

## Alpha Professional Tools® Distributor Policy

**January 1, 2023 – December 31, 2023**

This Non-Exclusive Distributor Policy ("Policy") sets forth the policy terms and conditions by which Alpha Professional Tools® (including its assignees and/or its successors) ("Alpha®") permits its distributors (each, a "Distributor") to distribute Alpha® Products.

### ***Alpha® Background***

Alpha® is a manufacturer of tools and supplies for the restoration and fabrication of natural and engineered stone, porcelain, glass, concrete, metal, hardscape, composite and construction industries. Alpha® has maintained its leadership in the market by developing the best and most innovative products for refinishing and fabricating. Alpha® sells through a network of authorized distributors and to federal, state and local government agencies throughout the United States, Canada, Mexico and Puerto Rico. Alpha® customers have been an integral part in the success of Alpha®.

This Policy outlines the commitment by Alpha® to its Distributors as well as Alpha® expectations of them. Alpha® offers support through its sales group participation, promotional items, trade show exhibits, lead generation, participation in special events at its Distributors' locations and continuous improvement through research and development.

To become an authorized Distributor of Alpha® or to maintain Distributor's status, the Distributor must meet the following criteria:

1. Be an established stocking distributor (reseller) of tools and supplies within these specific industries.
2. Located in an area (as determined by Alpha®) requiring coverage or additional coverage through distributorship.
3. Meet an appropriate opening order as determined by Alpha® for your target markets.
4. Purchase a minimum of \$5,000.00 net annually.
5. Agree to and comply with the Minimum Advertised Price (MAP) Policy Agreement set forth by Alpha® as well as the National Resale Price (NRP).
6. Provide an updated "Customer Contact Form" and participate in the Alpha® e-mail programs.
7. Participate in Alpha Professional Tools® Quivers Store program and ship distributor stocked inventory items. (see page 6 for details)
8. Have a good credit rating as determined by Alpha®.
9. Distributors who fail to purchase products within a one (1) year period will forfeit their distributor status and will need to be reinstated. A new credit application will be required to re-open any distributor who has been closed.

Alpha®, may at its discretion, modify the criteria for a distributor to maintain its status as a distributor for Alpha®. Alpha® may, from time to time, modify sales purchases and inventory requirements. Alpha®, at its sole discretion, may modify or terminate this Distribution Policy or MAP Policy at any time. Alpha® reserves the right to close any Distributor's status with Alpha® at our discretion.

Any reference to the word “Year” or “Fiscal Year” indicates the period beginning January 1, 2023 through December 31, 2023.

### **1. *Rights Granted***

Alpha® grants to the Distributor a non-exclusive right, on the terms and conditions contained below, to purchase, inventory, promote, and resell "Alpha® Products" (as defined below).

### **2. *Products***

As used in this Policy, the term "Alpha® Products" shall mean the products, related service parts, and accessories manufactured and/or sold by Alpha® to the Distributor, which products and parts may change from time to time.

### **3. *Terms of Sale***

All sales of Alpha® Products to the Distributor shall be subject to this Policy and made at such prices and on such terms as Alpha® shall establish from time to time on at least thirty (30) days' notice. All prices are subject to the freight policies set forth in the Freight Policy (Section 12) unless otherwise specified. Alpha® agrees to properly pack all items for shipment risk of loss due to damage or destruction of Alpha® Products shall be borne by the Distributor after delivery to the carrier for shipment. Any damages shall be noted at the time of delivery and reported to Alpha®. Distributor will select the shipper and will pay for the cost of shipment back to Alpha for all returned damaged Alpha® Products. All orders are subject to acceptance by Alpha®. This Policy shall control all aspects of the dealings between Alpha® and the Distributor with respect to the Alpha® Products and any additional or different terms in any Distributor order are hereby rejected.

Alpha® is not required to hold any promotional pricing beyond the end of that promotional month or take orders for such, if the Distributor is paying beyond terms.

