

# SEMA Business Guidelines and Manual Presented By MPMC

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## TABLE OF CONTENTS

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1. Introduction
2. Innovation
3. Contract Terms and Conditions
4. Freight Policy Practices
5. Catalog and Price Sheet Guidelines
6. Packaging Guidelines
7. Proposition 65
8. Manufacturer Representatives
9. Bar/UPC Codes
10. Cooperative Advertising Programs
11. Product Liability Insurance
12. Debt Collections
13. Export Sales
14. Electronic Data Interchange (EDI)
15. Minimum Advertised Pricing
16. Counterfeiting
17. Glossary of Terms
18. New/Future Topics

This manual is a guide provided by MPMC for all SEMA manufacturer members as a tool for up and coming performance aftermarket businesses who will be dealing with the day-to-day situations that will confront any successful and prospering venture working toward a strong placement into the market place.

Through the different methods of getting your product into the hands of the end user, whether through retailers, warehouse distribution, direct sales, or through internet sales, certain methods and rules must be established to ensure the financial, legal, and policy well-being of your business. This manual was developed through the experiences of many MPMC member companies. The information has been gathered and revised to aid new and existing companies to present industry “standards” that have proven effective as well as newer business technologies that are available within the market. Simply stated, this manual is the instruction book you have been looking for. Being a manufacturer member of SEMA entitles to you this information and the people that have followed these guidelines.

MPMC and SEMA websites are a great way to keep up on the latest news and information pertaining to the performance aftermarket business. MPMC and SEMA constantly update and post on Facebook®, Twitter®, SEMA.org, and MPMC E-Blasts providing information and news to help your business. The performance automotive aftermarket is changing daily, and along with the tools presented here, you also have decades of experience in the MPMC Select Council who are able to suggest or guide you through a particular inquiry.

MPMC is happy to have you involved in what we feel is a solid foundation and soundboard for the success of your business. MPMC is confident that this manual will answer many questions about our industry and assist you in bringing your business up to speed and streamline the effectiveness of getting your product into the hands of racers and on the track!

## **Research & development (R&D)/innovation activities**

Prior to launching any manufacturing venture, businesses are encouraged to anticipate how it will address what R&D activities it will implement to encourage innovation in the business. What financial and/or staff resources will you allocate? How will such R&D outcomes be protected?

## **Intellectual property strategy**

With regard to how a business plans to protect its identity, its products and its future innovations, businesses are encouraged to do a legal assessment of its intellectual property portfolio, e.g., copyrightable material, patents, trademarks, to ensure appropriate protections are in place.

## Index

1. Customer (Reseller) Qualification
2. Orders
3. Price Changes
4. Superseded Part Numbers
5. Terms of Sale
6. Extended Terms and Dating
7. Delinquent Accounts
8. Mergers and Acquisitions
9. Returned Checks
10. Defective Merchandise/Warranty
11. Returned Goods
12. Stock Adjustment
13. Internet Policy
14. Special Notice

### 3.1. Customer (Reseller) Qualification:

A Customer or Reseller comes in several business types. These types include Warehouse Distributors, National Retailers, Mail Order/Online Retailers, Jobber/Dealers and Exporters. These customers stock a good percentage of your product and distribute it throughout a specified region or customer base. The following section describes the criteria that a customer should follow to be eligible to maintain its status as a direct customer (reseller) of your company's product. You need to determine the appropriate amount of an initial opening order to establish direct status and a minimum annual volume your company will find acceptable to

maintain the distributor status. You will need to calculate general customer maintenance: how much it costs you to pack and ship product, and handle the account. Keep in mind that once you establish an account as a direct customer, you must be in a position to deliver product in a timely manner at a high fill rate. The sooner you can deliver your company's products to the distributor the sooner they will place a reorder. Exceptional service to your customer is a genuine tangible asset.

### Example of verbiage covering Customer (reseller) Qualification:

To qualify as a direct customer of "insert company name here", an opening order of \$[specify amount] is required. To maintain this direct status you must also order and receive at least \$[specify amount] in merchandise per calendar year. Failure to meet this requirement may result in cancellation of the direct status.

### Types of Distribution:

This section defines the types of distribution available to the performance aftermarket. A manufacturer can choose to sell to any and all types of distribution to help capture as much of the consumer demand created as possible.

1. **Warehouse Distributor:** This type of customer buys direct from the manufacturer and services business like parts stores, service centers and engine builders. They tend to be regional in focus and generally do not have any retailer business although many larger distributors have websites and stores. Example: Keystone, Premier, Motor State, Performance Warehouse, Meyer Distributing and National Performance Warehouse
2. **National Retailers:** This type of customer buys direct from the manufacturer and services the end-consumer through their large number of retail stores across the country. Example: Advance, Autozone, O'Reilly and Pep Boys.
3. **Mail Order/Online Retailers:** This type of customer buys direct from the manufacturer and services the end-consumer through their mail order catalogs and consumer websites. Example: Summit, JEGS and Amazon
4. **Jobber/Dealers:** This type of customer generally buys direct from Warehouse Distributors but in some cases can buy direct from the manufacturer and services the end-consumer through their retail location providing parts and services to service his/her local area.

5. **International/Export Customers:** This type of customer buys direct from the manufacturer and services businesses in other countries either by being located in these countries or in the US. Example: Rocket Industries, VPW, Exports International, etc.
6. **Direct to Consumer:** Manufacturers can also sell direct to the consumer. This is usually done through your company website, eBay stores, Amazon 3<sup>rd</sup> party stores and tech phone rooms.

### 3.2. Orders:

Orders are obviously the life support of your business. Having and maintaining criteria for the orders you receive is essential to the flow of your business. You may want to set up certain standards in regard to how orders are placed, the expected [workable] lead time, rules for expedited product, order cutoff times, and so on. Experience will prove to be the best guide, and in many cases, a further criterion will have to be considered in the ordering process.

#### Important Order Recommendations, Terms and Metrics:

1. **Examples of ways to take orders:** Fax, Email, Phone, EDI and B2B site.
2. **Order Confirmations:** Every order received should have an order confirmation sent back to the customer at point of order
3. **Fill Rate:** Many manufacturers track order fill rate. This is a metric that can either be done by unit or by line to tabulate your companies shipping performance. Example. If a customer orders 100 units of a part and you ship 95 units, you get a 95% fill rate using unit measurement. If a customer orders 10 lines on an order and you fill 9 lines at 100% you get 90% fill rate using line measurement. You will also have to set a measurement time period. Usual timelines are 3-7 days from placement of order
4. **EDI:** EDI is initials for Electronic Data Interchange. This type of order entry system is used by many large scale Resellers, National Retailers and Mail Order/Online retailers to place orders electronically that are automatically loaded to your system.
5. **B2B Site:** Some manufacturers have B2B (business to business) sites that allow customers to review inventory, place orders, get invoice information and gather new product information.

6. **Order Emails:** Many manufacturers set up a single order entry email address like [orders@yourcompanyname.com](mailto:orders@yourcompanyname.com) that all members of their customer service/order entry team have access to capture all orders.

### 3.3 Price Changes:

Many companies routinely issue a new price sheet/file. The intent is to notify customers of the new price sheet before the price sheet goes into effect. Realistically you are obligated to consider your customers' needs and it is customary to provide at least a minimum of 30 days' notice before the price sheet goes into effect. Many larger resellers require 60-90 days' notice, especially if they have catalogs that they, in turn, distribute to their customers. It is best to find out about their requirements and make this a part of your database notes for each of your customers. In addition, you may have a significant increase from a vendor that supplies you materials to complete a finished product, an increase that your company cannot absorb. If this is the case you will need to notify your customers and give them written notice of the impending price change – a minimum of 30 days' notice is customary. A new price file should be produced annually or as necessary. This price file should include part number, description, price (SRP, MAP, Jobber, Reseller, etc.), UPC codes, volumetrics, popularity code and/or country of origin.

#### Examples of verbiage covering price changes:

##### a. Example 1

On all [manufacturer's name] manufactured products only, all customers will be notified of price changes at least [number of days] days before they are effective. The prices of products we do not manufacture and over which we have the price control are subject to change without notice. Should [manufacturer's name] lower the price of any product, [manufacturer's name] WILL NOT make adjustments to any Resellers product in their inventory to reflect the new lower price. Should [manufacturer's name] announce a price increase, the Resellers will be allowed the existing price of their ordered items up to the effective date of the price increase. However, [manufacturer's name] will honor the existing price subsequent to the effective date for those catalog items on order by the Resellers that it does not have in stock as of the effective date of the price increase. This policy is subject to the then-existing credit line, account status and creditworthiness of the Resellers customer.

#### **b. Example 2**

[Manufacturer's name] reserves the right to change prices and/or discount structure at any time. When price changes are made, [manufacturer's name] will attempt to give all Resellers a minimum of 30 days' notice. When a price reduction is made, [manufacturer's name] will make every attempt to allow distributors to purchase at their new reduced cost for \_\_days prior to announcing reduced jobber pricing. This will effectively eliminate any devaluation of on-hand inventory.

Some manufacturers choose to put the following in writing: Prices subject to change without notice. It's an option that can be accomplished with ease and the reasons for which are obvious.

### **3.4 Superseded Part Numbers:**

There are occasions when, due to a variety of possible reasons, a company may have to supersede one of its own part numbers. In these cases, it is good business practice to consider notifying your customers in writing. If a part number cannot be substituted, be sure that your customer service department notifies the customer immediately so that they, in turn, can contact their customer(s) and let them know. It is also proper and a demonstration of efficiency to send your customers a crossover list in a spreadsheet so that they can easily look up a new part number or reference those that have been superseded. Part numbers that have been superseded should also be identified as such within your PIES data file using the appropriate fields provided.

#### **Examples of verbiage covering superseded part numbers:**

##### **a. Example 1**

When an ordered item has been superseded, the replacing item will automatically be shipped and invoiced. [Manufacturer's name] cannot guarantee that all items listed in our current catalog will continue to be available.

##### **b. Example 2**

We reserve the right, without notice, to change any material, specifications, part numbers or labeling without incurring any obligation to the buyer for past or future merchandise purchases.

### 3.5 Terms of Sale:

Outlining your terms of sale is a prominent procedure in the performance automotive industry. It is important that your customers know when payment of an invoice is due, and if you offer any cash discount for early payment. You may also want to clarify the terms in the event that a shipment might be delayed for whatever reason, be it weather of some other cause beyond the control of your operations.

#### Examples of verbiage covering terms of sale:

##### a. Example 1

[Manufacturer's name] normal terms of sale is a [percentage]% discount for payment on or prior to the 10th of each month, F.O.B. shipping point (subject to freight policy). The entire balance is due by the 25th of the month. The cash discount allowed will be clearly marked on each invoice together with the date by which payment must be made in order to earn the discount. Remittances must be dated, mailed and postmarked no later than the 10th in order to qualify for any discount. All payments postmarked after the 10th will not qualify for discount and are due in full on or before the 25th of the month, and must be received before the close of business on the 25th in order to avoid delinquent status.

The merchandise receipt date will determine the discount payment terms. All merchandise received subsequent to the first of the month must be paid by the 10th of the following month to qualify for the [percentage]% discount and by the 25th of the following month to avoid delinquent status. If the merchandise was shipped prior to the 25th of the month, but was received after the first of the following month, proof of late delivery must accompany the payment. After [manufacturer's name] receipt and verification of the proof of delayed delivery, [manufacturer's name] shall adjust the account accordingly to reflect that the payment will then be due on the 10th of the following month. It is customary that the invoice accompanying the goods will set forth prevailing terms, including appropriate due dates covering the shipment.

Cash discounts will only be allowed on open-account transactions. Credit cards/cash in advance (CIA) shipments, sight-draft shipments, wire transfers or transactions covered by a letter of credit are not eligible for cash discounts.

Credit memo discounts will be deducted from the gross amount due, determined prior to calculation of the cash discount. Our monthly statements will delineate the correct application of these credit memos.

