

# TECHGEAR-5.7

2910 Norman Strasse Rd. Suite 104. San Marcos, CA 92069  
Toll-free: 888.908.6024 E-Mail: [info@techgear5-7.com](mailto:info@techgear5-7.com)

## DEALER AGREEMENT

This agreement is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Tech Gear 5.7, Inc. having its principal office at 2910 Norman Strasse RD, Suite 104, (hereinafter called the "Company") and \_\_\_\_\_, having its principal place of business at \_\_\_\_\_ (hereinafter called the "Dealer"),

- 1. DEALER APPOINTMENT:** (a) Subject to this Agreement, the Company appoints Dealer and Dealer accepts appointment as a reseller for the Company's Products. This is a non-exclusive appointment without any defined territory.  
(b) The Company, in reliance on Dealer's representations and warranties regarding its capability to resell the Product to end users, authorizes Dealer to resell the Company's products ("Products") through Dealer's physical retail location(s) and/or its corporate website on a nonexclusive basis. Dealer agrees to use its best commercial efforts to promote the resale of the Products only at retail or on-line, (that is, advertising, promoting and reselling the Products solely to end user consumers and not to purchasers for resale to other resellers). Dealer's appointment hereunder shall not entitle Dealer to purchase or sell any Products from Company other than those described in Exhibit A. Dealer agrees and accepts that Company may modify the Company Products List from time to time without prior notice to Dealer.
- 2. DEALER LOCATION(S) & WEBSITES:** Dealer shall sell the Products from the address set forth above and from those addresses and URLs set forth on Exhibits "B" and "C" hereto ("Authorized Locations", "Authorized Internet Sites"), and from no other locations or websites unless Company consents to such other locations or website in writing. Dealer shall give Company thirty (30) days written notice of its intention to discontinue any location(s) or to open any new location(s). Nothing shall prohibit Company from adding additional dealers or selling directly or by any other means to accounts that may compete with one or more of Dealer's Authorized Locations.
- 3. PERFORMANCE AND SERVICE:** Dealer shall: (a) cause all salespersons that it employs in selling Company' Products to the public and to maintain current knowledge of the Product; (b) present the Product to all prospective consumer buyers; (c) maintain attractive, suitable and businesslike retail location(s) in good condition and repair from which to conduct its business; (d) and assist any Product purchasers in obtaining repairs and service under any published Consumer Product Warranty Statement for the Product that may be in effect from time to time.
- 4. ESSENCE OF AGREEMENT:** (a) The relationship of the Dealer to the Company will be that of an independent contractor engaged in purchasing products for resale to Dealer's customers. Dealer and its employees are not agents or legal representatives of the Company for any purpose, and Dealer has no authority to act for, bind or commit the Company. Dealer and Company agree that this Agreement does not establish a franchise, joint venture or partnership. Any commitment made by Dealer to its customers with respect to quantities, delivery, modifications, suitability of the Product, or suitability in specific applications will be Dealer's sole responsibility unless prior written approval is obtained from Company to make such commitment.  
(b) Dealer has no authority to modify the warranty provided by the Company with any Company product or to make any other commitment on behalf of the Company except as set forth herein. Dealer hereby indemnifies Company from any and all liability for such modified warranty or other commitment made by Dealer.
- 5. PRODUCTS:** This Agreement relates to all Products manufactured, produced or resold by the Company during the term of this Agreement, that are included in Exhibit A (below).
- 6. PRODUCT PURCHASES**
  - 6.1 Order Placement:**
    - (a) Dealer shall place orders for the purchase of Product from a sales representative or on-line dealer portal or at [orders@techgear5-7.com](mailto:orders@techgear5-7.com).
    - (b) Each order for the Products shall constitute a separate contract and any default by the Company in relation to any single order shall not entitle the Dealer to treat this Agreement as terminated.
    - (c) No acceptance by the Company of any purchase order forms or other forms of any kind from Dealer which include terms that are in addition to, vary from or conflict with any terms of this Agreement, or with any terms or conditions set forth elsewhere in the Company's schedules, forms, or policies, shall be deemed an acquiescence by the Company to any such variance or conflict. Any conflicting terms received by the Company from Dealer shall be of no effect and shall be considered void.
  - 6.2 Acceptance:** All orders submitted by Dealer are subject to acceptance by the Company. When the order has been accepted, in whole or part, the Company will use commercially reasonable efforts to fulfill the accepted portion of the order as promptly as practicable. The Company shall not be liable for any damages, consequential, special, incidental or otherwise, for its failure to fill orders or for any error or delay in the filling of orders. Whenever in the Company's opinion, demand for the Products or other market conditions so require, the Company may allocate its available inventory and/or deliveries among its dealers in such manner as it deems appropriate or necessary, without liability of any kind to Dealer.