**Orders for Product and Tools may be placed by email at [orderdesk@alpha-tools.com](mailto:orderdesk@alpha-tools.com).**

Sales tax will be charged on all shipments to Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Maryland, Massachusetts, Michigan, Nevada, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Texas, Virginia, and Washington unless an up-to-date state resale tax certificate from the Distributor is on file with Alpha® for that state.

The states of Arizona, California, Connecticut, Florida, Illinois, Maryland, Massachusetts, New York, North Carolina, and Pennsylvania will not accept another state's resale certificate for a drop shipment.

### **4. *Payment***

Alpha® payment terms are: 2% 10, Net 30. The Distributor is required to make sure that payment is received by Alpha® within the appropriate time period (i.e., 10 days or 30 days from date of invoice). A service charge of 1-1/2% per month (18% per year) shall be added to account balances past 30 days. In the case of late payments, Alpha® may, at its discretion, remove the discount, reduce the discount to the lowest distributor level, stop shipping or change the terms to C.I.A. or CC. For Distributor's with multiple locations, billing, and shipping addresses, it is imperative that all locations pay according to this Policy or all locations' discounts will be affected. The Distributor shall pay a service charge of \$25.00 for each draft returned because of non-sufficient funds.

Alpha® accepts MasterCard, Visa, Discover, American Express credit cards and PayPal. Distributor's credit card will be charged immediately as the Distributor's purchase orders are shipped. Invoices paid by credit card or PayPal are NOT eligible for 2% 10 terms.

### **5. Marketing Policies**

The Distributor will promote vigorously and effectively the sale of Alpha® Products through all channels of distribution prevailing in the Distributor's "primary marketing area" (as defined below), in conformity with the provisions of this Policy. Distributor acknowledges its intent to concentrate its marketing of the Alpha® Products in its "primary marketing area," including any area in the United States of America or territories thereof.

### **6. Merchandising Policies**

Alpha® will provide the Distributor with merchandising assistance from time to time in the form of product and sales training, and sales promotions, at a timing and value selected by Alpha®. The Distributor agrees to fully use such merchandising assistance.

### **7. Product Pricing Policies**

Alpha® will provide the Distributor with a Manufacturer's Suggested Retail Price (MSRP) and an additional discounted resale price called the Alpha® National Resale Price (NRP) for all Alpha® Products. The Distributor is expected to sell Alpha® Products at the Alpha® NRP or higher and the Distributor must advertise the pricing of Alpha® products in accordance with the MAP Agreement. Should the Distributor unilaterally discount the Alpha® NRP on any product, Alpha® reserves the right to unilaterally terminate the Distributor's right to distribute Alpha® Products under this Policy.

#### ***FAILURE TO COMPLY (Authorized Distributors)***

**First Violation.** Should the Distributor fail to comply with the terms in Section 7, a warning will be issued via e-mail stating the Distributor is violating this Section 7 with details of such violation. The Distributor shall then comply within forty-eight (48) hours; unless, however, the Distributor is using e-Bay, Amazon, Marketplaces or other online auction sites then they shall comply within twenty-four (24) hours, as the case may be. After a first violation, the Distributor shall immediately (a) lose up to five percent (5%) of the Distributor cost, if applicable, for a ninety (90) day period or (b) have its distributorship suspended for ninety (90) days. For clarification purposes, assuming the Distributor has a 15% discount, such Distributor following a first violation shall have its discount reduced to 10% for ninety (90) days or its distributorship will be suspended for ninety (90) days.

**Second Violation.** Should the Distributor fail to comply following the suspension period after the first violation, or should the Distributor receive a notice of a second violation of any kind, the Distributor shall immediately (a) lose up to ten percent (10%) of the Distributor cost, if applicable, for one hundred eighty (180) days or (b) have its distributorship suspended for one hundred eighty (180) days.