No cash refunds will be given against open credit balances and any credit balances must be offset by future purchases. All costs, charges and other fees related to export shipments and/or letters of credit shall be paid by customer. NOTE: No discount will be allowed against current invoices in cases of older invoices being unpaid.

#### b. Example 2

##### **Payment Terms**

##### **Net \_\_days**

- Payments must be received according to terms to qualify for discount. Total payment is due no later than \_\_days after date of invoice.
- A service charge of [specify percentage]% per month will be added to any unpaid balance of an invoice that is past due.
- Any accounts past due [specify number] days will require cashier's check—COD only—with an extra [specify percentage]% added to invoice to be applied towards delinquent account.

### **3.6 Extended Terms & Dating:**

Your company may want to offer special terms and dating, a very popular arrangement before the spring selling season, for example. Special terms and dating can provide your customers the opportunity to stock up on your line and sell product before the invoice is due. This creates positive cash flow and helps your customer. You will need to determine what the order levels will be and the terms that a creditworthy customer would receive based on the order size.

### Example of verbiage covering extended terms dating:

Throughout the year [manufacturer's name] offers the following special payment terms for quantity purchases of items currently in production or that will be available within 30 days of order. The following sets forth our payment terms at the following order levels which may be changed at our discretion. NOTE: The same cash discount applies in Section 5 (Terms of Sale).

ORDER LEVEL	TERMS
Level 1 \$(specify amount) to \$(specify amount)	(30 days)
Level 2 \$(specify amount) to \$(specify amount)	(30-60 days)
Level 3 \$(specify amount) to \$(specify amount)	(30-60-90 days)
Level 4 \$(specify amount) to \$(specify amount)	(30-60-90-120 days)

Invoices will be sent with each shipment. Depending on the quantity ordered, each invoice will specify the proper number of equal monthly payments that are to be made. For example, on an order of \$45,000, each shipment could be paid in three equal monthly installments of \$15,000 each.

Note that in cases of multiple shipping points, the orders must be received simultaneously.

Any backorder cancellations to dating programs will change terms and discount structures accordingly.

### Examples

- Ordered \$(specify dollar amount) – Shipped \$(specify dollar amount) – Cancelled \$(specify dollar amount]
- Terms will change from [specify number of days] to [specify number of days]

### **3.7 Delinquent Accounts:**

Delinquent (past-due) accounts cost your company money. You may want to impose a service charge to help cover these costs and encourage your accounts to remain current on their accounts payable. (See also page 15, “Debt Collections.”)

#### **Examples of verbiage covering delinquent accounts:**

##### **Example 1**

All delinquent accounts are subject to a service charge of [percentage]% per month, ([percentage]% annual percentage rate), applied to all past-due balances. Shipments will not be made to any delinquent account until the outstanding balance is paid IN FULL, including all service charges, if applicable.

##### **Example 2**

Shipments may not be made to any delinquent account until the outstanding balance is paid in full. Contact your representative in the credit department to discuss most situations. If you have billing issues, payment problems, or any other credit questions, contact the credit department (area code)/xxx-xxxx.

([Manufacturer’s name] reserves the right to charge an interest fee on past-due balances. Customers with delinquent accounts that are turned over to collection are responsible for all fees associated with the professional collection process.

NSF checks will result in a \$[specify dollar amount] service charge and reversal of all previously allowed discounts.

### **3.8 Mergers and Acquisitions:**

If a customer (reseller) merges or acquires another company there will be questions about any applicable advertising allowance (co-op). A consideration is to not allow additional funds until the beginning of the following year, since many customers will have exhausted all ad funds by the time a merger or acquisition takes place. (For more on advertising allowances/co-op, see Section 8, page 36, Cooperative Advertising Programs.)

### Examples of verbiage covering mergers and acquisitions:

#### Example 1

Purchases by customers that merge or are acquired by other customers during the year may not be combined and will be treated as separate individual accounts until the end of the current calendar year. In the following calendar year, the customers' accounts may be combined to establish a new base for the advertising allowance.

#### Example 2

Mergers or acquisitions require separate negotiation and will be treated as separate individual accounts until the end of the calendar year unless a separate agreement is reached between both parties.

### 3.9 Returned Checks:

As with delinquent accounts, a check that gets returned by the bank should also have a penalty assigned to it. The dollar value needs to be determined by your company. To help negate the extra expense incurred by the cost of processing a returned check, and to encourage your customers not to allow this to happen, the following policy could be used:

#### Example of verbiage covering bad checks:

ANY customer whose check is returned unpaid to [manufacturer's name] will be charged a \$(specify dollar amount) handling fee. Any discounts previously taken will automatically be disallowed and the full amount will be considered delinquent if not received by the 25th of the month.

### 3.10 Defective Merchandise:

Defective merchandise is part of doing business. Standing behind your product is very important to your company's reputation. Your company will determine an amount of time for which you want to warrant your product. From there you can formulate a defective policy. Here is an example:

## Examples of verbiage covering defective merchandise:

### Example 1

Any product having a manufacturing defect must conform to [manufacture]'s returned goods procedure. Credit or replacement of the product consistent with [manufacturer's name] limited warranty policy will not be issued to a customer (reseller) until the unit is returned to the factory located at [manufacturer's address]. The Reseller will be notified by return mail or telephone of the actual cause of the problem if the product is deemed to be non-defective.

### Example 2

[Manufacturer's name] products advertise a [specify number of days] money-back guarantee. Dealers and distributors must be willing to accommodate this guarantee without undue penalties charged to the customer. Defective merchandise must obtain a Return Goods Authorization (RGA) number prior to being returned. This RGA number must be clearly marked on the outside of the return package. All returns must be shipped freight prepaid. [Manufacturer's name] will issue credit for products received and for the freight cost for qualifying defective returns, all installation/removal labor costs excluded. Returned merchandise is subject to a [specify percentage]% handling and repackaging charge.

### Consumer Warranty (Example)

[Manufacturer's name] warrants our products [specify number] of days from the date of original purchase to be free from defects in materials and workmanship. If, during this period, the product fails under normal use due to a manufacturing defect, then [manufacturer's name] will replace or repair the item. To obtain repair or replacement under the terms of this warranty, notify us at [manufacturer's address]. Proof of purchase and date of purchase are required to validate warranty.

All implied warranties, including the warranty of merchantability, are limited to the same [number]-day period from date of original purchase. [Manufacturer's name] is not liable for any direct or consequential loss or property damage arising from any use of this product. This warranty gives you specific legal rights; you may also have other rights which vary from state to state. Offer good in U.S.A. and Canada only.

### 3.11 Returned Goods:

Returned goods are products that will be returned to your factory by your customers for various reasons such as defective, cancellation, etc. There are many variables in regards to returned goods, and you want to have a system that streamlines your service to your customers and within your own company.

- You may use sales reps (see page 4, Manufacturers Representatives) to write up a warranty adjustment as in the illustration below.
- You need to think about obsolete part numbers. Are they going to be the parts that do not appear in your catalog/website, or the parts that don't appear on your price file?
- You may want your customer to return the products via a carrier that you prefer or one that offers your business a preferred shipping rate. Determine the way that best suits your company.

Putting together a policy on how these returns will be handled is going to maximize your customer service to your customers (resellers).

#### Example of verbiage covering returned goods:

All merchandise that is to be returned for credit must first be inspected by a [manufacturer's name] authorized factory representative. A list of the items to be returned must then be forwarded to the factory for a Returned Goods Authorization (RGA) or Returned Material Authorization (RMA) number. An RGA or RMA number will be issued and must be labeled on all boxes as Returned Goods. It must be noted when the request is being made in one of four separate categories—(1) Warranty; (2) Stock Adjustment; (3) Special Order Cancellation; or (4) Return for Inspection—which is subject to [manufacturer's name] determination. Upon receipt of the Returned Goods Authorization, all shipments of returned merchandise must be freight prepaid. ALL FREIGHT-COLLECT SHIPMENTS WILL BE REFUSED. Returned merchandise is subject to [manufacturer's name] inspection and a [percentage]% handling charge. The credited price on returned merchandise will be according to the Julian date on the carton or proof of purchase date. A deduction for the amount of [manufacturer's name] credit memo may be taken in the month following date of issue.

DISCONTINUED OR OBSOLETE ITEMS WILL NOT BE ACCEPTED FOR CREDIT.

Items not listed in the current year's price sheet are considered discontinued or obsolete.

Returned merchandise must be packaged carefully to prevent shipping damage. If merchandise is damaged in shipping back to [manufacturer's name] and not properly insured, then credit will not be issued.

[Manufacturer's name] does not accept customer debit memos. A credit memo will be issued after merchandise has been received and inspected. The customer's account will be credited accordingly and may be deducted from customer's remittances in the month following issuance of [manufacturer's name] credit memo. Customer debit memos must not be deducted from remittances.

Any credit arising from a return will be applied to the customer's account and will be offset by future purchases. No cash refund will be given against credits resulting from merchandise returns.

### **3.12 Stock Adjustment:**

A stock adjustment allowance is very common in the performance aftermarket industry. It is a percentage (that your company determines) of the previous year's net purchases, an amount that your company will allow the Reseller to return to your company in a calendar year. The idea is to keep inventories fresh with product that is selling (known as "turning") through distribution and exchanging it for product that is not. Discontinued and/or obsolete products are generally not allowed in a stock adjustment. The allowance is commonly determined for a pre-established percentage (usually 1-3% of previous year's net purchases). This is done by getting a list of product the customer wants to stock-adjust, being sure it qualifies, and then receiving (in most cases) an offsetting order (usually a 2 for 1 offsetting order). Your company should determine the required amount of the offsetting order: a specific number is common. If a sufficient offsetting order is not placed, a percentage restocking charge would apply.

### Example:

Let's say your stock adjustment is [specify percentage]% of the previous year's purchases, with a [specify number] offsetting order or a [specify percentage]% service charge applies. The Resellers last year calendar purchases were \$[specify dollar amount]. The Reseller would be entitled to return \$[specify dollar amount] in merchandise. Returning \$[specify dollar amount] of merchandise, they would need to place a \$[specify dollar amount], (specify number)-piece offsetting order or they will be charged \$[specify dollar amount], [specify percentage]% of the \$[specify dollar amount] returned.

### Examples of verbiage covering stock adjustment:

#### Example 1

Resellers are allowed an inventory adjustment amounting to [percentage]% of their previous year's net purchases with a two-for-one offsetting order or a [percentage]% handling charge applies. The warehouse stock adjustment program is allowed any time during the calendar year. Stock adjustments must be returned each year and any unused balance cannot be accrued or carried over into future periods. All merchandise to be returned for stock adjustment must be listed in the current catalog. There will be a [percentage]% handling charge on all merchandise over the [percentage]% inventory adjustment and [specify number] offsetting allowable. Resellers requesting a stock adjustment must contact the authorized factory representative to review the merchandise in question. After inspection by the representative, a complete list of the merchandise to be returned for exchange must be factory approved. Upon written receipt of the Returned Goods Authorization (RGA) from the factory, the merchandise may be returned. Merchandise being returned for stock adjustment must be accompanied by a copy of the RGA form, and must be in one shipment. All stock adjustment returns made to [manufacturer's name] factory must be sent freight prepaid. All collect shipments will be refused, no exceptions.

All returned merchandise must be properly insured by the reseller against shipping damage.

[Manufacturer's name] cannot accept any returned items for credit, exchange or warranty that have been used for display, have been installed, are shopworn or have not been purchased directly from [manufacturer's name] as the original source of purchase. All products being returned must be in perfect condition and in the original carton or package and are subject to factory inspection. Credit

will be issued at prices prevailing at the date of original purchase and may be deducted from customer's remittance in the month following date of issuance of [manufacturer's name] credit memo.

