



Snoozer

FOR DOG PEOPLE. BY DOG PEOPLE.

NOTICE: THIS AGREEMENT INCLUDES AGREEMENTS TO PARTICIPATE IN BINDING ARBITRATION PURSUANT TO SECTION 15-48-10 OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED.

This document, dated _____, 2022, (“Agreement”) is an agreement between O’Donnell Industries, Inc., a company incorporated under the laws of South Carolina with its principle offices at 561 Bessie Road, Piedmont, SC 29673 (“O’Donnell”) and _____, located at _____ (“Dealer”).

- O’Donnell is a manufacturer, importer, and supplier of the Snoozer* Pet Products line of products and Dealer is a reseller of pet products.
- Dealer intends to purchase products from the Snoozer Pet Products line for resale to Dealer’s customers.
- Only dealers approved by O’Donnell are authorized to resell or advertise Snoozer Pet Products under strict licensing specifications, terms, and conditions.
- In order to protect the high quality image and reputation for value and service associated with the Snoozer Pet Products brand, O’Donnell has implemented a minimum advertised price policy.
- In order to protect the resellers of Snoozer Pet Products as well as the image of the Snoozer Pet Products brand, and to give guidance on minimum standards of reseller conduct, O’Donnell has specified certain restrictions on reseller conduct.

* Snoozer and the Snoozer logo are trademarks of O’Donnell Industries, Inc.

THEREFORE, in consideration of the mutual binding promises, covenants, and undertakings detailed in this agreement, and for other good and valuable consideration, the sufficiency of which is acknowledged, the parties agree to the following terms and provisions.

I. DEFINITIONS

- A. Basket means “online basket, shopping cart, or other virtual collection used to store a customer’s selections for purchase prior to payment”
- B. Consumer means “person or group of people who purchase Merchandise for personal use or for use by their pet”
- C. Distributor means “an entity that sells goods to Consumers or to other Distributors”
- D. Merchandise means “products purchased by Dealer from O’Donnell, regardless of whether the products have been discontinued by O’Donnell”
- E. Offer means “special offer, sales price, or other deal”
- F. Permission means “written permission from O’Donnell”
- G. Pet Product means “any product usable by a pet or pet owner”
- H. Special Merchandise means “products purchased by Dealer from O’Donnell that are not manufactured by O’Donnell in its normal course of business”
- I. Store means “physical facility or online store”
- J. Third Party means “physical facility or online store not owned by Dealer that allows other entities to sell products including, but not limited to, Amazon, Wal-Mart, etc.”

II. SALE OF MERCHANDISE

- A. O’Donnell authorizes Dealer to resell Merchandise to Dealer’s customers. O’Donnell may revoke Dealer’s permission to resell Merchandise at any time at O’Donnell’s sole discretion.
- B. Dealer may only sell Merchandise to Consumers. Dealer may not sell Merchandise to a Distributor without Permission.
- C. O’Donnell may discontinue any product at any time without notice to Dealer and Dealer may not hold O’Donnell liable for discontinuing a product.
- D. Dealer shall keep Merchandise that is advertised or sold by Dealer online consistent with the O’Donnell Industries Item Master.

- E. Dealer may not advertise Merchandise without Permission. Dealer may only advertise and sell Merchandise from a Store owned by Dealer. Dealer may not advertise or sell Merchandise through any Third Party.

III. MINIMUM ADVERTISED PRICING

- A. Advertise, as used in this section, means “advertise, publish, or publicly post, regardless of the format or medium of communication including, but not limited to, automatic electronic mail responses to price inquiries, bulk electronic mail, postcards, flyers, radio, television, billboards, magazines, trade journals, airplane banners, newspaper inserts, website banners or similar online advertisements, webpages, facsimiles, mailings, pre-recorded telemarketing messages, or any other form of advertising”
- B. O’Donnell shall determine a minimum advertised price (“MAP”) for each product manufactured by O’Donnell. O’Donnell may set or change a product’s MAP at any time without notice to Dealer and Dealer may not hold O’Donnell liable for any modification of a product’s MAP.
- C. Dealer may set its prices for selling Merchandise in Dealer’s sole discretion; however, Dealer may not Advertise Merchandise for a price lower than the MAP set by O’Donnell.
- D. If Dealer advertises using the term “email for best price” or any other similar term, then Dealer’s response to emails received by Dealer pursuant to this advertisement is subject to the restrictions in section III.C above.
- E. Dealer may show its online customers a price lower than a product’s MAP after the customers have selected the product for their Basket and chosen to begin the payment process.
- F. If Dealer issues rebates or coupons to its customers that are applicable to Merchandise, then Dealer shall limit these rebates or coupons to future purchases by the customer, i.e. the rebate or coupon cannot be applied to the transaction for which it was issued.
- G. If Dealer does not comply with the provisions of this section, then O’Donnell may suspend or revoke sales of Merchandise to Dealer and revoke Dealer’s status as an authorized reseller. This provision should not be construed to imply that O’Donnell is not entitled to revoke Dealer’s status as an authorized reseller for any other reason or no reason at O’Donnell’s sole discretion.

IV. MARKETING

- A. Dealer shall advertise Merchandise in a manner as defined in the Snoozer brand standards attached at Addendum A.

