

**ECS TUNING
DISTRIBUTOR AND DEALER ACCOUNT TERMS AND CONDITIONS**

THIS DISTRIBUTOR AND DEALER ACCOUNT TERMS AND CONDITIONS (“Agreement”) is entered into on the ____ day of _____, 20____, by and between **ECS TUNING, LLC.** (hereinafter “ECS Tuning” or “Company”), acting for itself or on behalf of certain affiliated companies, and _____ (hereinafter “Distributor/Dealer or Receiving Party”).

WHEREAS, ECS Tuning and Distributor/Dealer intend to engage in a business relationship whereby ECS Tuning would provide non-exclusive rights to Distributor/Dealer to purchase automotive parts, equipment and services for installation or resell to the general public by(the “Distributor/Dealer Relationship”); and

NOW, THEREFORE, in consideration of the foregoing and mutual promises and conditions contained herein, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Distributor and Dealer Terms

a. Product Warranty / Disclaimer

- i. ECS Tuning strives to provide the highest quality products to our customers. Warranties are non-transferable, and only apply to the original purchaser of the part(s). The original purchaser is the wholesale account that purchased the part(s). If a third party customer of the wholesale account has a warranty issue the end user must first contact the wholesaler and the wholesaler will contact ECS Tuning. Under no circumstances will a customer that purchased an item indirectly be given any warranty information by ECS Tuning. This policy applies to all warranty issues, lost or damaged items in shipping and any core charge items. ECS Tuning will only replace or repair warranty items at our discretion. Refunds are not provided for any warranty transaction.
- ii. All items returned for warranty inspection are subject to testing within our company and in some cases may require that the parts are sent to the manufacturer for inspection and testing. ECS Tuning does not guarantee that any products will be warrantied until this process is complete. ECS Tuning will not, under any circumstances, provide a warranty replacement part until the testing process is complete. Customers who bypass our warranty policy and purchase replacement products prior to the receipt of warranty confirmation must understand that a warranty is not guaranteed until the inspection is complete. In some cases warranties will be denied and ECS Tuning must return the item(s) at the expense of the customer.
- iii. ECS Tuning is not responsible for any damages that may have occurred by using the products that we sell. ECS Tuning does not pay for consequential, incidental and contingent damages or costs incurred of any kind, including the cost incurred directly or indirectly in relation to goods sold by ECS Tuning including labor or parts coverage. ECS Tuning will only replace the defective item that was originally purchased from ECS Tuning, once the Customer Service Department

has verified that this part is faulty. Parts or products that may have been damaged or lost as a result of a faulty product will not be replaced by ECS Tuning under any circumstances. This includes but is also not limited to duties, taxes, and brokerage fees for foreign shipments. ECS Tuning will only ship replacement parts to the original address that the items were shipped to originally.

- iv. ECS Tuning products are subject to current warranty terms per the date of purchase. All other products that are not manufactured by ECS Tuning carry the original manufacturer warranty. Clearance and Scratch-and-Dent items do not carry a warranty and all sales are final. Due to the possible rapid failure or misdiagnosis of some products, ECS Tuning will not offer warranty coverage on electrical components or wearable mechanical items including but not limited to; air mass sensors, oxygen sensors, light bulbs, brake rotors, brake pads, clutch pressure plates, clutch disks and/or flywheels. In addition some manufacturers of products that ECS Tuning sells require professional installation documentation before any warranty will be honored.

b. Core Charge Policy

- i. Some products offered by ECS Tuning may have a core charge deposit that is required during the initial purchase. In some cases, ECS Tuning is unaware of a core charge until after an item has been ordered. If a core charge is required after the item has been ordered, ECS Tuning may contact the customer to inform them of the core charge. Core charges are usually combined with the initial cost of the item purchased and you may qualify for a core refund if the item is returned. In order to receive core credit, the item must be in rebuild-able condition without any damaged, structural harm or missing items. The core must be returned to ECS Tuning in the original OEM package in which the replacement part was sent.
- ii. ECS Tuning inspects all items that are returned for core credit and reserves the right to determine if that product qualifies for core credit. Items that are not returned in the original packaging will not qualify for core credit. ECS Tuning does not accept junkyard cores. If the return does not meet these requirements, the items will be returned or discarded at your discretion. If the item is denied for core credit, the customer is responsible for the cost of having the item returned.
- iii. Please allow an ample amount of time for core charges to be processed, as ECS Tuning needs to inspect all parts before a refund is granted. Return shipping for core charge refund is the sole responsibility of the buyer and all cores must be returned within thirty days of original purchase.