## Example 2

### STOCK ADJUSTMENTS

- Stock adjustments are limited to [specify number]% of the distributor's previous year net shipments from \_\_\_\_\_ (specify calendar date range in these spaces) to \_\_\_\_\_.
- A [specify number] offsetting order must accompany stock adjustments up to the [specify number]% limit. Stock adjustments in excess of the [specify number]% allowance are not allowed.
- Requests for stock adjustments are accepted only between (specify calendar date range) same as above example.
- All stock adjustments must be sent to [manufacturer's name] freight prepaid.
- Missing parts from product returns will be deducted from the credit issued.
- A [specify number]% handling charge will be assessed on stock received in excessively damaged condition. Stock received in non-saleable condition will not receive credit.
- Credit will be issued to a distributor for returned items invoiced directly from [manufacturer's name]. No credit will be issued for [manufacturer's name] products obtained from other sources (stock lifts, etc.)
- Only product listed in the most current distributor price sheet is acceptable for return. Discontinued or obsolete items are not accepted for credit. (An obsolete item is any item not appearing in the current [manufacturer's name] price sheet.)
- [Manufacturer's name] cannot accept any returned items for credit or exchange that have been used for display, have been installed, or are shopworn. All products being returned must be in new condition and in the original carton or package and are subject to factory inspection.
- Custom racing-application products are not returnable.

### 3.13 Internet Policy

An Internet policy mainly refers to the use of your company's logo and if you offer a "Where to Buy" link on your website. It is important to protect the use of your logo and prevent unauthorized use of your logo. Therefore, you should be aware of how your customers— Resellers, jobbers, retailers—are using your logo, etc. and prevent unauthorized use of your logo, etc.

#### Examples of verbiage covering Internet policy:

##### Example 1

Use of [manufacturer's name] logo on a warehouse distributor's website:

[Manufacturer's name] embraces the Internet as a means to communicate to its customers and the general public. If an authorized reseller has an Internet website and intends to use the [manufacturer's name] logo or include promotional material on their site, it is important to contact the sales department for prior approval and related media material. Any use of [manufacturer's name] logo, trademarks, name, etc. on customer's website will require the prior written approval of [manufacturer's name].

##### Example 2

Adding a link from the [manufacturer's name] website:

Authorized resellers requesting a link from the [manufacturer's name] website to their own are required to contact the sales department or visit the [manufacturer's name] website for current policy and procedures. Warehouse distributors must meet and maintain certain guidelines to be considered for the Internet link. Any use of [manufacturer's name] logo, trademarks, name, etc. on customer's website will require the prior written approval of [manufacturer's name].

### 3.14 Special Notice

This is basically the closure to the terms and conditions that your company would issue.

**Example of verbiage covering “special notice”:**

[Manufacturer’s name} reserves the right to, at any time or without prior notification or liability, change or improve the design of any product, add products or discontinue products. Any such acts will not give rise to an obligation to accept returns of (except those returns specifically provided for herein) or to update the design of any such prior products. All products must be listed in the current calendar year catalog to be considered part of [manufacturer’s name] terms and conditions. In the event of the termination of an existing warehouse distributor qualification by either party, [manufacturer’s name] has no obligation to buy back or attempt to transfer merchandise beyond [manufacturer’s name] normal obsolescence program.

BY PLACING AN ORDER AFTER [INSERT DATE], YOU HEREBY ACKNOWLEDGE THAT THESE TERMS WILL COVER ANY PURCHASE FROM [manufacturer’s name]—EFFECTIVE DATE [INSERT DATE] THROUGH [INSERT DATE]. THIS PROVISION SUPERSEDES ANY PREVIOUSLY ISSUED SALES POLICY AND IS SUBJECT TO CHANGE AT [manufacturer’s name] DISCRETION WITH 30 DAYS’ NOTICE.

A freight policy describes the minimum dollar amount or minimum weight of an order that will qualify for free freight shipped to your customers. The supplying manufacturer must determine appropriate minimums by checking the freight costs with your shipping department. They can advise you of the costs associated by order size, weight, and any other influencing factors.

If an account wants an order shipped via air (overnight, two-day, etc.), you may require that they submit the request in writing. You may decide to allow phone orders, but a common business practice is not to take an expedited order over the phone. The customer could later claim they never authorized the expedited (air) shipment, and refuse to pay the additional shipping charges.

Your company also should list the lead time turnaround for stocking orders.

Common terminologies used in freight policies are Free Alongside Ship (FAS) and Free On Board (F.O.B.). See the Glossary on page 50 for the definitions of these terms.

## Examples of verbiage covering a freight policy

### Example 1

Orders of \$[specify dollar amount] in value to one location qualify for prepaid freight. All orders not meeting the prepaid freight requirement will be shipped prepaid and the freight charges will be billed to the customer.

Air freight shipments requested by the customer will be billed accordingly to the customer. These orders must be submitted in writing. (No phone orders or requests).

The above policy applies only to shipments within the contiguous United States and Canada.

## Example 2

All shipments are handled at our dock in [insert manufacturer's city and state] via UPS or common carrier. It is important to advise [manufacturer's name] if you have a preferred shipping method. Freight is prepaid on orders of \$[insert amount] or more to a single delivery address within the continental United States. \$[insert dollar amount] in Canada (Canadian customers are responsible for all duties, fees, brokerages, GST, etc.). Minimum charge for UPS shipment is \$[insert amount].

## Prepaid Delivery

All shipments will be made by common carriers of the manufacturer's choice. Requests by customers for specified carriers will be honored provided that there is no differential in freight cost.

When possible, all stocking orders—truck shipments and UPS ground orders—will be processed within a pre-determined number of days from acceptance of order.

## Drop Shipments

A drop shipment ("drop ship") is an order that is shipped to another location other than the customer's usual warehouse address. This is most commonly to an independent automotive store (jobber) or, in some instances, a consumer. Make sure you cover potential issues, including getting a drop ship order in writing (as mentioned earlier under the heading "Freight"), reviewing lead time for drop ship orders, and a minimum dollar amount for the special orders. You need to determine what the minimum is, an amount based on your cost of doing business. You can imagine if you sold a product for \$8.00 and were drop shipping them all day, it would end up costing your company quite a bit to process these orders. Also, make sure that you do not become the "stocking warehouse" to your distributor by drop shipping too many orders. For example, this could be very prevalent with companies selling over the Internet. Number 10 below is one solution to this issue. Here are some guidelines that will help you determine a drop-ship policy that may be applicable to your company's operation:

Examples of verbiage covering provisions of shipments:

### Example 1

(Manufacturer's name) will make UPS, FedEx, air freight or USPS parcel post drop shipments for its Resellers clients subject to the following conditions:

1. All requests for drop shipments must be in writing on customer-approved letterhead with purchase order. No verbal authorization accepted.
2. All shipments will be invoiced directly to the warehouse, subject to normal payment terms.
3. No C.O.D. shipments or C.O.D. for freight-only shipments are allowed.
4. Orders for Air Freight Priority One, when accepted by [specify time], will be shipped the same day. All others will be shipped the next business day.
5. Any unshipped items will be backordered and shipped when available, unless directed otherwise in writing by the Reseller.
6. The Reseller will be responsible for all charges incurred by a refused shipment. A [insert number]% restocking charge will be charged to the Reseller for a refused shipment, in addition to any storage or return freight charge from the carrier.
7. All freight charges to be paid by the customer.
8. A minimum order of \$[specify dollar amount] must be placed or a \$[specify dollar amount] service charge will be billed to Reseller for order.
9. The customer will be charged sales tax for all merchandise drop-shipped in [manufacturer's state] unless customer provides [manufacturer's name] a valid resale card for the [manufacturer's state] drop-ship location.
10. Drop Ship Annual Volume Charge: Resellers will not be assessed a drop ship annual charge for drop shipments so long as the value of accumulated drop shipments does not exceed [insert number]% of the distributor's current year net purchases. Drop shipments are defined as shipments to locations no owned or under common control by the distributor. All drop shipments that exceed the [insert number]% allowance will be assessed (a/an) [insert number]% handling charge.

### Example 2

Drop shipments will be accommodated on an exception-only basis. All shipments will be invoiced directly for the distributor, subject to [manufacturer's name] normal payment terms. The distributor will be responsible for all charges incurred by a refused shipment. A \$[insert number] drop-ship fee will be added to the invoice.

## **State Sales Tax**

If your company operates in a state in which state sales tax is assessed, then you will need to make sure you comply with laws to ensure accurate collection of the tax. It is imperative that local resources be contacted for guidance; understanding specific details is critical (in some states the tax is not assessed on reconditioned products nor on labor, as but two examples). Here is an example for a State that collects this type of tax:

### **Example of verbiage covering sales tax:**

#### **Example 1**

In locales in which we do not have a valid resale card on file for the purchaser at the point of delivery, we shall charge sales tax for all merchandise shipped or drop-shipped within [manufacturer's state].

#### **Example 2**

Applicable state sales tax will be charged on all shipments within [manufacturer's state] unless a current resale card has been submitted to the credit manager at [manufacturer's name].

### **Shortages/Loss:**

Shortage claims come in when a customer notifies you that they received less than the packing slip quantities indicate. Time is the critical factor in these cases. The sooner you can get this reported by the customer the sooner you can perform your own internal audit (i.e., cycle count, weights, etc.). The longer it takes for a shortage to be reported, the harder it will be to substantiate the claim. Give your customers a reasonable amount of time to report such shortages and some criteria on how it will be processed by your company.

## Examples of verbiage covering shortages and losses:

### Example 1

All notices of shortages must be sent in writing to the attention of the sales department of [manufacturer's name] within [number of days] business days of delivery together with a copy of the signed delivery receipt listing shortages. No deduction should be made, nor will one be allowed, until authorization is received from [manufacturer's name] to make such deduction, and then deduction should be taken only in the month following issuance of [manufacturer's name] credit memo. Failure to follow this procedure may jeopardize the issuance of the customer's cash discount.

### Example 2

All [manufacturer's name] shipments are shipped from (manufacturer's city, state]. Title passes from [manufacturer's name] to the purchaser at the time of shipment. Carton shortages and damages must be claimed against the carrier at the time of delivery. To expedite processing of claims against the carriers, the customer must note damages on the bill of lading at the time of delivery, and promptly request an inspection by the carrier or his claims agent.

If a shortage is found within the shipment it must be reported to [manufacturer's name] in writing within [number] business days of receipt of shipment. Claims not received within this time frame will not be honored. Claims should refer to the order number, invoice number, date of invoice, date of shipment, part number, description and carton count.

## Damage Claims:

Damage claims must also have some criteria in place and observed for many of the same reasons listed under shortages. There follows examples of way to handle damage claims:

## Examples of verbiage covering damage claims:

### Example 1

[Manufacturer's name] will not accept freight-damaged merchandise for credit or account adjustment. Should you receive merchandise which is damaged in transit, the following procedures must be observed, no exceptions:

1. Make a notation on the delivery receipt before the delivering carrier leaves your premises and retain a copy thereof.
2. Keep all cartons, packaging and damaged product as evidence. If possible, take digital photos of the damage.
3. Notify [manufacturer's name] sales department immediately.
4. Notify delivering carrier's claims department immediately to settle claim. [Manufacturer's name] will assist in providing any documentation required to settle the claim.
5. If there is concealed damage, the delivering carrier must be notified within [number] hours.
6. DO NOT deduct the damaged merchandise from your remittance to [manufacturer's name].

Ownership of the merchandise transfers at the F.O.B. shipping point in [manufacturer's city and state] and all shipments are fully insured. Therefore, claims for lost or damaged merchandise must be originated by the recipient and are required to be made to the delivering carrier, not [manufacturer's name]. [Manufacturer's name] must be informed immediately when a loss or damage claim occurs. Credit will not be issued for [manufacturer's name]-owned display inventory.

### Example 2

Should the distributor receive merchandise that is damaged in transit: Notify delivering carrier's claims department immediately to settle claim. DO NOT deduct the damaged merchandise from remittance to [manufacturer's name].

In today's electronically driven world, it's been said that your product data is as important as the product itself, and further argued that the product data is even more important! Consider that 78% of specialty automotive consumers look for parts information online, and eCommerce sales increased 23% in 2017 to \$22 Trillion<sup>1</sup>, and you begin to understand the basis of the argument. Consumers cannot buy it if they cannot find it.

While creating and maintaining an electronic catalog might seem like a daunting task, keep in mind that best practices have been established for your benefit, and there are service providers available, like the SEMA Data Co-op.

