

**Metabolic Maintenance, Inc.**  
**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](http://www.metabolicmaintenance.com) (collectively, the “**Agreement**”) shall govern the purchase of Metabolic Maintenance, Inc. (“**MM**”) products (“**Product**”) 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 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 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 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](http://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, and 8 (“**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 \$6,000.00. 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.
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.
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. **Termination; Survival.** This Agreement may be terminated by either party at any time by giving written notice. Those provisions that by their nature are intended to survive termination of this Agreement shall so survive.
14. **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.
15. **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.
16. **Authority.** Reseller represents that it has the power and authority to enter into and be bound by this Agreement in accordance with its terms.
17. **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.
18. **Assignment.** Reseller’s rights and/or obligations under this Agreement may not be transferred or assigned in any manner without MM’s written consent.

**AGREED AND ACCEPTED BY RESELLER:**

By: \_\_\_\_\_

Reseller’s Name: \_\_\_\_\_

Date: \_\_\_\_\_