- B. Dealer may not use any images created by or for O'Donnell without Permission. If Dealer receives Permission to use such images, then Dealer may not modify these images without Permission and Dealer shall only use these images to promote Merchandise.
- C. Dealer may not use text or language from O'Donnell's website or marketing materials without Permission.
- D. Dealer shall only use the word "snoozer" to describe Merchandise. Dealer may not use the word "snoozer" in Dealer's company name, base web URL, or in any other manner that implies that Dealer is the manufacturer of Merchandise.
- E. If Dealer's Store includes products advertised as "Made in the USA" or any other designation indicating that the products are manufactured in the United States of America, then Dealer shall verify that any Pet Products advertised in this category are actually manufactured in the United States of America. Dealer may not rely on the manufacturer's representation that the Pet Product is manufactured in the United States of America as verification under this paragraph.

V. ORDERING / PAYMENT

- A. O'Donnell's Offers to customers who buy directly from O'Donnell are not applicable to purchases made by Dealer or customers who purchase from Dealer or Dealer's Store.
- B. If Dealer pays for any shipment of Merchandise late, then Dealer shall pay ____% of the total amount owed to O'Donnell in addition to the amount owed.
- C. If O'Donnell is required to enter Dealer's order manually, then Dealer shall pay O'Donnell \$15.00 in addition to the amount owed to O'Donnell for the order. O'Donnell is not liable for any errors that occur when manually entering Dealer's order.

VI. RETURNING MERCHANDISE

- A. Dealer may only return Merchandise to O'Donnell for manufacturing warranty issues. O'Donnell shall review returned Merchandise and determine whether a manufacturing warranty issue exists. If O'Donnell determines that a manufacturing warranty issue does not exist, then Dealer shall pay O'Donnell a restocking fee determined by O'Donnell. If O'Donnell determines that a manufacturing warranty issue does not exist and Dealer chooses to replace the item for Dealer's customer, then Dealer is responsible for the cost of the replacement.
- B. Dealer is responsible for all communications from Dealer's customers regarding returns, service, or warranty questions. Dealer shall instruct Dealer's customers to

communicate only with Dealer regarding returns, service, and warranty questions. If Dealer's customers contact O'Donnell, then Dealer shall pay O'Donnell a service fee determined by O'Donnell.

- C. Dealer shall pay for shipping returned Merchandise to O'Donnell. If O'Donnell determines that a manufacturing warranty issue exists with returned Merchandise, then O'Donnell shall reimburse Dealer for the cost of shipping the returned Merchandise and Dealer shall reimburse Dealer's customer for any cost the customer paid for shipping the returned Merchandise to O'Donnell.
- D. Dealer may not return Special Merchandise or monogrammed Merchandise to O'Donnell.

VII. DISPUTE RESOLUTION

- A. The parties stipulate that monetary damages may not be an adequate remedy for a breach of Agreement. Therefore, O'Donnell may request injunctive relief from a court of competent jurisdiction in addition to any other rights or remedies available to O'Donnell. Dealer waives any right it may have to any bond or other security required from O'Donnell to obtain injunctive relief.
- B. The parties shall submit any dispute, claim, or controversy arising out of or relating to Agreement or any dispute contemplated by Agreement, including, but not limited to, any action in tort, contract, or otherwise, at equity or at law, any alleged breach, or any matter with respect to the meaning, effect, validity, termination, interpretation, performance, or enforcement of Agreement to binding arbitration administered by the American Arbitration Association ("AAA") in accordance with the AAA Commercial Arbitration Rules which are incorporated by reference.
- C. If arbitration occurs pursuant to this section, then the arbitration will be exclusively conducted in Greenville, South Carolina.
- D. The parties stipulate that any matters that are the subject of Agreement and any issues arising between the parties in relation to Agreement concern interstate commerce as contemplated by the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* (1999).
- E. If O'Donnell employs an attorney to represent it in any phase of dispute resolution, including, but not limited to, negotiation, arbitration, or litigation, then O'Donnell is entitled to recover its reasonable attorney's fees, expert witness fees, and any other costs of litigation incurred.

VIII. NOTICE

- A. The parties shall deliver any notice pursuant to Agreement to the following address:

If to O'Donnell:

If to Dealer:

O'Donnell Industries, Inc.

561 Bessie Road

Piedmont, SC 29673

- B. Notices are deemed delivered when they are delivered to Federal Express or any other reputable overnight carrier or deposited with the United States Postal Service by registered or certified mail (return receipt requested).

IX. INTERPRETATION

- A. Agreement is governed by and interpreted according to the law of South Carolina.
- B. The captions of Agreement are solely for convenience and do not affect the meaning or construction of Agreement.

X. BINDING EFFECT OF AGREEMENT

- A. Agreement is binding on the parties and their legal representatives.
- B. Neither O'Donnell nor Dealer may modify Agreement without express written consent of both O'Donnell and Dealer.
- C. If either party waives any provision of Agreement, that waiver does not constitute a waiver of any other provisions of Agreement and that waiver is limited to a specific instance and does not constitute a continuing waiver of the provision unless expressly provided by the waiving party in writing.
- D. If any court of competent jurisdiction declares that any portion of Agreement is void or unenforceable, this does not affect the enforceability of the rest of Agreement.
- E. Agreement is binding upon and inures to the benefit of the parties, their successors, and assigns.

XI. EXECUTION

- A. Agreement is executed when both parties have signed below and is effective beginning on the date of the second signature.

B. The parties may execute Agreement in one or more counterparts, each counterpart constituting an original agreement but all counterparts constituting one instrument.

THEREFORE, in evidence of the parties' agreement to the terms detailed above, the parties affix their signatures:

O'DONNELL INDUSTRIES, INC.

DEALER

Signature

Signature

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____