. REP shall not use any trademark, trade dress or trade name on any Products and Service(s) other than that expressly authorized by PKB in writing from time to time. REP shall not use the IPRs, including without limitation, the PKB trademarks, trade dress, trade names or logos in any manner (including advertising) without submitting such proposed use to PKB and obtaining prior written approval therefore from PKB.
- b) Upon termination of the Agreement, REP agrees to discontinue immediately all use of the IPRs, to destroy and to deliver to PKB, at PKB's election, all advertisements, brochures, displays, designs, posters, software, and other promotional material then in REP's possession and control.
- c) REP shall promptly inform PKB in writing of any infringement of any of the IPRs, or of any claim or allegation that the IPRs, including without limitation the PKB trademarks, trade dress, trade names, or logos, infringe upon the rights of any other person. REP shall have no right to maintain or defend any action on behalf of PKB regarding the IPRs.

6. Indemnity and Warranty

REP agrees to defend, indemnify, and hold PKB harmless from and against all claims, demands and other liabilities, including attorney's fees, asserted against PKB as a result of REP alleged acts or omissions as a result of its violations of this agreement or use or misuse of IPRs rendered pursuant hereto by REP.

7. Arbitration

Disputes arising out of or in any manner relating to this Agreement, which the parties do not resolve in good faith within five (5) days after either of the parties notifies the other of its desire to resolve such dispute, will be settled by arbitration.

In such cases where amicable settlement cannot be reached, such disputes or differences shall be resolved by arbitration under the Commercial Arbitration Rules of the American Arbitration Association in Austin, Texas. The decision made in such arbitration shall be binding upon the parties.

8. Severability

The invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity or enforceability of any of its provisions.

9. General

This Agreement is entered into the State of Texas, and its interpretation and construction and the remedies for its enforcement or breach are to be applied in accordance with the laws of the State of Texas. Venue for any action arising hereunder shall be had only in Austin, Texas.

Each party shall use its best efforts to prohibit the unintentional disclosure to any third party of any confidential information concerning the other party or concerning the Products and Services during the term of this Agreement. Furthermore, this obligation shall survive termination of this Agreement for a period of one (1) year.