**Third Violation.** Should a Distributor commit a third violation or fail to cure prior violations, (a) the Distributor shall immediately lose the entire Distributor cost, if applicable, for one (1) year which begins on the day of the third and final violation notice or (b) Distributor's status as an approved distributor or Distributor shall be suspended for one (1) year (after such time such the Distributor would have to re-qualify as an approved distributor or Distributor; and all unpaid balances outstanding to Alpha® shall become immediately due and payable).

Alpha® reserves the right, in its sole discretion, to determine all violations of this Policy and in the sole discretion of Alpha® at any time resulting in the permanent loss of Distributor's distributorship.

### **8. Sales Reports**

Upon request of Alpha®, the Distributor shall provide statements summarizing all sales of Alpha® Products for the requested time period. Documentation shall be written, and shall include product name, quantity of product sold, date product sold, city and county product sold to, and product sales price.

### **9. Product Warranty Policies**

In the event that any of Alpha® Products are proven to Alpha® satisfaction to have been defective at the time of sale to Distributor, Alpha® will make an appropriate adjustment, in the original sales price of such product or, at Alpha® election, replace the defective product. If applicable, manufacturer shall provide to the Distributor information with respect to Alpha® limited warranty extended to the original consumer of Alpha® Products. MANUFACTURER MAKES NO WARRANTY TO DISTRIBUTOR WITH RESPECT TO ALPHA® PRODUCTS, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Distributor individually, and on behalf of its employees and end users, acknowledges the inherent danger in the use of power tools and blades therefore the user assumes all risk.

### **10. Order Processing; Claims; Returns**

A. *Fulfillment of Orders.* Alpha® will employ reasonable commercial efforts to fill Distributor's orders promptly on acceptance, but reserves the right to allot available inventories among distributors at its discretion.

B. *Minimum Order.* Minimum purchase order is \$100.00. A \$9.99 minimum order fee will be applied.

C. *Minimum Annual Purchase.* Distributor will purchase a minimum of \$5,000.00 of Alpha® products per year.

D. *Shortages.* Please inspect all cartons upon receipt. Claims for shortages will be considered when reported within 48 hours from receipt.

E. *Damages/Lost Shipments.* All claims for merchandise damaged or lost in transit must be filed with the carrier of record, rather than with Alpha Professional Tools®, and all claims for damage or lost shipment must be made within 30 days of the shipment date. Please check all cartons for damages prior to accepting from carrier. The delivery driver should note damage to cartons and sign the bill of lading.

F. *Claims for Material Returned by a Distributor's Customer.* The Distributor is not authorized to replace returned goods without securing prior approval from Alpha®. Return authorization must be secured from Alpha® before merchandise is returned. All claims regarding possible defective products must include a completed Product Complaint Form. To ensure the Distributor's safety, returned product that is considered unsafe to use will be discarded by Alpha®. This does not guarantee credit or replacement of the product.

G. *Return Goods Policy.* Requests for returns will be authorized at the discretion of Alpha®. Goods must be current catalog products. Products purchased over one year ago and discontinued products are not eligible for return. Goods must be in new, resalable condition. Return authorization must be secured from Alpha® before any merchandise is returned. Freight charges must be prepaid. All returned goods are subject to a 20% restocking and/or a 10% repackaging charge. Authorized returns for credit, without invoice verification, will be credited at the lowest invoice price with maximum promotional discounts applied. International dealers are responsible for all customs fees, duties, taxes or any additional charges that may apply.

## **11. Freight Policy**

The following information pertains to all Alpha® products with the exception of vacuums: *Freight charges for all vacuums are F.O.B. shipping point indicating that the Distributor is responsible for the freight costs and assumes transportation liability. Reference the Confidential Distributor Price List for the list of SKU's included in this Policy.*

### **DOMESTIC SHIPMENTS**

#### ***Continental U.S.A.***

Alpha® reserves the right to select routing of shipments for prepaid freight orders. Product is shipped F.O.B. Franklin, NJ via ground service (when possible). Free ground freight applies to domestic orders of \$750.00 or more to a single destination within the Continental U.S.A. Backorders shipping within the Continental U.S.A. will be shipped ground freight prepaid. If a Distributor requires Air Service, Alpha® will pay the regular ground portion of the freight if the order is \$750.00 or higher. The Distributor will be responsible for the balance. Air freight charges for orders under \$750.00 will be the paid for by the Distributor.