## **Cataloging and Data Standards**

Accurate and complete data is an important part of your business, whether you are a manufacturer, engineer, marketing executive, project manager, or private business owner. Organizing your product data in standardized formats means your data can be validated for compliance, and easily shared to all your customers.

As you may have noticed from the unique "load sheet" formats your customers send, their requirements can be as varied as their fingerprints. Fortunately, many of the information requirements are based on the standards developed and maintained by the Auto Care Association known as PIES and ACES.

PIES is everything about your product, and fields include descriptions, prices, weights and dimensions for shipping, UPC codes, internet titles, product attributes, popularity codes, images, and more.

ACES contains the vehicle fitment information, including year/make/model/sub-model, and continues into configurations like engine, transmission, body style, cab and bed style and others depending on the type of the product. A great feature of ACES is that it allows

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<sup>1</sup> SEMA Market Research, 2017 Market Research Report

you to only map as much as is required by the product. While typically “engine” wouldn’t be a required field to select a step bar for a truck, “cab style” would be very important to choosing the right step bar.

You may find more useful information about ACES and PIES on the SEMA Data Co Op website under “Resources” tab:

- <http://www.semadatacoop.org/data-standards>

### **Electronic Catalog Assistance**

While Auto Care provides us with the standards, you may find it helpful to enlist the services of a Product Data Management Solutions Provider to assist you with creating, maintaining, and distributing your unique information.

The SEMA Data Co-op is an end-to-end solution to help you author, validate, store, and distribute your product data. The SDC supports its members with a knowledgeable Data Lab, intuitive online and offline tools, and support from on-boarding your data to updating the latest vehicles.

The SDC helps manufacturers:

- Build a compliant data set to the PIES & ACES industry standards
- Validate uploads, corrections, additions, & new products
- Store product data securely, including digital assets like images, videos and pdfs
- Distribute data with complete control
- Manage the exports by matching customers individual content needs & formats
- Offer near-real-time distribution via the SDC PIM system

The SDC provides a Scorecard system to highlight specific milestones with your product data, and provide reachable goals to the next level, helping you create a very robust data set.

For more information about the SEMA Data Co-op (SDC), please visit their website:

- [www.semadatacoop.org](http://www.semadatacoop.org)

Another company that offers assistance with data standards and cataloging is DCi.

For more information about DCi, please visit their website:

- [www.dcinet.com](http://www.dcinet.com)

### **Electronic Price Sheet Guidelines**

The Product Information Exchange Standard (PIES) is a product of the Automotive Aftermarket Industry Association (AAIA) Electronic Commerce Committee. The purpose of this effort was to develop a standard for exchanging product information between all members of the supply chain, from the manufacturer to the retailer/wholesaler and to the service retailer.

The PIES standard was designed to facilitate the lawful exchange of product data that is more comprehensive than a simple price sheet. It allows for information on such diverse elements as:

- Packaging, including dimensions, weights, etc.
- Barcodes/product identification
- Extended product information
- NAFTA Information
- HAZMAT information
- Warranty information
- Shipping information
- Links to product installation instructions
- Links to product images
- Links to product data sheets and safety information

The standard is designed in a flexible format which allows each of the record segments to be “looped” as many times as needed in order to meet data delivery requirements. For example, a part with multiple price levels would have multiple price detail segments, one for each price level. It is only necessary to send those segments that are needed to provide specific information.

For more information, there are several useful links to information about the ACES and PIES standards on the SEMA Data Co Op website at <http://www.semadatacoop.org/data-standards>

The purpose of packaging is simply to encase a physical object, typically a product that requires protection from tampering or protection during transit from manufacturer to consumer, and later, protection at the retail level from outright theft of a product from within the packaging. Labeling refers to any written or graphic communications on the packaging or on a separate but associated label.

Product packaging and label design are generally designed and engineered to be a key element to promote sales of an individual product or an entire product line. The package in which a product is contained may serve several functions: 1) Protect and stabilize the product during shipment; 2) provide an informative message on the exterior surfaces of the package; 3) provide proper identification and description of the enclosed product; and 4) prevent theft at the retail level.

There is a variety of packaging styles available, including cartons, bags, blisters, envelopes, wrappers, anti-static packages, pallets, wood-crate and skin-pack or shrink-wrap. The type of product will generally determine the best package suitable for the task.

When determining the type of packaging for any given product it is recommended you consider how the product will reach the end consumer. Should the package also be a shipping container? Will the package be a self-contained point-of-purchase display? Does the package need any descriptive notes or comments regarding the product? Will the installation instructions be printed on the package (as opposed to having printed instructions contained in the package)? Should the package include multilingual product descriptions?

A package for a retail product may also include a case-pack and/or a master-pack. For example, a small high-volume retail package may be packed in a case-pack of twelve retail packages and these case-packs may be placed into a larger master-pack container that includes six case-packs. The master-pack in this example would total 72 retail packages.

It is suggested you contact a packaging materials company in your local area for guidance because these suppliers are skilled at providing service and expertise in developing the ideal package for your products. It is common for packaging companies to maintain in-house design

teams that will provide samples of custom packaging ideas for your unique products. You may have a keen sense in designing and engineering products in your field of expertise; however, you may be without the background to develop a package suitable for protecting and/or merchandising the product. Give a call to a packaging specialist in your local area to discuss packaging solutions for your product. You may even contact another MPMC member in your area and ask them for advice or a recommendation on a packaging supplier they are using.

Proposition 65 (Prop 65) is a California law that gives consumers and their attorneys the ability to sue businesses that do not include warning labels on products containing chemicals associated with cancer and birth defects. If you are already familiar with the labelling requirements of Prop 65, you know it can be difficult to comply with the law, and that compliance can be costly. It's about to become worse. Products manufactured after August 30, 2018 will be subjected to updated regulations with more onerous labelling requirements. This article outlines what you need to know about the new requirements.

Prop 65 became law in 1986 with the stated purpose to “provide warnings to Californians about significant exposures to chemicals that cause cancer, birth defects, or other reproductive harm.” Because the law allows for a private cause of action, it has spawned an industry of aggressive plaintiff-side law firms that misuse the law to net large settlements. The specialty auto parts industry has been a frequent target of Prop 65 lawsuits.

The law requires warning labels on products containing chemicals listed by the California Office of Environmental Health and Hazard Assessment (OEHHA) as known to cause cancer, birth defects or reproductive harm. There are over 800 chemicals currently on the [list](https://oehha.ca.gov/proposition-65) [<https://oehha.ca.gov/proposition-65>].

Prop 65 doesn't stop anyone from selling their products no matter what chemicals they contain—it is simply a law that requires consumer warning labels under certain circumstances. The warning requirement applies to any business with 10 or more employees in the chain of distribution, including manufacturers, distributors and retailers, and out-of-state companies selling product in California. Under the law, fines can run up to \$2,500 per day per violation.

The Prop 65 regulations are very specific. If it's determined that a product meets the criteria for labeling, a warning *currently* must contain the following language:

WARNING: This product contains a chemical known to the State of California to cause [cancer] [and/or birth defects or other reproductive harm].

Products manufactured after August 30, 2018, however, will be subject to new, more detailed labelling requirements. Under the new rules, a warning must contain:

- A graphic depiction of a yellow triangle containing an exclamation point;
- Specify **at least one chemical** for which the warning is being provided if the label is not included on the product or packaging; and
- Include the website [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

The new requirement to list at least one chemical for which the warning is being provided makes it more difficult to comply with the law because companies can no longer put a generic label on all products. However, the new regulations do allow one very useful out from listing specific chemicals on product-warning labels. A short form or “truncated” on-product label can be used when the label is placed directly on the product or product packaging.

If a truncated warning is placed directly on the product, a truncated warning can also be used on the company website or catalog. Many companies find that the placement of truncated warnings directly on the product is the most efficient means of complying with Prop 65 as there is no need to list a specific chemical.

Examples of Acceptable Warning Labels  
Under the New Regulations

<p style="text-align: center; color: red; font-weight: bold;">Cancer</p> <div style="border: 1px solid black; padding: 5px; text-align: center;">  <p><b>WARNING:</b> This product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the State of California to cause cancer. For more information, visit <a href="http://www.P65Warnings.ca.gov">www.P65Warnings.ca.gov</a>.</p> </div>	<p style="text-align: center; color: red; font-weight: bold;">Combined Cancer/Birth Defect</p> <div style="border: 1px solid black; padding: 5px; text-align: center;">  <p><b>WARNING:</b> This product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the State of California to cause cancer or birth defects or other reproductive harm. For more information, visit <a href="http://www.P65Warnings.ca.gov">www.P65Warnings.ca.gov</a>.</p> </div>
<p style="text-align: center; color: red; font-weight: bold;">Birth Defect</p> <div style="border: 1px solid black; padding: 5px; text-align: center;">  <p><b>WARNING:</b> This product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the State of California to cause birth defects or other reproductive harm. For more information, visit <a href="http://www.P65Warnings.ca.gov">www.P65Warnings.ca.gov</a>.</p> </div>	<p style="text-align: center; color: red; font-weight: bold;">Truncated on Product Warning</p> <div style="border: 1px solid black; padding: 5px; text-align: center;">  <p><b>WARNING:</b> Cancer and Reproductive Harm—<a href="http://www.P65Warnings.ca.gov">www.P65Warnings.ca.gov</a></p> </div>

**Type Size:** The warning text must be the same size as other consumer information presented on the package and may not be smaller than 6-point type.

All internet purchases, whether using the truncated warning or full warning, must include the warning on the product display page or a clearly marked hyperlink using the word “**WARNING**” on the product display page, or otherwise prominently displaying the warning to the purchaser prior to completing the purchase.

For catalog purchases, the warning must be provided in the catalog in a manner that clearly associates it with the item being purchased. In the specialty auto parts industry, it is often impractical to list a warning next to every line item in the catalog. Many companies will place a symbol next to items requiring a warning and print the full warning on the bottom of the catalog page. While the OEHHA has not provided more specific guidance on catalog warnings of this sort, this may be sufficient to comply with the requirement that the warning is clearly associated with the item being purchased.

In addition to the above labeling of product, packaging and catalogs, you may consider the following steps to fully communicate this information through the entire distribution channel.

**Website Tech/FAQ sections:** Add some technical information regarding Prop 65 in your tech or FAQ sections of your website with links to the Prop 65 page [www.P65Warnings.ca.com](http://www.P65Warnings.ca.com).

**Price Sheet/Set Up Information:** Your price sheets generally include product information like part number, description, price, weights, volumetric, UPC codes, etc. Consider adding a column to your price file or new product set up information titled Prop 65 Chemicals Y/N and supply a “Y” for products that include Prop 65 chemicals and “N” for products that do not include Prop 65 chemicals.

**Digital Product Data:** If you subscribe to data services like SEMA Data Co-op or DCI, you can supply this product information to these providers and they will add it to your ACES/PIES data sets.

**Media Press Releases:** Prop 65 warnings can be added to any media product press releases sent to magazines, online websites, bloggers, vloggers and other media outlets

**Event Signage:** Prop 65 warnings should be used on any specific product signage used at trade or consumer events.

The new requirements apply to products *manufactured* after August 30, 2018—so there is no need to recall products or change the labels on products that have already been manufactured.

The labelling requirements of Prop 65 are very detailed and above is simply an overview of the new requirements. We urge you to consult the resources available at [www.sema.org/prop65](http://www.sema.org/prop65), which contains additional information and links to statutes, regulations, information provided by OEHHA and the California Attorney General. No part of this article constitutes legal advice and you should consult with legal counsel prior to using this guidance. If you have questions or need further information, please contact Daniel Ingber, SEMA's Chief Corporate Counsel: [danieli@sema.org](mailto:danieli@sema.org) or (202) 792-4446.