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## 6.3 Payment:

(a) Invoice: The Company may invoice the Dealer for the price of the Products on or at any time after shipment of the Product to Dealer. If the Company Products are to be picked up by the Dealer, The Company shall be entitled to invoice the Dealer at any time after the Company notifies the Dealer that the Products are ready for pick-up.

(b) Credit: The Dealer represents to the Company that it is in good financial condition and is able to pay all invoices when due. Before Dealer's initial order can be shipped, this Agreement must be signed by Dealer and accepted by the Company. Open accounts may be established only upon approval by the Company.

(c) Late Payment: Past due amounts are subject to late payment service charges of 1.5% per month, which is an annual rate of 18%, or a higher rate as allowed by law. Accounts past due will have shipments held and Dealer may be required to pay C.O.D. by credit card, cashier's check or money order. Further, the Company may cancel or suspend any further deliveries to the Dealer under any order. The Company shall have the right to offset amounts that may be owed to Dealer if Dealer's account is in arrears.

(e) Bad Checks: Any check returned for "Non-Sufficient Funds" automatically changes the account terms to C.O.D. cash (cashier's check, money order). A service charge of \$50.00 will be charged to the Dealer for each Non-Sufficient Funds returned check. Any order placed subsequent to the return of a check for Non-Sufficient Funds may be held by The Company until the returned check has cleared.

(f) Collection: In the event of any litigation arising out of this Agreement for the collection of money due to the Company by Dealer, the Company shall be entitled to its attorney's fees, costs and all expenses.

7. **INSOLVENCY:** The Company may, at its option, cause the entire unpaid balance to become due immediately, may cancel this Agreement, suspend any further deliveries under this Agreement without any liability to Dealer, and may enter Dealer's premises and take possession of Dealer's products without any liability to Dealer upon the occurrence of any of the events set forth below:

(a) Dealer fails to pay any part of the purchase price when due, or;

(b) Dealer becomes insolvent, or;

(c) Dealer makes any voluntary arrangement with its creditors, becomes bankrupt, becomes subject to an administration order or goes into liquidation (other than from the purpose of amalgamation or reconstruction), or;

(d) A receiver is appointed for any of the property or assets of the Dealer, or;

(e) Dealer ceases or threatens to cease to carry on its business, or;

(f) The Company reasonably anticipates that any of the events mentioned above is about to occur and notifies the Dealer accordingly.

(h) Upon termination of this Agreement between the parties, the Company shall have the right to offset any amount that may be owed to Dealer towards an outstanding balance on Dealer's account.

(i) Notwithstanding any other terms or provisions of this Agreement, should Dealer default in payment of the purchase price when due, or fail to comply with any provisions of this Agreement, Company may cancel the sale of such Products or enforce the terms of such sale, and may remove or repossess such inventory on ten (10) Days prior written notice and take such other action as it may deem necessary to protect its interest, it being understood that the remedies contained in this section are cumulative and in addition to all other rights and remedies of the Company.

## 8. PRICE SHEETS:

(a) Dealer acknowledges receipt from the Company of the current Confidential Dealer Price Sheet(s) for the Products (hereinafter called collectively "the Price Sheets"). The Price Sheets, and any supplementary or replacement Price Sheets, and each of the prices and other terms and conditions of sale contained in such Price Sheets shall be considered an integral part of this Agreement. The Company shall have the right to reduce or increase prices to Dealer at any time, upon issuance to Dealer of a new Price Sheet or upon otherwise so advising Dealer in writing. Any new prices shall be applicable to all orders shipped by Company after the effective date of same, as stated in the new Price Sheet or other notification.

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(b) Dealer acknowledges that Price Sheets and all materials related to Product pricing, sales programs and dealer marketing programs are copyrighted information that are to be maintained in confidence and not copied, retransmitted or disclosed by Dealer, its employees or agents to any third party.