#### ***Outside the Continental U.S.A.***

Alpha® reserves the right to select the routing of shipments for prepaid freight orders. Product is shipped F.O.B. Franklin, NJ via ground service (when possible).

Alpha® will pay the ground freight charges on orders over \$1,500.00 shipping to a single destination in *Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands*. Backordered items will be shipped ground freight prepaid if the original order was over \$1,500.00.

Alpha® will pay ground freight charges to zone 8 on shipments of \$750.00 but less than \$1,500.00 to *Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands*. *The Distributor will be invoiced for the balance of the freight charges to these destinations*. Backordered items will be invoiced for the freight charges from zone 8 to the final destination if the original order was more than \$750.00 but less than \$1,500.00.

The Distributor will be responsible for the full amount of the freight charges for all orders and/or backorders under \$750.00. If Distributor requires Air Service for destinations outside the Continental U.S.A., Alpha® will pay the regular ground portion of the freight for orders of \$1,500.00 or higher. For orders over \$750.00 but less than \$1,500.00, Alpha® will pay the ground freight charges to zone 8. The balance of the freight charges will be the responsibility of the Distributor. Air freight charges for orders under \$750.00 will be the paid by the Distributor.

### **CANADIAN SHIPMENTS**

Alpha® will pay ground freight charges on orders over \$1,000.00 shipping to a single destination in Canada. Alpha® will pay 50% of the ground freight charges for orders over \$750.00 but less than \$1,000.00 shipping to a single destination in Canada. The Distributor is responsible for the

entire amount of the freight charges for order less than \$750.00. The same freight policy will apply to all backorders and will be based on the original order dollar amount.

All other standard freight policies apply as outlined in this Policy. If the Distributor requires air freight services, Alpha® will pay 50% of the ground freight charges for orders over \$750.00 but less than \$1,000.00; 100% of the ground freight charges for orders over \$1,000.00. The Distributor will be responsible for the air freight portion of the freight charges.

**The Distributor is responsible for all customs fees, duties, taxes or any additional charges that may apply.**

### **DROP SHIPMENTS**

Drop shipment orders under \$1,250.00 made directly to the Distributor's customer(s) will be charged the appropriate ground freight rate. All backorders under \$1,250.00 will be charged ground freight from our warehouse location.

Alpha® will pay the ground freight charges on drop ship orders and backorders over \$1,250.00 shipping to a single destination in the Contiguous U.S.A. (excludes Alaska and Hawaii).

Purchase orders must include a valid shipping address, phone number including area code and an email address. Sales tax will be applied to any drop ship orders and/or backorders shipping into the states listed in Section 3 of this Policy unless a resale certificate is on file or submitted with the Distributor's order.

Alpha® is not responsible for drop ship orders left without a signature. If the Distributor requires a signature, an additional charge of \$8.50 will be added to the order.

Alpha® cannot process any international drop ship orders. This includes drop ship orders into Canada, Puerto Rico and the U.S. Virgin Islands.

### **QUIVERS PARTICIPATION POLICY**

Any Distributor who participates in our Ecommerce program as a Quivers Retailer, must abide by the conditions below in order to claim an order on the Quivers site:

- Product must physically be in your warehouse at the time an order is claimed
- Orders need to ship within 24 hours (excludes weekends and holidays)
- Able to complete 100% fill rate; no partial shipments
- No substitutions
- Quivers orders totaling \$500.00 or more receive free ground freight

### **SPECIAL DELIVERY EQUIPMENT**

Any charges for special delivery equipment or requirements will be the sole responsibility of the Distributor.