A field sales representative team (commonly referred to as “sales reps”) is an option when the manufacturer’s sales team cannot reach all of its targeted distributors and dealers on a regular basis. These representatives can be viewed as an extension of your in-house sales staff. Sales representatives are your eyes and ears in the field—they interact directly with the distribution customers, retail customers, consumers and race teams. Representative agencies may consist of a single individual or be a multimember agency covering a vast territory. You may consider several factors in determining the type of agency or individual that will best help you satisfy your objectives. Do you need to cover a certain geographic area or do you need to service one specific account? There are many agencies available in the performance industry and it is easiest to refer to SEMA News or the SEMA Membership Directory for listings of the various agencies and the type(s) of clients they generally serve.

- An agency employs trained sales agents in specific geographic areas who offer long-term continuity between suppliers and buyers.
- Today’s well-rounded agency covers all facets of the aftermarket: retailers, wholesalers, jobbers and expeditors.
- Agency sales personnel are in constant contact with their customers in the marketplace because of the varied product lines they represent. Professional sales agents handle more than just sales presentations. Their customers rely on them for in-store service, computer printouts, advertising layout, plan-o-gramming and some marketing tasks.

Realizing the rep’s ability to quickly provide broad-brush field support and garner timely exposure of products and services to a prospective customer base can be attractive to manufacturers. Contracting with independent agencies can be a cost-effective way to cover a large geographic territory with a professional team of sales representatives. Although sales rep organization is not for everyone, some manufacturers find that the fixed cost of the rep’s commission can be an effective way to control sales expenses while maintaining a broad sales presence.

In an effort to develop a better understanding and working relationship between the independent sales representative and principal manufacturer, the SEMA Manufacturers Rep Council (MRC) has compiled the following list of guidelines and expectations to help maintain a healthy and profitable relationship for all parties, including the customer.

### **Expectations of a Manufacturer:**

#### **Provided by the SEMA Manufacturers Rep Council**

- The manufacturer should expect the rep to be open and honest about their agency's capabilities when interviewing for the line. Corporate cultures and personalities should mesh. The agency should be able to illuminate other products in their portfolio that will complement the line for which it is being interviewed. The agency should accurately portray their personnel in their true capacity; i.e., sales versus service personnel. The intent of the understanding in advance is to dramatically reduce confusion and disappointment on behalf of both parties once the relationship is established.
- The manufacturer should expect all agency sales personnel to be available, with appropriate notice, for training provided on their product line, conditional upon the level of complexity of the products.
- The manufacturer should expect all agency sales personnel to be willing to travel with sales management within their respective territories for the purpose of in-field training, sales presentations, new program kick-offs, etc.
- The manufacturer should expect agency sales personnel to accurately "paint a picture" of the customer's needs and wants when preparing quotes and sales presentations to assure a profitable relationship once the sale is completed.
- The manufacturer should expect agency sales personnel to actively present, place, and assist in the sell-through of their product line with their respective customers.
- To be effective in customer sales training sessions and sales presentations, the manufacturer has every right to expect the agency sales personnel to keep themselves updated on new products, available literature, policies and competitors.
- The manufacturer should expect agency sales personnel to make themselves available for major sponsored events and customer open-house functions in an effort to promote their products.

### And most importantly:

- The manufacturer should expect regular, informed communication from all agency sales personnel, including call reports on a monthly or quarterly basis.

### Expectations of an Independent Sales Representative:

#### Provided by the SEMA Manufacturers Rep Council

- The rep should expect to receive timely communication on the company's policy changes, personnel, and product and program updates.
- The rep should expect to receive comprehensive training on the manufacturer's product line, conditional upon the level of complexity of the products.
- The rep should expect the manufacturer to respect their time, as with any business relationship, and provide adequate notice of their desire to conduct sales training and in-field sales work. Six to eight weeks' notice is commonly considered acceptable.
- The rep should expect to receive all pertinent and current sales literature and product samples, at no cost, to effectively market the manufacturer's product line.
- The rep should expect advance notice on the distribution of all marketing materials, special promotions and telemarketing efforts within their geographic territory.
- The rep should expect that all accounts within their geographic territory be included in the commission pool whether or not those accounts were sold directly by the rep or closed due to the efforts of direct telemarketing on behalf of the manufacturer.
- The rep should expect to receive complete and accurate reporting of all customer purchases.

### And most importantly...

- The rep should expect to receive complete and timely compensation for services rendered.  
Following are several examples of contracts that may be considered useful when hiring an agency. These examples may need revision based on each individual manufacturer's sales and marketing objectives. Note that some contracts cover specific customers, while others cover geographic territories.

## Sample Contract A:

[date]

Attention: [Mr. Named Principal]

This letter, when duly executed on behalf of [name of sales rep agency], hereinafter referred to as "AGENCY," and delivered to [XYZ Manufacturing], hereinafter referred to as "XYZ," shall constitute an agreement between the parties with respect to the sales representation by Agency of XYZ merchandise in the geographic territory, hereinafter referred to as "THE TERRITORY," and the accounts assigned in the territory as follows:

Territory: [list the states or territories or specific account]

XYZ agrees to pay a commission of [percentage]% of net purchases by all chain retail accounts and [percentage]% on performance distributor accounts. Commissions will be paid [number of days] days after the close of the month in which the payment is received for all invoices, less credits and customer deductions issued that month.

Commissions will be debited for the following conditions:

1. No commission will be paid on any customer invoice(s) that become past due 90 days or more.
2. Commissions will be paid on the net payment of the invoice. No commission will be paid on debits or deduction made off invoice by the customer. If the debit or deduction is not allowed by XYZ and not collected in 90 days, no commission will be paid on the deducted amount.
3. Co-op, which includes off invoice or submitted claims, will be deducted for commissions when the customer applies the credit to their account. XYZ will provide a detail of commission adjustments with payment.

Agency agrees:

1. To employ its best efforts to promote the sale of XYZ merchandise and services to assigned accounts.
2. To comply with the directives of XYZ in regards to the signing of new accounts.
3. That XYZ has the final decision on the signing of new accounts and no commitment may be made to any prospective account without the express written consent of XYZ.

The term of this agreement shall be for a period of [number of months] months commencing on [date], except that either party may cancel at any time by delivery of written notice to be effective 30 days from receipt. In the event that the agency takes on a competitive product line, XYZ reserves the right to cancel this agreement immediately upon receipt by agency of written notice.

The determination of what constitutes a competitive product line or service will be at the sole discretion of XYZ.

This agreement shall renew automatically for successive 1-year periods subject to each party's right to cancel as set forth above.

XYZ Manufacturing

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

Signify your acceptance of the above terms by signing the original in the space provided below. Return the original; retain a copy for your records.

Authorized Agency Signature

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

## Sample Contract B.

### MANUFACTURER'S REPRESENTATIVE AGREEMENT

1. \_\_\_\_\_ agrees to appoint  
(manufacturer name)

\_\_\_\_\_  
(Rep. Company Name)

as their sales representatives for the following territory:

[List all states, territories or specific accounts in this space]

2. The commission rate to be paid for all sales (the net amount of invoice) made in the above-mentioned territory will be [percentage]%.
3. The above-listed manufacturer further agrees to pay these commissions in the month following the month of shipment. Example: Invoice shows shipment October 10, commission payment due in November. The exact date for payment should be somewhere between the 15 and 20 of the month so that rep can break this down for payment to his sales personnel by the end of the month.
4. The manufacturer, listed above, further agrees to initiate "charge-backs" for commissions paid the rep if invoices become 120 days past due. The rep must be informed monthly of all past due accounts.
5. The rep in this agreement is confined to securing distribution, writing orders and servicing the defined distribution. The manufacturer has the right of final approval on all orders submitted. The rep has no function in behalf of the manufacturer such as entering into other agreements, incurring debts, etc.
6. The rep in this agreement is totally responsible for all of his company's personnel with regard to travel expenses, trade show expenses, etc., in their pursuit of sales for the manufacturer.
7. The above manufacturer agrees to "hold harmless" the rep from possible lawsuits that could arise from the sales of the manufacturer's products.
9. This contract will be in force for a period of 6 months from the date of contract. Thereafter, it can be canceled by either party in writing up to 60 days' notice. The rep will be paid all commissions due for the 60-day period of notification.

\_\_\_\_\_  
(Manufacturer's name)

\_\_\_\_\_  
(Rep Agency's Name)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

Signed:

\_\_\_\_\_  
(Authorized Officer: Name & Title)

\_\_\_\_\_  
(Authorized Officer: Name & Title)

## Sample Contract C.

[Date]

[Name of Manufacturer's Officer]

[Title]

[Name/address of Manufacturer]

Dear [Name of Officer]:

This letter confirms that [manufacturer's name], henceforth known as "The Manufacturer," hereby retains [name of rep firm] henceforth known as "The Firm," located at [address], commencing [date] under the following terms and conditions:

1. The Firm shall keep The Manufacturer informed as to the general conditions that pertain to or affect the sale of its products.
2. The Firm will make no representations, warranties or commitments binding The Manufacturer without The Manufacturer's prior consent, other than standard terms of sale.
3. The Firm shall act as The Manufacturer's sales representative for the wholesale and retail sales of all products of The Manufacturer. The Firm shall have responsibilities for the sale of all new products, whether through a line extension or acquisition.
4. The Firm will serve as an independent contractor and is responsible for paying all applicable social security, withholding and other employment taxes. The Firm bears all expenses incurred in its sales endeavors, except the following, which The Manufacturer agrees to pay. This would include, but not be limited to, advertising fees, trade shows, exhibit fees and business meetings. All requests for reimbursement by The Firm will be agreed upon by both The Firm and The Manufacturer in advance and on an individual basis.
5. The Manufacturer agrees to pay The Firm, as compensation for its services, a commission of [percentage]% on the gross invoice amount of sales shipped into The Firm's exclusive territory as specified in Exhibit A. The commission rate specified above cannot be changed unless mutually agreed upon in writing. There shall be no non-commissionable accounts in the territory unless specified in Exhibit B.
6. The Firm shall receive commissions on all shipments into the exclusive territory. Commissions shall also be paid to The Firm on all orders originating from customers within the Firm's exclusive territory. The Manufacturer shall inform The Firm of all verbal communications with Customers and furnish The Firm with all customer and Manufacturer correspondence.
7. There shall be no deductions from, or charge backs to, The Firm's commissions due to advertising allowances, closeouts, markdowns, or for any other reason, unless mutually agreed upon in writing. The Firm shall assist The Manufacturer in obtaining credit and financial information regarding customers, report this and other pertinent information to The Manufacturer, and otherwise assist in the timely processing of orders, except that The Firm assumes no responsibility for customers' credit or collection of delinquent accounts.
8. Commission statements containing accurate purchase order numbers, shipping dates, customer's name and address, invoice numbers and invoice dollar amounts shall be sent, together with payment, to The Firm on or about the 15th day of the month following the month in which the goods are shipped.

9. The Manufacturer agrees to retain The Firm for a minimum period of 1 year from the date of the commencement of this Agreement.
10. At the termination of this Agreement, a final accounting shall be made between the parties, The Firm shall receive full commissions on all accepted orders, in-house at the date of the termination of this Agreement.
11. The Manufacturer shall furnish The Firm will all necessary sales supplies such as catalogs, price lists, display material, and other sales aids in sufficient quantity to fulfill the requirements of the territory, at no charge, unless otherwise mutually agreed upon in writing. In addition, The Manufacturer shall furnish adequate samples to The Firm. Such samples shall remain the property of The Manufacturer. Except in the case of unsolicited samples or samples which are expendable or of insufficient value, The Firm shall exercise reasonable care in accounting for all samples furnished and shall return such samples to The Manufacturer or dispose of them at prices set by The Manufacturer, remitting any proceeds to The Manufacturer, at its discretion and direction.
12. The Manufacturer shall provide The Firm with the names of all persons and companies within its exclusive territory, requesting information on The Manufacturer's product(s), together with general correspondence, quotes, supply, price and timely delivery information.
13. 14.15. This Agreement forms the entire understanding between the parties. It cancels and supersedes all prior Agreements and understandings. There shall be no change or modification of any of the terms in this Agreement unless it is amended in writing and signed by both parties.
16. This Agreement shall be binding upon each of the parties hereto, their heirs, successors, assigns and successors in interest.