(c) The prices set forth in the Price Sheets are exclusive of any taxes. Dealer shall be responsible for payment of all taxes resulting from its purchase, resale or other dealings with the Products.

(d) Although Company may, from time to time, provide Dealer with suggested resale prices or promotional pricing programs, it is the Dealer's sole responsibility to establish its own resale prices and terms.

(e) The Company shall have the right at any time, and from time to time, to modify or cease making available any or all of the Products without advance notice to Dealer and without incurring any liability or duty to repurchase or modify Products from Dealer.

(f) All Dealers who wish to qualify for payment terms must submit a completed Company credit application to be approved by the Company credit department. Pending approval of the Company's credit department, payment shall be due for all purchases by Dealer within thirty (30) days of the date of the invoice issued by Company.

## 9. WARRANTY:

(a) Dealer understands and agrees that the only warranty that the Company extends for the Products to the Dealer is that the Products meet the Company's specifications at the time of shipment. If a Product is found to be defective within the terms of the Company's consumer warranty statement provided with the Product, the Company, at its option, will repair or replace the Product free of charge. The Company's maximum liability for claims of any kind is strictly limited to the purchase price of the Product.

(b) Dealer agrees that it shall not in any way alter the Products (nor the parts or components thereof) without the prior written authorization of the Company, nor extend any warranty nor make any representations other than those contained in the Company's then current consumer warranty statement provided with the Product by the Company. Any warranty given by Dealer with respect to the Products is strictly the responsibility of Dealer, and any Product that has been altered without prior written authorization or any such additional warranty or representation shall be void. Dealer hereby agrees to defend, indemnify and hold the Company harmless against any claim or cause of action whatsoever including costs, expert fees and attorney's fees, arising out of, or occasioned by, the Dealer's extension of said additional warranty.

(c) The Company offers no other warranty, expressed or implied, except as set forth in the consumer warranty statement offered by the Company with the Product. To the fullest extent allowed by law, the Company specifically disclaims all other expressed or implied warranties, including but not limited to the implied warranties of merchantability, fitness for a particular purpose, and non-infringement. The remedies provided in this Agreement, including the procedure for return of defective goods, are Dealer's sole and exclusive remedies. The Company shall not be liable for any direct, indirect, special, incidental or consequential damages whether based on contract, tort or any other legal theory.

(d) Dealer shall provide to Company any information regarding its customers which Company deems necessary to register any warranty, adjust any warranty claim, or issue or renew any license associated with any product sold to such customer by Dealer and which was acquired from Company.

**10. INDEMNIFICATION:** Dealer will defend, indemnify and hold harmless the Company, and its employees and agents, from any and all fines, suits, proceedings, claims, demands, debts, obligations, liabilities or actions of any kind by anyone (including reasonable attorneys' fees, expert fees and costs) arising from or connected with the activities or operation of Dealer, its employees or agents. Company will indemnify Dealer in product liability actions brought against Dealer by third parties involving solely the defective materials, manufacture or design of Products or that the Products or their names infringe on any patents, trademarks, or other intellectual property right; however, Company will not indemnify Dealer against actions arising from unauthorized changes to the Products or Names or from any practices or representations by Dealer to any customer or to the trade which are false, misleading, incomplete, fraudulent, untrue or contrary to Company's sales policies, standard contract terms or this Agreement.

**11. PRODUCT SPECIFICATION CHANGE:** The Company reserves the right without prior approval from or notice to Dealer to make changes in the Product.

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## 12. TERMINATION:

(a) This Agreement is for an initial term beginning on the date the Company accepts it and ending on the first December 31st thereafter. This Agreement will renew on each January 1st thereafter for an additional one-calendar year term unless a party gives at least thirty (30) days notice of non-renewal. Either party may terminate this Agreement at any time for convenience by giving notice of termination to the other. No termination will release Dealer from any of its obligations accrued prior to termination. In the event Dealer becomes bankrupt, insolvent, makes an assignment for the benefit of creditors or ceases normal business operations, this Agreement shall thereupon be deemed terminated immediately without notice.

(b) The Company may, from time to time, give Dealer written notice of amendments to this Agreement. Any such amendment will automatically become a part of this Agreement on the effective date specified in the notice unless Dealer objects in writing within ten (10) working days of the notice date. In the event, Dealer provide such notice off non-acceptance, this Agreement shall automatically terminate. Each party acknowledges that the other has made no commitments regarding duration or renewal of this Agreement beyond those expressly stated in this Agreement.