## **12. Financial Policies**

The Distributor acknowledges the importance to Alpha® of the Distributor's sound financial operation and the Distributor expressly agrees that it will:

A. Maintain and employ in connection with the Distributor's business and operations under this Policy such working capital and net worth as may be required to enable the Distributor to properly and fully carry out and perform all of the Distributor's duties, obligations and responsibilities under this Policy;

- B. Pay promptly all amounts due Alpha® in accordance with terms of sale extended by Alpha® from time to time;
- C. Furnish, at Alpha® request, a detailed reconciliation of Alpha® statements of account with Distributor's records, listing all differences, and showing net amount the Distributor acknowledges to be due Alpha®.
- D. Billing date will begin the date that the merchandise leaves Alpha® facility; in addition to any other right or remedy to which Alpha® may be entitled, shipments may be suspended at Alpha® discretion in the event that the Distributor fails to promptly and faithfully discharge each and every obligation in this Section.

### **13. Use of Alpha® Name**

- A. A Distributor will not use, authorize or permit the use of, the name "Alpha Professional Tools®" or "Alpha®") or any other trademark or trade name owned by Alpha®, or any confusingly similar variation thereof, as part of the Distributor's firm, corporate or business name in any way.
- B. Distributor shall not contest the right of Alpha® to exclusive use of any trademark or trade name used or claimed by Alpha®. Distributor may, subject to Alpha® policies regarding reproduction of same, utilize the Alpha® name, trademarks or logos in advertising materials for the sole purpose of advertising Alpha® Products.
- C. In all marketing or promotional material displaying Alpha® products or description of products, the Distributor will clearly display Alpha® logo and/or name of Alpha Professional Tools®. Only the following variants of Alpha® name shall be used:

"Alpha Professional Tools®", "Alpha®," or  **Alpha Professional Tools® ALPHA®**

### **14. No Reproduction**

A Distributor shall not manufacture, or have someone manufacture, a reproduction or copy of any of Alpha® products.

### **15. Relationship of the Parties**

The relationship between Alpha® and the Distributor is that of vendor and customer. Distributor, its agents and employees shall, under no circumstances, be deemed employees, agents or representatives of Alpha®. The Distributor will not modify any of Alpha® Products without written permission from Alpha®. Neither the Distributor nor Alpha® shall have any right to enter into any contract or commitment in the name of, or on behalf of the other, or to bind the other in any respect whatsoever.

### **16. Terms and Termination**

- A. Unless earlier terminated as provided below, the term of this Policy and Distributor's status as a distributor of Alpha® shall commence upon Distributor's purchase of Alpha® Products and continue for so long as Distributor distributes Alpha® Products.
- B. Alpha® may terminate the Distributor's distributor status with Alpha® at any time by written notice given to the Distributor not less than ninety (90) days prior to the effective date of

such notice in the event Alpha® decides to terminate all outstanding distributor agreements for Alpha® Products and to offer a new or amended form of Distributor Policy.

C. Notwithstanding the foregoing, Alpha® may terminate the Distributor's distributor status with Alpha® immediately upon notice to the Distributor, upon any of the following events:

- (1) failure of the Distributor to comply with any of the policies in this Policy (subject to the violation/cure notices provided under Section 7 above), which failure is not cured with ten (10) days' notice from Alpha®;
- (2) any assignment or attempted assignment by the Distributor of any interest in this policy or delegation of the Distributor's obligations without Alpha® prior written consent;
- (3) any sale, transfer or relinquishment, voluntary or involuntary, by operation of law or otherwise, of any material interest in the direct or indirect ownership of the Distributor or substantially all of its assets or any change in the management of the Distributor;
- (4) failure of the Distributor for any reason to function in the ordinary course of business, any insolvency of the Distributor, or any voluntary or involuntary bankruptcy of the Distributor;
- (5) conviction in a court of competent jurisdiction of the Distributor, or a manager, partner, principal officer or major stockholder or member of the Distributor for any violation of law tending, in Alpha® opinion, to affect adversely the operation or business of the Distributor or the good name, goodwill, or reputation of Alpha®, Alpha® Products, or Distributor; or
- (6) submission by the Distributor to Alpha® of false or fraudulent reports or statements, including, without limitation, claims for any refund, credit, rebate, incentive, allowance, discount, reimbursement, or other payment by Alpha®.