Sincerely yours,

[Name of Rep Firm]

(The Firm)

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

[Name, Title]

Accepted and Agreed to

[Name of Manufacturer]

(The Manufacturer)

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

[Name, Title]

## Sample Contract D:

### MANUFACTURER'S REPRESENTATIVE AGREEMENT

This agreement confirms that [manufacturer's name], henceforth known as The Manufacturer, located at [full address] hereby retains <rep firms name>, henceforth known as The Agency, located at [full address] effective [date] under the following terms and conditions:

1. The Agency shall keep The Manufacturer informed about all applicable general conditions, which pertain to or affect the sale of its products.
2. The Agency will make no representations, warranties or commitments binding The Manufacturer without The Manufacturer's prior written consent, other than standard terms of sale. All orders taken by The Agency are subject to final acceptance by The Manufacturer in its sole discretion.
3. The Agency shall act as The Manufacturer's sales representative in the automotive industry for the wholesale sales of all products of The Manufacturer to new accounts hereafter established as customers of The Manufacturer by The Agency within the territory set forth upon the attached ("The Territory"). The Agency shall so act as to customers which have either their entire business activity within the Territory or their main business office is within the Territory. In the Manufacturer's sole discretion it may transfer to The Agency existing customers within The Territory. Sales shall include new products of The Manufacturer, whether through a line extension or acquisition. The Agency shall not be limited in its ability to represent other manufacturers that do not sell products that are similar or functionally the same as the products served by The Manufacturer. To fulfill its obligations hereunder, The Agency shall maintain on a regular basis personal contact with purchasing agents of potential customers and similar people located in The Territory. In addition, The Agency shall arrange personal follow-ups of sales after deliver in order to build and maintain goodwill of The Manufacturer's customers within the Territory.
4. The Agency will serve as an independent contractor and shall be responsible for paying all applicable social security, withholding and other employment taxes. The Agency bears all expenses incurred in its sales endeavors, except the following, which The Manufacturer agrees to pay. This would include, but not be limited to: advertising fees, tradeshow, exhibit fees and business meetings. All requests for reimbursement by The Agency will be agreed upon by both parties in writing in advance and on an individual basis.
5. The Manufacturer agrees to pay The Agency, as compensation for its services, a commission of 5% on the net invoice amount of sales for which it is responsible after deducting discounts, allowances, taxes, cost of collection, if any, rebates and returns. The commission rate specified above cannot be changed unless mutually agreed upon in writing
6. The Agency shall assist The Manufacturer in obtaining credit and financial information regarding customers, report this and other pertinent information to The Manufacturer, and otherwise assist in the timely processing of orders and also in the collection of delinquent accounts as requested by The Manufacturer.
7. The Manufacturer shall maintain an accurate set of books and records regarding commissions due The Agency and agrees to promptly furnish The Agency with copies of all order acknowledgements and invoices reflecting shipments into the Territory with respect to orders for which The Agency is entitled to compensation. Commission statements containing accurate purchase order numbers, shipping dates, customer's name and address, invoice numbers and invoice dollar amounts shall be sent, together with payment, to The Agency on or about the 15th day of the month following the month in which payment for the goods is received.
8. The Manufacturer agrees to retain The Agency for a minimum period of 1 year from the date of the commencement of this Agreement. In the event either party desires to terminate this Agreement any time after the initial 1-year term, written notice must be sent to the other party no later than thirty days prior to the

effective termination date. Before the lapse of the 1-year period, or anytime thereafter, The Manufacturer may cancel and terminate this Agreement after ten day's notice, in writing, to the Agent, if Agent (a) Fails to conduct the business of The Agency to the satisfaction of The Manufacturer; (b) Fails to observe or perform any of the other provisions, terms or conditions on the part of The Agency; or (c) Becomes involved in any financial difficulty that, in the opinion of The Manufacturer, impairs The Agency's ability to properly conduct the business of the Agency. Also, The Manufacturer may terminate this Agreement at any time upon (a) The death of the Manufacturer; or (b) The transfer of The Agency's business or transfer of control of The Agency's business to parties other than those now in control. All notices hereunder shall be sent to the other party by certified mail, return receipt requested, at the address above stated or such other address as later provided by an authorized representative of The Manufacturer. On the termination of this Agreement, neither party shall be liable to the other for damages of any kind and character whatsoever resulting solely from such termination, whether on account of the loss by The Manufacturer or The Agency of present or prospective profits on account of sales, anticipated sales, or expenditures, investments or commitments made in reliance on the same, in connection with the establishment, development or maintenance of The Agency's business. However, such termination shall not prejudice or otherwise affect the rights or liabilities of the parties with respect to products previously sold by The Agency, or any indebtedness then owing by either party to the other.

9. At the termination of this Agreement, a final accounting shall be made between the parties
10. The Manufacturer shall furnish The Agency with all necessary sales supplies such as catalogs, price lists, display material, and other sales aids in sufficient quantity to fulfill the requirements of the territory, at no charge, unless otherwise mutually agreed upon in writing. In addition, The Manufacturer shall furnish adequate samples to The Agency. Such samples shall remain the property of The Manufacturer.
11. The Agency recognizes that information relating to The Manufacturer, and all aspects of its business, except to the extent that The Manufacturer has made such information available to the general public, is confidential and is therefore a valuable asset of The Manufacturer. The Agency shall not, during or after the term of this Agreement, use for its own benefit or disclose such confidential information to any person, firm, corporation or other entity for any reason or purpose whatsoever. The Agency shall be responsible for any acts of any of its personnel disclosing such confidential information as if such confidential were revealed by The Agency.
12. Notwithstanding paragraph 8, The Manufacturer agrees to indemnify and hold The Agency harmless against any and all losses, legal fees, court costs and reasonable expenses arising from or in connection with claims for the infringement of any patent rights, property damage or personal injury arising from the product(s) manufactured by The Manufacturer or sold by The Agency pursuant to this Agreement. The Manufacturer agrees to provide the Agency with a copy of product liability insurance, co-naming the Agency and its associates as a beneficiary on its policy which indemnifies and holds The Agency harmless.
13. Notwithstanding paragraph 8, The Agency shall indemnify and hold The Manufacturer harmless, at all times during and after the terms of this Agreement, from all claims, damages, liability and expense, including reasonable legal fees, arising from or in any way connected with the claim of a party not a party to this Agreement on account of any act or omission on the part of The Agency.
14. This Agreement forms the entire understanding between the parties. It cancels and supersedes all prior Agreements and understandings. There shall be no change or modification of any of the terms in this Agreement unless it is amended in writing and signed by both parties. The parties agree that this Agreement shall be governed by the laws of [insert State of jurisdiction].
15. This Agreement is not assignable by The Agency without the written consent of The Manufacturer.

Bar codes (or UPC/GTIN Codes) are commonly used method to mark and identify products at the manufacturing level, distribution level and at the retail outlet. “UPC” stands for Universal Product Code. UPC bar codes were originally created to help grocery stores speed up the checkout process and keep better track of inventory, but the system quickly spread to all other retail products because it was so successful. Many useful tasks may be accomplished using bar codes, including inventory management, pricing and product identification. Bar codes may be used to identify individual products, master-packed products, case-packs and even pallet loads of products. Bar codes are available in many different formats and may be obtained by contacting GS1 US. GS1 US is formerly known as the Uniform Code Council Inc. (UCC). Information regarding GS1 US may be obtained by contacting [www.gs1us.org](http://www.gs1us.org).

A manufacturer applies to GS1 US for permission to enter the UPC system. The manufacturer pays an annual fee for the privilege. In return, GS1 US issues the manufacturer six-digit manufacturer identification number and provides guidelines on how to use it. You can see the manufacturer identification number in any standard 12-digit UPC code found on almost any product sold at the retail level.

Once you have entered into the UPC system it will be necessary to have the equipment necessary to print and scan (read) bar code labels. There are several manufacturers that supply bar-coding equipment, including the following:

Zebra Brand Thermal Bar Code Label Printers

800 268-1736 or 847 955-2283

Checkpoint METO Corporation

800 257-5540 or 856 848-1800

Reminder, bar code (UPC/GTIN) information is a required field within the PIES data standard. For further information, visit [www.gtin.info](http://www.gtin.info).

A cooperative (co-op) advertising program is a method used by many manufacturers in the performance aftermarket to allow their direct resellers to advertise the manufacturer's product and provide reimbursement for the funds spent on the advertisement. The manufacturer reimburses the funds to the distributor once proof of advertising is provided to the manufacturer. This is done for several reasons:

- The reseller will reach their customer base.
- The reseller will increase the sales of the products.
- The reseller may know of niche markets for the products

Below are several policies established by members of the MPMC that may be used as guides to establish your company's co-op advertising policy. You may also seek a mentor from the MPMC Select Committee members to assist you in determining the percentage of co-op that will best fit your business.

## Sample Policy A.

### Cooperative Advertising Policy

#### Warehouse Distributors

Effective [date]: All co-op claims will be issued via credit memo and MUST BE accompanied with proof of tear sheets and paid invoicing.

[Manufacturer's name] will pay [percentage]% of warehouse distributor's media costs for consumer advertising of [manufacturer's name] products, limited to [percentage]% of the total net factory billings for the [previous year or current net year billing]—choose one.

- [Manufacturer]'s logo will be supplied by [manufacturer's name] and must be featured prominently in all ads to qualify for co-op dollars.
- Allowances are based on factory net billings only.
- Allowances are given in the form of a credit memorandum, based on the receipt of itemized customer expenditures, including tear sheet for each advertisement (print media) or proof of performance (TV or radio) and invoice(s). Credits may not be taken until authorized by [manufacturer's name].
- [Manufacturer's name] will supply co-op advertising materials in reasonable quantities at no charge.

## Approved Media:

- Newspapers: Established and audited daily newspapers qualify. Weekly or periodic newspapers will be subject to qualification by review of the distributor and [manufacturer's name].
- Magazines: Established and audited magazines with circulation coverage patterns approximating the trading area of the Resellers outlets qualify. Magazines, which offer spot regional coverage, will also qualify.
- Television: TV advertising on listed commercial stations qualifies.
- Radio: Local market commercial radio stations qualify.
- Other media: Other local market mediums (direct-mail, transit, billboards, etc.) qualify.

## How to File A Claim:

Submit all co-op claims to [manufacturer's name], Attn: Co-op Manager

- Newspaper or magazine: Full-page tear sheet of each advertisement inserted, plus a copy of warehouse distributor's invoice from the newspaper.
- TV or radio: Affidavit of performance from the station.
- Other media: Copy of invoice from advertising medium plus adequate proof of performance.

Claims must be filed on or before the last day of the calendar month immediately following the month in which the advertising appeared or was broadcast. Cooperative funds not used within the calendar year will be canceled after 60 days.

## Sample Policy B.

Effective (DATE)

This policy supersedes all previous [manufacturer's name] co-op policies.

- Basic Program: [manufacturer's name] offers a [indicate number]% of [insert last year] paid invoices.
- Eligibility: Available to all [manufacturer's name] dealers.
- Qualifying Products: Any product purchased from [manufacturer's name]
- Advertising Expense Not eligible for Co-op:
  - Newspaper ad preparation or production cost.
  - Radio or TV production costs.
  - Agency fees.

- Clothing purchase.
- Consumer ads advertising [manufacturer's name] products at [indicate number]% or more below the current jobber price.
- Ads that are not product specific are not eligible for co-op. Ads such as [indicate number]% off entire line or discounts on all [manufacturer's name] products. We will pay for product-specific ads such as [indicate number]% off all [manufacturer]'s [list specific products].
- Claim Deadline—[Manufacturer's name] must receive the co-op claim within 90 days of the ad publication date. [insert current year] co-op funds unclaimed by March 25 [insert next year], will be forfeited.

### Policy:

- All claims will be processed and credited by your account manager at [manufacturer's name]. [Manufacturer's name] will not be liable for claims submitted elsewhere.
- Consumer advertising, advertising to dealers, and advertising to wholesale customers is reimbursable.
- Claims involving media without published rate schedules will be audited by [manufacturer's name] against established guidelines for comparable media based on circulation.