(b) Each party shall advise the other of any change in its ownership, control or operating arrangements. Either party's failure to enforce any provisions of this Agreement will not be deemed a waiver of that provision or of the right to enforce it in the future. Upon termination or expiration of this Agreement, Dealer will immediately cease to be authorized to sell or install products of Company, and from using any Company trademarks or trade names. The indemnities provided in this Agreement will survive termination or expiration of this Agreement.

**13. REPURCHASE OF COMPANY PRODUCTS UPON TERMINATION OR NON-RENEWAL:** Upon termination or non-renewal of this Agreement, the Company shall have the option, but not the obligation, to repurchase any or all Products then in Dealer's inventory at the same price as Dealer paid for the Products. Company may exercise this option within thirty (30) days of termination or non-renewal by the mailing of notice thereof to Dealer.

**14. RIGHTS RESERVED TO COMPANY:** Except to the extent that the specific provisions of this Agreement expressly provide otherwise, the Company reserves to itself the unqualified right to manage its business in all respects including, but not limited to, the rights to modify, improve, alter, discontinue or develop new Products, labeling or packaging. Dealer's orders may be filled from any of its facilities. In the event that Company is restricted in the production, sale or delivery of Products by capacity limitations, acts of governmental authority, strikes or any other cause, natural or otherwise, or terminates sales of the Products to Dealer, Company shall not be compelled to honor previously accepted Dealer orders. In all such cases, except for termination to Dealer, Company shall distribute Products among all its Dealers in such a manner as it, in its sole discretion, deems appropriate.

**15. WAIVER OF JURY TRIAL:** The parties to this Agreement hereby knowingly and voluntarily, without coercion and after consulting (or having had the opportunity to consult) with counsel of their choice, waive all rights to a trial by jury of all disputes between them arising out of this Agreement. Neither party hereto shall seek to consolidate, by counterclaim, or otherwise, any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived. This waiver of jury trial may not be modified in any respect or relinquished by any party except in a written instrument executed by both parties.

**16. GOVERNING LAW:** This Agreement shall be governed by and construed under the law of the State of California and the United States of America. The exclusive venue for any dispute between the parties in connection with this Agreement shall be brought before the state and federal courts located in San Diego County, California. Dealer submits itself and its property to the exclusive jurisdiction of the state and federal courts located in San Diego County, California. Any legal action alleging breach of this Agreement may not be commenced by either party more than one year after the breach complained of is alleged to have occurred.

## 17. GENERAL CONSIDERATIONS:

(a) Except as described below, the Company or Dealer may not assign any of its rights or delegate any of its obligations under this Agreement to any third party without the express written permission of the other. However, Dealer understands that the Company may assign this Agreement to a successor corporation or entity and Dealer approves such transfer in advance. The Company's standard Terms and Conditions of Sale, as stated on the Company invoice form are incorporated in this Agreement. In the event of any inconsistency, the terms of this Agreement will prevail. This Agreement contains the entire and only understanding regarding the relationship between the Company and Dealer. The Company hereby gives notice of objection to any additional or inconsistent terms defined in any purchase order or other document issued by Dealer.

(b) Neither the Company nor Dealer will be liable for its failure to perform under this Agreement due to contingencies beyond its reasonable control including, but not limited to, strikes, riots, wars, fire, acts of God, or acts in compliance with any law of the United States of America or any other government body or agency of it.

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(c) All notices, demands or consents required or permitted under this Agreement will be in writing and will be delivered personally or sent by certified mail to the respective parties at the addresses defined on the first page of this Agreement, or at such other address as will be given by either party to the other in writing.

(d) No amendment or modification of any provisions of this Agreement will be effective unless in writing and signed by the party against whom such amendment or modification is sought to be enforced.

(e) The Captions and Section headings used in this Agreement are for convenience only and are not a part of this Agreement and will not be used in construing it. If any provisions of this Agreement are held by a court of competent jurisdiction to be invalid under any applicable statute or rule of law, they are to that extent to be deemed omitted and the remaining provisions of this Agreement will remain in full force and effect.