c. Rebranding

- i. ECS Tuning strictly prohibits any practice in which a Distributor/Dealer rebrands, private labels, or by other means portrays any ECS Tuning branded product (ECS Tuning, Ziza Lighting, Alzor Wheels, Schwaben Tools) as any other brand for purpose of reselling without written consent from ECS Tuning.

- ii. Violation of this policy will result in subsequent termination of Distributor/Dealer appointment and possible legal action.
- d. Copyrights and Intellectual Property
- i. ECS Tuning will allow the use of media such as pictures, videos and descriptions on an approved wholesaler website with the following limitations:
 - 1. The use is restricted to ECS owned brands
 - 2. ECS Tuning Products
 - 3. Assembled by ECS
 - 4. Ziza Lighting
 - 5. Alzor Wheels
 - 6. Schwaben Tools
 - ii. Any pictures, videos or descriptions of items that are not in the list of brands above are in direct violation of copyright laws.
 - iii. A currently active and appointed wholesale account can use these pictures, videos and descriptions to promote only the items that have been purchased directly from ECS Tuning.
 - iv. If the item has been purchased through an intermediary the use of ECS Tuning's pictures, video or descriptions is strictly prohibited.
 - v. All pictures, images and descriptions remain the exclusive, proprietary property of ECS Tuning and may not be altered, modified or manipulated in any way without written permission from ECS Tuning.
 - vi. The unauthorized use of ECS Tuning media will result in the immediate suspension and possible termination of Distributorship/Dealership. If the unauthorized use continues after suspension of the Distributor/Dealer account, legal action may be taken by ECS Tuning for copyright and intellectual property infringement.
- e. No Cancel-No Return Policy
- i. Special order and/or No Cancel-No Return items will require full non-refundable payment before the order is placed with our suppliers. Under no circumstances will this value be refunded in the event that the order does not ship due to customer requested cancellation, order modification or refusal at the time of delivery.
- f. Payment Terms
- i. ECS Tuning does not offer credit terms. Orders will be shipped pre-paid via cash, cashier's check, credit card or wire transfer.
- g. Terms of Use

- i. All transactions with ECS Tuning are subject to the current Terms of Use located on www.ecstuning.com/TermsOfUse/. Distributors/Dealers acceptance of shipment or performance and/or payment for the goods or services constitutes acceptance of ECS Tuning's current Terms of Use at the date and time the order is placed.
- h. ECS Tuning Liability
 - i. ECS Tuning's liability on any claim for loss or damage arising out of this contract or from the performance or breach thereof or connected with any goods or services supplied hereunder, or the sale, resale, operation or use of goods, whether based on contract, warranty, tort (including negligence) or other grounds shall not exceed the price allocable to such goods or services or part hereof involved in the claim regardless of cause or fault. ECS Tuning shall not under any circumstances be liable for any labor charges without its prior written consent. In no event shall ECS Tuning be liable for any incidental or consequential damage, including but not limited to, loss of profits or revenue, loss of use of products or associated product, cost of capital, cost of substitute products, facilities or services, downtime costs, or claims of customers of Distributor/Dealer for such damage.
- i. Term and Termination
 - i. This Agreement shall be effective for a term of one year from the Effective Date. It shall be automatically extended for further one-year terms unless either party gives written notice to the other at least 30 days before the expiration of the initial or any renewal term of the party's intent not to renew. ECS Tuning may terminate this Agreement at any time and without prior notice in the event of a breach of the Agreement by Distributor. Any monies payable by Distributor to ECS Tuning shall not be affected by termination or expiration of the Agreement. The provisions of this Agreement relating to (i) protection of ECS Tuning's proprietary rights in the Products and (ii) warranty, technical and infringement issues shall survive expiration or termination of this Agreement for any reason.
- j. Confidentiality
 - i. While this Agreement is in effect and thereafter, Distributor/Dealer or Receiving Party shall safeguard and treat as confidential all price lists, policies and procedures, technical information, specifications and any other information supplied to it that is designated as confidential ("Confidential Information"). Distributor/Dealer or Receiving Party shall not disclose, make reference to, or make public to any person or entity any Confidential Information provided to Distributor/Dealer or Receiving Party by ECS Tuning without the prior written authorization of the owner ECS Tuning. Distributor/Dealer or Receiving Party shall further limit the disclosure of Confidential Information to its employees who, by reason of their duties, have a need to know the same.
 - ii. Receiving Party hereby agrees that during Receiving Party's relationship with Company, and for a period of two (2) years immediately following the termination of Receiving Party's relationship or discussions regarding