### Eligible Media:

- All media must specifically serve the claimant's trading area.
- Newspapers (daily, weekly, Sunday) the circulation of which can be audited independently.
- Broadcast advertising (TV and radio) requires advance written authorization of your account manager. Full details of all activities must be supplied for approvals.
- Catalogs, circulars, supplements and tabloids distributed via direct mail or as newspaper inserts.
- Email Advertising
- Digital Advertising which could be video, pay per click advertising or banner ads

### Advertising Requirements:

- Ad must feature a clean and accurate illustration of [manufacturer's name] product(s). Artwork is available on request.
- The advertisement must include a selling price for each advertised product.
- Ad may not feature claims and/or guarantees in copy content not warranted by [manufacturer's name].
- The proper [manufacturer's name] logo must appear to be eligible for co-op.

### TV and Radio Advertising:

- Advertiser's invoice is required (after approval).
- Advertiser station invoice and copy of the script with a notarized copy of the RAB/TV documentation is required.

NOTE: Be sure radio and/or TV is advised prior to placement of advertising that the documentation will be required for co-op substantiation.

TERMS: [Manufacturer's name] reserves the right to audit the books of advertisers, newspaper publishers, and other third parties concerning claims submitted. Failure to grant such permission will relieve [manufacturer's name] of any obligation to honor such claims. [Manufacturer's name] also reserves the right to terminate or amend this program at any time upon 60 days' written notice. For answers to questions, call your territory manager at [manufacturer's phone number].

NOTE: [Manufacturer's name] co-op advertising plan is in compliance with FTC guidelines which must be adhered to by the retailer and vendor.

- Reimbursement Procedure – Do not deduct from remittances. Advertiser will be reimbursed by credit memo! Dealers advertising [manufacturer's name] must comply with all terms and conditions of the plan to be eligible for reimbursement. Each claim must be substantiated as follows:
- Newspaper advertising: Advertiser's invoice, plus net publisher's invoice. In lieu of net publisher's invoice with each claim, you may submit new publisher's invoice—one for each publication used—showing the rate you actually paid. If these rates are verified, [manufacturer's name] will reimburse at those rates for futures claims. You must notify [manufacturer's name] when rates change. Original full-page tear sheets, or in the case of a multi-newspaper campaign, submit one tear sheet and a list of all newspapers in which the ad was run. List must be certified by an officer of the advertiser's company. Submission claims must be done within 90 days of the ad's appearance.
- Catalogs, circulars, supplements and tabloids: Advertiser's invoice, plus paid supplier's invoice substantiating printing and distribution and proof of distribution.
- Pre-printed inserts (e.g., newspaper supplements): Advertiser must submit a copy of the net publisher's invoice for quantity actually inserted in the newspaper. Preprinted insert must accompany claim. Printer's invoice for insert must accompany claim.

Product liability is the area of law in which manufacturers, distributors, suppliers, retailers, and others who make products available to the public are held responsible for the injuries those products cause. Although the word "product" has broad connotations, product liability as an area of law is traditionally limited to products in the form of tangible personal property.

## **Certificate of Insurance**

Some customers may ask you for a certificate of insurance, a document generated by your company's insurer that offers valid proof of liability insurance protection. In some cases a written request/agreement may be required by the manufacturer. The certificate of insurance names your customer as an additional insured party, extending the provisions of your policy to the customer when they sell your products. Your customers may request a certain dollar amount of coverage per occurrence, an AM Best rating, etc. Contact your company's insurance agent/representative to determine what you may require to satisfy your customer's request. It is also suggested you investigate your industry category average or what the major distributors or retailers in the category require. As an example, one MPMC member was requested to provide a \$3 million policy from an existing customer. After reviewing requirements of similar customers, the standard was determined to be a \$1 million policy. The MPMC member offered the \$1 million policy to the requesting party and they agreed to accept the counter offer. This investigation and negotiation saved the MPMC member a substantial premium fee.

Nearly every company prefers to do business on a credit basis; this also means there will be some losses, which may be encountered in the credit process. Depending on follow-up and communication/relationships with the debtor, these losses can be reduced and controlled. Communication/relationships and follow-up are essential and important parts of the formula.

There are a number of elements which should be reviewed and attended to. Always do a credit check and read what it says, and maintain a copy of the credit report in the customer's file. Trade associations may have a credit reporting group or benefit partner specializing in Credit Reporting. SEMA has partnered with First Credit to offer credit reporting to SEMA members at a member rate.

<https://www.sema.org/ccprocessing>

As promptly as possible, qualify or identify what is causing a delay in payment. Also record or make note of the situation for future reference. Set credit limits at a manageable level and adhere to the. Again read the credit report responses and abide by what is being said. Always get a signed purchase order; a properly prepared and executed "P.O." is a legal and binding contract. If you have delivered goods or services to a client/customer, it will help your agreement at a later date if there collection issues develop. Again, maintain communication; if something is disputed, address it immediately. Monthly payments may be held up when only a single item on an invoice is in error. The rest may be paid upon investigation and communication. Within that communication, set reminders for the follow-up with a plan of action. Do not threaten; do what you say you will do. Be fair and be firm as the accounts receivables reports become more aged. The longer it is on the books the less likely it will be collectable. Document what you are doing; the typical "Who, What, When, Where, and How" apply here. Use that information to your benefit in your documentation. "Time is Money"— history has shown/proven that the longer the past due is past due, the less likely you will be to collect it.

**Three things are very important:**

1. The building of relationships between your accounts receivables person and the accounts payables person.

2. Management's support and backing in your collection attempts (this means if you need them to communicate to the debtor's management that they will).
3. If this is a one-time sale or service, do not hesitate using a reputable collection service or going to court with legal counsel to take appropriate action.

The last remedy can ruin chances of further or future business opportunities, take note.

In many cases a delinquent account is only experiencing cash-flow difficulties and suggesting a payment schedule may resolve the situation to continue the business relationship. When a customer is no longer permitted to buy your products, a collection agency may be your only alternative to collect the past-due balance. If a consumer debt is turned over to a third party collector, you need to be aware of the potential risk imposed under the Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. 1692 et seq.), which became effective March 20, 1978. The FDCPA was designed to eliminate abusive, deceptive, and unfair debt collection practices. In addition, the FDCPA protects reputable debt collectors from unfair competition and encourages consistent state action to protect consumers from abuses in debt collection. The FDCPA creates guidelines under which debt collectors may conduct business, defines rights of consumers involved with debt collectors, and prescribes penalties and remedies for violations of the Act.

Take the time to find reputable legal counsel for contract/agreements and to invest into some reading material on collections. Review the suggested collection letters in those publications. This is well-spent money in the long run.

Certain products and small growing businesses may have a product or products that may have potential in the international market. Shipping one or two products a month to another country may not be an issue; however, when moving large quantities of products to a distributor in another country, caution is imperative. The possibility of international sales may raise several issues with which to be concerned—they will be discussed in this section.

**Export Documents:** Export documentation is required for all shipments leaving the United States. These documents may also be required by the country of import. Usually a copy of the invoice listing the products in the shipment will suffice, along with the value of the merchandise. If you are considering shipping merchandise to Canada or Mexico, a NAFTA Certificate of Origin document may be required by the importer in order to reduce the tariffs related to the shipment.

**Exchange Rates:** World currencies are variable and volatile. Your bank partner is an excellent information source to help you set up your export program when it comes to dollar values.

**Terms & Conditions of Sale:** Due to the various payment methods involved with exporting, it is most likely that each account will require a Terms and Conditions agreement tailored to your business. These Terms and Conditions may specifically define the territory of the customer. A territory may be limited to a country or it may include an entire continent—be specific when outlining the territory; however be careful when establishing a territory. You may encounter “restraint of trade” laws relating to certain countries or geographic locations.

**Payment terms, Including Bank Transfers, Letter of Credit:** The customer and country to which you are shipping will determine your payment terms. As a rule of thumb it is not uncommon for most transactions to be handled with either a valid letter of credit or bank transfer at the time of shipment.

**Patents:** U.S. patents may not apply internationally. It is a good practice to consult your patent attorney before shipping your patented product out of the United States or its territories.

**Logo Trademarks:** U.S. trademarks (including, but not limited to: any symbol, word, or words, design element, or otherwise a unique identifier used to represent a company and/or product) may not apply internationally. As with patents, your trademarks may not be protected outside the United States. It is recommended that you contact your attorney regarding your trademarks and apply for international trademark protection to safeguard the use of your logo.

Electronic Data Interchange (EDI) is the computer-to-computer exchange of structured information by agreed message standards from one computer application to another. Electronic interchange is intended to achieve a minimum of human intervention. In common usage, EDI is understood to mean specific interchange methods agreed upon by national or international standards bodies for the transfer of business transaction data, with one typical application being the automated purchase of goods and services.

Large distribution centers, chain stores, retailers and mass merchandisers may require EDI transactions to conduct business. EDI may: 1) Save time and money; 2) Improve customer service; 3) End repetition; and 4) Expand your customer base. EDI is also complicated and requires dedicated personnel, software and equipment. EDI may not be for all manufacturers; however, if you decide for your company to become business partners with a customer who requires EDI, more than likely the customer will provide key contact information with the software and services required to interface with their systems.

Prior to committing to an EDI program, be sure to investigate shared costs with the customer, cost for software, hardware, computer programmer and an information technology specialist—you may determine EDI is a costly venture. If your sales volume can handle the additional expense of an EDI system, you may realize the benefits in a short period of time. In addition, prior to implementing EDI, it is recommended that your product information be compiled to the PIES data standards to ensure proper transmission to data receivers and all trading partners.

For further information regarding EDI, log onto, [www.datatrans-inc.com](http://www.datatrans-inc.com), or.

You may also be able to trade with a company that requires EDI by using a third party, a stand-alone processing service. You submit and retrieve your documents via a website or email login without the need to interface directly with your business software. Although it doesn't offer the same advantages of traditional EDI processing, such as elimination of data-entry errors, this can be a cost-effective way for a small supplier to sell to a large distributor. For further information for this type of service, log onto [www.liaison.com](http://www.liaison.com), [www.covalentworks.com](http://www.covalentworks.com) or [www.dcs-is-edi.com](http://www.dcs-is-edi.com)

# MINIMUM ADVERTISED PRICING (MAP) 15

## Minimum Advertised Price (MAP)

A manufacturer MAP program supports distribution with marketing allowances or credits for maintaining a minimum advertised price.

Reasons a manufacturer may want to institute a MAP program can be, but are not necessarily limited to, the following:

- Due to the technical nature of some products, a minimum amount of profit is required by the distributor to train and retain skilled personnel to support the manufacturer's product.
- A manufacturer has the right to control the image of its products as high-end and sophisticated.

SEMA has a video presentation on MAP Pricing by Gene Zelek of Freeborn & Peters

[SEMA Biz Tip MAP Pricing](#)

For an in-depth explanation of MAP pricing, how it works, the rights and wrongs, and if it is right for you, refer to the SEMA website at [www.SEMA.org/webinars](http://www.SEMA.org/webinars). The PowerPoint presentation, as a PDF file, and the audio/video of the webinar are both available for download.

If your company does have a MAP pricing policy, the PIES data standard now has a field to accommodate this important pricing data, allowing easy and accurate communication of this vital information through the entire distribution channel.

## Manufacturer Advertised Pricing

Over the years, manufacturers have sought ways to control the prices at which their products are sold to the ultimate customer. There are many reasons for this. Many feel that when a product is sold at too low a price level, it lessens the value of the product and, perhaps, even the reputation of the manufacturer. Many feel that maintaining reasonable prices for products is the way to assure that

a strong local market is developed. They believe that it will be difficult to find distributors who are prepared to advertise and promote their products and stock complete lines if others are allowed to sell the product at lesser prices and “free ride” on their efforts. Strong price protection also is seen as a means of attracting high-end sellers.