(f) This Agreement, including the attached Exhibits, constitutes the entire Agreement between Company and Dealer concerning this transaction, and replaces all previous communications, representations, understandings, and Agreements, whether verbal or written between Company and Dealer, or any official or representative of either of them.

(g) This Agreement will be binding upon and inure to the benefit of the successors and permitted assigns of Company and Dealer.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures as dated.

TECH GEAR 5.7, INC

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

Its: \_\_\_\_\_

Title: \_\_\_\_\_

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

DEALER

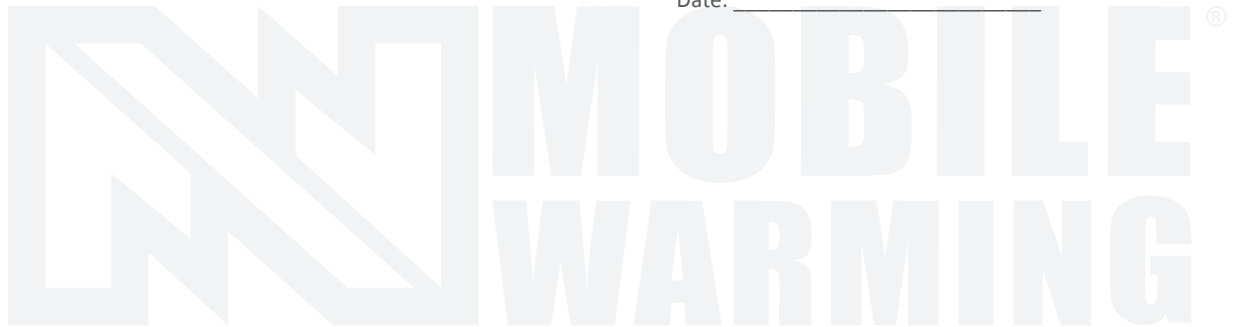
Dealer's Name: \_\_\_\_\_

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

Its: \_\_\_\_\_

Title: \_\_\_\_\_

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



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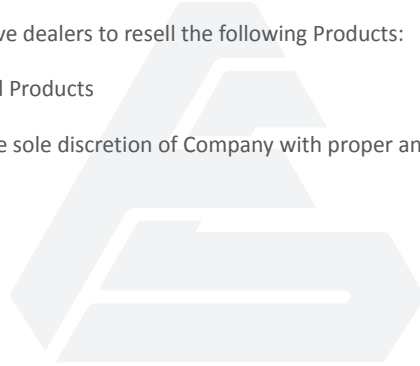
## EXHIBIT A:

### PRODUCTS

Company appoints Dealer as one of its non-exclusive dealers to resell the following Products:

- FieldSheer and Mobile Warming Branded Products

This exhibit may be updated and/or modified at the sole discretion of Company with proper and advanced notice to dealer.



FIELD SHEER®

MOBILE®  
WARMING

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## EXHIBIT B:

### AUTHORIZED LOCATION(S)

Store Name	Street Address	City or Town	State and Zip	Phone

FIELDSTEEPER®

MOBILE®  
WARMING

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## EXHIBIT C:

AUTHORIZED INTERNET SITE(S) (must list all corporate sites where retailer intends to merchandise Company products; No sale on third party market place sites (such as Ebay, Sears etc.) are permitted. Dealer agree to only list the Products on the URL provided below.

URL:

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FIELDSTEER®

MOBILE®  
WARMING

Initial \_\_\_\_\_



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## RESALE CERTIFICATE

I certify that \_\_\_\_\_ ("Dealer") is engaged as a registered retailer located at \_\_\_\_\_, and is registered with the state of \_\_\_\_\_, sales permit number \_\_\_\_\_. All purchases by Dealer from Tech Gear 5.7 are for retail sales or are ingredients or components of a new product to be resold, leased or rented in the course of business. We are in the business of retailing **motorcycles and related gear and apparel**.

I further certify that if any property so purchased tax free is used or consumed by our Company so as to make it subject to sales tax, we will pay the tax due direct to the proper taxing authority, when state law so provides, or inform Company, Inc. to bill us for taxes. This certificate shall be part of each order which we may hereafter give Company unless otherwise specified, and shall be valid until canceled by us in writing or revoked by the state.

A general description of products purchased from Company: **motorcycles and related gear and apparel**.

FIELD SHEEP®

MOBILE®  
WARMING

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