the Distributor/Dealer Relationship, Receiving Party shall not do the following:

- a. Solicit, contact, hire, use or employ any of Company's existing or past employees, customers, prospective customers, contracting parties, Distributor/Dealers or suppliers for the purposes of using them in any way, either directly or indirectly, to compete with Company or otherwise harm the Company.
- b. Distribute, share, communicate or publicize any information or credentials related to Company's website login for purposes of using it in any way, either directly or indirectly, to compete with Company, purchase products without Distributor/Dealer appointment or otherwise harm the Company.

2. Miscellaneous

- a. All covenants and agreements set forth in this Agreement and made by or on behalf of either of the parties hereto shall bind and inure to the benefit of the successors, heirs and assigns of such party, whether or not so expressed. No party may assign or transfer any of its respective rights or obligations under this Agreement without the consent in writing of the other party hereto, such consent not to be unreasonably withheld.
- b. In the event that any one or more of the provisions contained herein is held invalid, illegal or unenforceable in any respect for any reason in any jurisdiction, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired or affected, it being intended that each of parties' rights and privileges shall be enforceable to the fullest extent permitted by law, and any such invalidity, illegality and unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- c. Except as specifically set forth or referred to herein, nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity other than the parties hereto and their permitted successors or assigns, any rights or remedies under or by reason of this Agreement or any other certificate, document, instrument or agreement executed in connection herewith.
- d. **Governing Law.** This Agreement, including the validity hereof and the rights and obligations of the parties hereunder, shall be construed in accordance with and governed by the laws of the State of Ohio applicable to contracts made and to be performed entirely in the State of Ohio (without giving effect to the conflicts of law's provisions thereof). Each of the parties hereto agrees that any action or proceeding brought to enforce the rights or obligations of any party hereto under this Agreement will be commenced and maintained in the State of Ohio. Each of the parties hereto further agrees that process may be served upon it by certified mail, return receipt requested, addressed as more generally provided in Section E.

- e. All notices, requests, demands, consents and communications necessary or required under this Agreement shall be delivered by hand or sent by registered or certified mail, return receipt requested, or by overnight courier, or by facsimile (receipt confirmed) to:
 - i. ECS Tuning Inc
1000 Seville Road
Wadsworth, Ohio 44281
 - ii. Facsimile Number: 330.331.2022

- f. Entire Agreement. This Agreement, including the Schedules and Exhibits, is complete, and all promises, representations, understandings, warranties and agreements with reference to the subject matter hereof, and all inducements to the making of this Agreement relied upon by all the parties hereto, have been expressed herein or in such Schedules or Exhibits. This Agreement may not be amended except by an instrument in writing signed by ECS Tuning and Distributor/Dealer.

- g. Any controversy or claim arising out of or relating to this Agreement, the making, performance or interpretation of this Agreement, shall be heard in the local courts sitting in Summit County, Ohio, or in the federal district courts sitting in the Northern District of Ohio.

- h. If any legal action, arbitration, or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties will be entitled to recover reasonable attorney fees and other costs incurred in that action or proceeding, in addition to any other relief to which they may be entitled.

IF YOU DO NOT WISH TO E-SIGN – PLEASE SIGN DISTRIBUTOR/DEALER SECTION BELOW

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first set forth above.

ECS TUNING, INC.

By: _____

Its: _____

Date: _____

Distributor/Dealer:

By: _____

Its: _____

Date: _____