Under the law, however, the manufacturer is not allowed to control the price of the product once it leaves the control of the manufacturer. This includes explicit agreements on resale price levels. It also includes other means of causing distributors to adhere to required prices. The control of the price of a product at resale is considered a “resale price maintenance” scheme.

Even though such arrangements are illegal, there are lawful ways in which manufacturers may influence the prices at which their products are sold at the retail level. All of these must be undertaken carefully in that the line between acceptable and unacceptable types of activity is sometimes difficult to identify. Such efforts generally require “unilateral” action by the manufacturer. That is, the activity cannot be agreed to between the manufacturer and his customer. For example, a manufacturer may establish a policy that he will not sell to cost-cutters. If a customer sells the manufacturer’s product below the price established by the manufacturer, the manufacturer may simply stop dealing with that customer. Such a policy may well discourage selling below the manufacturer’s suggested retail price. On the other hand, if a cost-cutting reseller were to be terminated, it would be very difficult to reestablish the relationship and avoid the conclusion that the terminated dealer has agreed to comply with the pricing requirement of the manufacturer. Further, the manufacturer may establish a “suggested retail price” for a product and have a tag or marking on the product stating the “suggested retail price.” It is also permissible for the manufacturer to advertise the product at the “suggested retail price.” Further, sales of products by a manufacturer on the bases of agency or consignment may allow a manufacturer to establish the sales prices of products. These arrangements, however, envision that the manufacturer has not sold the products to a reseller. Rather, the manufacturer has maintained title and established the terms and conditions of the sale of the products. In short, there is not a resale of the product. Of course, none of these actions require that the customer sell the product at any particular price. The ultimate pricing decision remains with the retailer.

Another approach to influence the retail price of products is to require a specified price in co-op advertising. For many years, controlling the advertised price of products through restrictions on co-op advertising was considered “per se” illegal. That is, it did not

make any difference whether the arrangement had beneficial and pro-competitive effects. If it was done, it was simply illegal. That has changed. Now, agreements on advertised prices in co-op advertising are reviewed on the basis of “rule of reason.” This means that such programs may be legal or illegal, depending on the way they are structured. Generally, such programs will be considered legal where the retailer retains the right to advertise, using its own funds, at whatever price it wishes and, of course, is allowed to sell the product at a price of its choosing. The manufacturer generally will be allowed to require the retailer to use only the “suggested retail price” or no prices at all in advertisements that are paid for using co-op advertising funds and withhold cooperative advertising payments for advertisements that do not comply. Since the legality of the program will depend on the facts, it is always advised to have such programs reviewed by counsel.

In each of the programs described in this article, it is likely that when the facts demonstrate that the retailer has been effectively denied the opportunity to exercise its right to determine pricing, a “resale price maintenance” scheme will be found.

## Defining Counterfeit:

### Webster's Dictionary definition:

- As an adjective: made in imitation of something genuine so as to deceive or defraud; forged.
- As a noun: 1 a) an imitation made to deceive; forgery; b) something that so closely resembles something else as to mislead.
- Synonym: false, artificial.

## What are counterfeit parts?

In the eyes of the law and for all practical purposes, counterfeit parts are imitation parts manufactured, package and represented in a way intended to deliberately mislead. Counterfeiters often duplicate a trademark exactly or alter it just enough that the consumer won't notice the difference. Counterfeit parts distributors use trademarks or other distinctive characteristics, primarily in packaging, to market their imitation products in an effort to trick consumers into thinking they are purchasing a genuine, brand-name part.

## U.S. Regulations

U.S. laws earmarked for these imitation parts are primarily covered in the 1984 Anti-Counterfeiting Act. The Act gave federal investigators the authority to go after imitation parts makers with stiff penalties as high as \$250,000 and jail time of up to 5 years. In 1996 the U.S. government took additional steps to fight counterfeiting with the passage of the Anti-Counterfeiting Consumer Protection Act. This act increases the penalties for counterfeiting and allows officials to destroy any products imported to the United States that are found to be trademark violations. Previously, the government only exported material back to the country of origin, only to be smuggled in again.

Legislative efforts of late have been primarily directed toward providing stronger criminal penalties for trafficking in counterfeit marks that are identical with, or substantially indistinguishable from, a mark registered on the principal register in the United States Patent and Trademark Office.

### Enforcement

The U.S. Customs & Border Protection (CBP), which now operates under the U.S. Department of Homeland Security, is charged with the responsibility of import commercial enforcement.

### Counterfeiting Perspective

The word counterfeit becomes the catchall phrase for a broad spectrum of perceived threats in products sold into the performance automotive aftermarket. Reverse-engineered, functional products (in many cases manufactured overseas and sold for a lower price into the distribution chain and/or consumer market) do not necessarily fit the definition nor are the target of anti-counterfeit legislation, particularly when they are marketed under a unique or brand name that differs from the original manufacturer or distributor. Counterfeiting is a deliberate act to deceive and confuse where a product is passed off as quality, brand-name merchandise.

It is useful to understand that “copying” is not the same as “counterfeiting,” which, as explained above, typically involves confusion about the manufacturing source and violation of trademark rights.

Copying is generally legal. If it weren't we might have only one maker of light bulbs. The Supreme Court's March 2001 decision (*Traffix Devices Inc. v. Marketing Displays Inc.*) states in part that, “in general, unless an intellectual property right such as a patent or copyright protects an item, it will be subject to copying.” As the Court explained, “Copying is not always discouraged or disfavored by the laws which preserve our competitive economy. Allowing competitors to copy will have salutary effects in many instances. Reverse engineering of chemical and mechanical articles in the public domain often leads to significant advantages in technology.”

This Supreme Court decision made clear that threats of costly litigation over “trade dress” (a product's general appearance) could not be used frivolously to acquire what would amount to a perpetual patent.

For more information on the subject, visit the Intellectual Property Rights Guide in the Government Affairs section of the SEMA website at: <https://www.sema.org/governmentaffairs>

**ACES:** AAIA Catalog Enhanced Standard (ACES). ACES will mark a few short years in the aftermarket. In this short time it has grown from a new standard to the standard for the management and exchange of automotive application catalog information.

**ALEXA:** Alexa.com is a website that allows you to see where a particular website ranks among all other website both domestically and internationally. This website is a powerful tool in comparing websites to see where they stand up to each other.

**Co-op:** The method used by many manufacturers in the performance aftermarket to allow their direct distributors to advertise the manufacturer's product. It is known as a cooperative (co-op) advertising program. Direct distributors place advertising: the manufacturer, in turn, provides reimbursement of the funds spent on the advertisement. The manufacturer reimburses the funds to the distributor once proof of advertising is provided to the manufacturer.

**Devaluation of Inventory:** When a manufacturer lowers the price on a product, the reseller's inventory has been "devalued". In some cases the reseller will send in a request for a credit for the difference of the old to the new value.

**Distributor:** A distribution business is the middleman between the manufacturer and retailer or [usually] in commerce or industrial, the business customer. After a product is manufactured by a supplier/factory, it is typically sold to a distributing partner, warehoused in their facility, and resold and distributed to retailers, jobbers or end-users, the consumers.

**DTC:** Direct to Consumer. This is a distribution method where the manufacturer sells product directly to the end consumer

**EBITDA:** Earnings before interest, tax, depreciation and amortization (**EBITDA**) is a measure of a company's operating performance. Essentially, it's a way to evaluate a company's performance without having to factor in financing decisions, accounting decisions or tax environments. This is a major metric when buying or selling a company

**EDI (Electronic Data Interchange):** Standard format for sending and receiving business information and invoices electronically. This is an important subject when dealing with larger Resellers, Mail Order and National Retail customers

**EOB: Explanation of benefits.**

**FAS:** Free Alongside Ship (FAS) is an international commerce term. It means that the seller pays for transportation of the goods to the port of shipment. The buyer pays loading costs, freight, insurance, unloading costs and transportation from the port of destination to his factory. The passing of risk occurs when the goods have been delivered to the quay at the port of shipment.

**F.O.B.:** Free On Board (F.O.B.) is an international commerce term. It is similar to FAS, but the seller also pays for the loading costs. The passing of risk occurs when the goods pass the ship's rail at the port of shipment. Internationally the term specifies the port of origin, e.g., "F.O.B. New York" or "F.O.B. Vancouver." Domestically within the United States and Canada, the term is used in two common phrases: "F.O.B. shipping point," and "F.O.B. destination." The intent is to distinguish when the title of goods passes from the seller to the buyer. Under the terms of "F.O.B. shipping point," the title of the goods passes to the buyer at the shipping point. Similarly, under the terms of "F.O.B. destination," the title of the goods passes to the buyer when the goods arrive at their destination. The distinction is important because it determines who pays for the shipping costs of the merchandise: whoever holds the title to the merchandise at the time of shipping pays for its transportation costs. Also, it is important If the shipment is damaged while traveling, in which case the owner must file the freight claim. Note that this usage is consistent with the official international commerce terms definitions, and should not be used for international shipping.

**Four "P":** Product, Price, Placement and Promotion. This is a system of looking at sales and marketing problems. You can look at any business problem by analyzing the 4P's.

**GAP Analysis:** this is an analysis that a sales person might use to identify gaps in a customer's product offering. This analysis is commonly handled by review of the customer's websites, catalogs or purchasing system to help find opportunities

**Inventory Turns:** This is an important business equation in which you divide the total sales dollars by total inventory dollars in a period to give you the turn rate. This tells the business owner how many times their inventory has turned over in a period

**Jobber:** Jobbers are companies that purchase quantities of products and either sell them to retailers, or sell directly to the end-users of those products (repair shops, consumers, etc.).

**Julian Date:** It is the number of the day in a calendar year. For example, February 15, 2006, would be the 46th day of 2006. Products oftentimes are marked with a Julian date when the product is manufactured.

**L.O.C. (Line of Credit):** A credit limit is the maximum amount of credit that a bank or other lender will extend to a debtor, or the maximum that a credit card company will allow a card holder to borrow on a single card. Some lenders will allow a borrower to exceed this limit, but then subject the borrower to fines or penalties.

**Mail Order:** A term that broadly describes the buying of goods or services by mail delivery. The buyer places an order for the desired products with the merchant through some remote method such as through a telephone call. The products are then delivered to the customer via mail delivery or another method of shipping.

**MAP Pricing:** Minimum advertised pricing

**Net 30:** Net 30 is a form of trade credit; it specifies that payment in full is expected to be received 30 days after the goods are delivered. Net 30 terms are often provided with associated “credits” that are given for early payment; e.g., “2% 10th net 30” indicates a 2% discount is provided if payment is received within 10 days of the delivery of the goods, and that full payment is expected within 30 days.

**PIES (Product Information Exchange Standard):** A product of the Automotive Aftermarket Industry Association (AAIA) Electronic Commerce Committee. The purpose of this effort was to develop a standard in the automotive aftermarket for exchanging product information between all members of that supply chain from the manufacturer to the distributor to the retailer/wholesaler and to the service retailer.

**P.O.P. (Point of Purchase):** A “POP” display is a presentation created to stimulate the purchase of a product when a consumer views the display. This is often an interactive display for a given product.

**Rep:** A manufacturer’s representative or team of representatives acting as an agent on behalf of a manufacturer to sell and promote the manufacturer’s product or product line.

**UPC:** Universal Product Code. Bar codes (or UPC codes) are a commonly used to mark and identify products at the manufacturing, distribution and retail levels.

**Three Step Distributor:** A distribution method where a manufacturer sells to a warehouse distributor, then the warehouse distributor sells to a retailer which then sells the product to the consumer. Complete distribution process is handled with three steps

**Two Step Distributor:** A distribution method where a manufacturer sell to a retailer which then sell the product to the consumer. Complete distribution is handled with two steps

If you encounter a topic that is not covered in this manual, we urge you to submit your question to an MPMC Select Committee member the SEMA Staff Liaison Jim Skelly [jimsk@sema.org](mailto:jimsk@sema.org) who will pass along the question to the Business Guidelines Task Force for further research or clarification. This publication is a live document that will be subject to many changes in the years to come. With your help and suggestions, it is a valuable manual that will continue to grow and serve the MPMC membership.