

THE DEALER AGREEMENT

The "Standard Provisions" of the "Nissan Dealer Sales and Service Agreement" provide, in pertinent part, the following:

Section 1. Definitions

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G. "Competitive Vehicles" shall mean those new vehicles which are considered by Seller [Nissan] to be directly competitive with Nissan Vehicles.

....

N. "Primary Market Area" shall mean the geographic area which is designated from time to time as the area of Dealer's sales and service responsibility for Nissan Products... Seller reserves the right, in its reasonable discretion, to issue new, superseding "Notices of Primary Market Area" to Dealer from time to time.

....

Q. "Executive Manager" shall mean the person named as Executive Manager in ... this Agreement upon whose personal qualifications, expertise, reputation, integrity, experience, ability and representations that he or she shall devote his or her primary efforts to and have full managerial authority and responsibility for the day-to-day management and performance of Dealer, Seller has relied in entering into this Agreement.

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Section 3. Vehicle Sales Responsibilities of Dealer

A. General Obligations of Dealer.

Dealer shall actively and effectively promote through its own advertising and sales promotion activities the sale at retail ... of Nissan Vehicles to customers located within Dealer's Primary Market Area. Dealer's Primary Market Area is a geographic area which Seller uses as a tool to evaluate Dealer's performance of its sales obligations... Seller may, in its reasonable discretion, change Dealer's Primary Market Area from time to time.

B. Sales of Nissan Cars and Nissan Trucks.

Dealer's performance of its sales responsibility for Nissan Cars and Nissan Trucks will be evaluated by Seller on the basis of such reasonable criteria as Seller may develop from time to time, including for example:

1. Achievement of reasonable sales objectives which may be established from time to time by Seller for Dealer as standards of performance;

Exhibit A

2. Dealer's sales of Nissan Cars and Nissan Trucks in Dealer's Primary Market Area and/or metropolitan area in which Dealer is located, as applicable, or Dealer's sales as a percentage of:
 - (i) registrations of Nissan Cars and Nissan Trucks;
 - (ii) registrations of Competitive Vehicles;
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3. A comparison of Dealer's sales and/or registrations to sales and/or registrations of all other Authorized Nissan Dealers combined in Seller's Sales Region and District in which Dealer is located. . .; and
4. A comparison of sales and/or registrations achieved by Dealer to the sales or registrations of Dealer's competitors.
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D. Additional Factors for Consideration

Where appropriate in evaluating Dealer's sales performance, Seller will take into account such reasonable criteria as Seller may determine from time to time, including, for example, the following: the Dealership Location; the general shopping habits of the public in such market area; the availability of Nissan vehicles to Dealer ...; any special local marketing conditions that would affect Dealer's sales performance differently from the sales performance of other Authorized Nissan Dealers; the recent and long term trends in Dealer's sales performance; the manner in which Dealer has conducted its sales operations (including advertising, sales promotion, and treatment of customers); and the other factors, if any, directly affecting Dealer's sales opportunities and performance.

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H. Evaluation of Dealer's Sales Performance

Seller will periodically evaluate Dealer's performance of its [sales] responsibilities...Dealer shall have the opportunity to comment, in writing, on such evaluations. Dealer shall promptly take such action as may be required to correct any deficiencies in Dealer's performance of its [sales] responsibilities...".

Section 6. Other Seller and Dealer Responsibilities

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D. Hours of Operations.

Dealer recognizes that the service and maintenance needs of the owners of Nissan Products and Dealer's own responsibilities to actively and effectively promote the sale of Nissan Products can be met only if Dealer keeps its Dealership Facilities open and conducts all of its Dealership Operations ... during hours which are reasonable and convenient for Dealer's

Exhibit A

customers. Accordingly, Dealer shall maintain its Dealership Facilities open for business and shall conduct all Dealership Operations required under this Agreement during such days and hours as automobile dealers' sales and service facilities are customarily and lawfully open in Dealer's Primary Market Area...

Section 12. Termination

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B. Termination by Seller for Non-Performance by Dealer.

1. If, based upon the evaluations thereof made by Seller, Dealer shall fail to substantially fulfill its responsibilities with respect to:

a. Sales of new Nissan Vehicles and the other responsibilities of Dealer set forth in Section 3 of this Agreement;

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Seller shall notify Dealer of such failure and will review with Dealer the nature and extent of such failure and the reasons which, in Seller's or Dealer's opinion, account for such failure.

Thereafter, Seller will provide Dealer with a reasonable opportunity to correct the failure. If Dealer fails to make substantial progress towards remedying such failure before the expiration of such period, Seller may terminate this Agreement by giving Dealer notice of termination...