### **17. Obligations on Termination**

On termination of this Policy and the Distributor's distributor status, the Distributor shall cease to be an authorized distributor of Alpha® and;

A. All amounts owed by the Distributor to Alpha® shall, notwithstanding prior terms of sale, become immediately due and payable;

B. All unshipped orders shall be canceled without liability of either party to the other;

C. The Distributor will resell and deliver to Alpha® on demand, free and clear of liens and encumbrances, such of Alpha® Products and materials bearing Alpha® name as Alpha® shall elect to repurchase, at a mutually agreed upon price, but not in excess of Alpha® current price to the distributors for such products and materials, provided that Alpha® shall not be obligated to pay the Distributor for any item originally provided free of charge;

D. Neither party shall be liable to the other because of such termination for compensation, reimbursement, or damages on account of the loss of prospective profits or anticipated sales, or on account of expenditures, investments, lease, or commitments in connection with the business or good will of Alpha® or the Distributor or for any other reason whatsoever growing out of such termination; and



E. The Distributor will remove and not thereafter use any sign or materials containing any trade name, logo, or trademark of Alpha®, and will immediately destroy all, advertising matter and other printed matter in its possession or under its control containing such name, or any of Alpha® trademarks, trade names or logos. The Distributor will not at any time after such termination use or permit any such trademark, trade name, or logo to be used in any manner in connection with any business conducted by it or in which it may have an interest, or otherwise whatsoever as descriptive of or referring to anything other than merchandise or products of Alpha®. Regardless of the cause of termination, the Distributor will immediately take all appropriate steps to remove and cancel its listings in telephone books and other directories, and public records, or elsewhere that contain the Alpha® name, logo or trademark. If a Distributor fails to obtain such removals or cancellations promptly, Alpha® may make application for such removals or cancellations on behalf of the Distributor and in Distributor's name and in such event the Distributor will render every assistance.

### **18. Acknowledgments**

Each party acknowledges that no representation or statement, and no understanding or agreement, has been made, or exists, and that in entering into this Policy each party has not relied on anything done or said or on any presumption in fact or in law, (1) with respect to this Policy, or to the duration, termination, or renewal of this Policy, or with respect to the relationship between the parties, other than as expressly set forth in this Policy; or (2) that in any way tends to change or modify the terms, or any of them, of this Policy or to prevent this Policy becoming effective; or (3) that in any way affects or relates to the subject matter hereof. The Distributor also acknowledges that the terms and conditions of this Policy, and each of them, are reasonable and fair and equitable.

### **19. Assignment**

Neither this Policy nor the Distributor's status as a distributor of Alpha® Products may be assigned by Distributor without the prior express written approval of Alpha®, which may be withheld by Alpha® at Alpha® absolute discretion.

### **20. Notices**

Any notice required by this Policy or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or by certified mail, postage prepaid, or recognized overnight delivery services, or by e-mail at the e-mail address provided by each party;

If to Alpha®:

Alpha Professional Tools®

16 Park Dr Ste 9

Franklin, NJ 07416

Attn: Sales Department

[sales@alpha-tools.com](mailto:sales@alpha-tools.com)

### **21. Governing Law**

This Policy shall be construed and enforced in accordance with the laws of the State of New Jersey.

### **CAUTIONS/WARNINGS**

Always read and follow directions found on labels and elsewhere. Always wear proper personal protection equipment. Always follow OSHA and ANSI safety procedures.