

ProMax Online - Online Training Agreement

Date: _____

Dealership: _____ Dealer ID: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone number _____

Persons to be trained: _____

Sold by _____

Class: _____ Class: _____

Class: _____ Class: _____

Classes are \$30 each

Total amount due: \$ _____

Method of Payment-Circle One: Check or Visa / MC / Invoice on next tatement

Credit Card # Exp. Date

Name of Card holder

Credit Card Billing Address (leave blank if the above address is the billing address)

Item 1a – Definition of Training: Training session(s) will be conducted via internet meeting software (WebEx or similar) and telephone. Components necessary for effective training are: a high speed internet connection and an environment relatively free of distraction.

Item 2 - Payment Due Prior to Training: The following fees and charges are due to Dealer Marketing Services, Inc. (hereinafter “DMS”) no later than 7 days prior to the first Training Date defined in Item 1 (hereafter "DUE DATE"). Customer understands that in the event payment is not received by DMS on or before the DUE DATE, DMS may, at DMS's option, cancel such training in which case Customer agrees to pay to DMS within 10 days of invoice date a sum of money equal to 50% of the training fees applicable to this Agreement.

Item 3 - Training Terms: DMS will provide a DMS online trainer to Customer for the dates and training of products specified in this Agreement. It is also Customer's responsibility to ensure that all employees attending the Training are present and available for Training on the dates and times scheduled. In the event any or all employees are not available for any scheduled training session(s) times, Customer understands that the Training will be charged at a rate of 100%, regardless of attendance and Customer shall remain responsible for all amounts of money due as specified herein. Customer understands and agrees to provide a personal computer on which the current version of ProMax is installed for every employee designated for Training, as defined in Item 1a.

Item 4 - Warranty: DMS warrants that the DMS Trainer provided under this Agreement is authorized by DMS to provide the Training and that the DMS Trainer will be available for Training on the dates specified in this Agreement to provide the Training for the products specified herein. DMS makes no other warranty, expressed or implied, including but not limited to the adequacy or accuracy of the Training, the merchantability or fitness of the Training for a particular purpose, nor the compatibility of the Training with customer’s intended use of the Training. The Training is provided on and "As Is, As Available" basis.

Item 5 - DISCLAIMER: THE WARRANTY SET FORTH IN THE IMMEDIATELY PRECEEDING PARAGRAPH IS IN LIEU OF ALL OTHER WARRANTIES OF THE SERVICES PROVIDED HEREIN, EXPRESSED OR IMPLIED, AND CUSTOMER AGREES THAT THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A

PARTICULAR PURPOSE ARE EXLUDED FROM THIS TRANSACTION AND TO NO APPLY TO THE SERVICES PROVIDED HEREIN. IN THE EVENT ANY DMS OFFICERS, EMPLOYEES OR REPRESENTATIVES HAVE MADE ORAL OR WRITTEN STATEMENTS ABOUT THE SERVICES PROVIDED HEREIN WHICH CONFLICT WITH THIS AGREEMENT SUCH STATEMENTS SHALL NOT BE DEEMED WARRANTIES, SHALL NOT BE RELIED UPON BY CUSTOMER, AND SHALL NOT BE DEEMED PART OF THIS AGREEMENT. DMS IS NOT RESPONSIBLE FOR THE CORRECTNESS, ACCURACY, RELIABILITY, AND CURRENTNESS, OR OTHERWISE OF THE SERVICES PROVIDED HEREIN AND MAKES NO WARRANTY WITH RESPECT TO SUCH MATTERS. CUSTOMER ASSUMES ALL RISKS OF USING THE SERVICES PROVIDED HEREIN IN CUSTOMER'S BUSINESS.

Item 6 - Sales and Uses Taxes: Sales and uses taxes will be added when DMS is aware that taxes on the services provided herein are applicable; provided, however, that if such taxes are not added, and DMS is required to pay such taxes to any government authority, Customer will reimburse DMS for the amount of such payment within 10 days of the invoice date.

Item 7 - Limitation of Remedy: DMS shall not be liable for any indirect, special, incidental, or consequential damages, including but not limited to loss of profits, business interruption, loss of business, or other pecuniary loss or exemplary damages, whether due to negligence or other form of tort or contractual liability, even if DMS has been advised of the possibility of such damages.

Item 8 - Solicitation for Hire. Neither party shall solicit for hire any employee, contractor or any other personnel of the other party assigned to or involved in any consulting or training project under this Agreement for a period of twenty-four (24) months from the employee's contractor's or other personnel's conclusion of services hereunder.

Item 9 - Governing Law, Attorneys Fees and Enforcement Costs. This Agreement and all dealings between the parties hereto shall be determined by and are governed by the laws of the State of Illinois. DMS and Customer hereby submit to the jurisdiction of the Courts of the State of Illinois with venue at the Circuit Court of the Fourteenth Judicial Circuit at Rock Island, Rock Island County, Illinois. In the event of removal to a Federal Court such court shall be the District Court of the District of Illinois having jurisdiction over Rock Island, Illinois. The parties expressly waive the jurisdiction of any other Court; and acknowledge this Agreement, without more, shall be sufficient to sustain the dismissal of an action commenced in any Court other than specified in this Agreement. In the event DMS expends any sums of money to enforce any of its rights under this Agreement, Customer shall be responsible for and pay any and all such sums expended by DMS, including but not limited to attorney's fees, costs and expenses of litigation or otherwise. If any portion of this Agreement is determined to be legally invalid or unenforceable, such portion will be severed from this Agreement and the remainder of this Agreement will continue to be fully enforceable and valid.

Item 10 - Force Majeure: Neither party shall be in default if failure to perform any obligation hereunder is caused solely by supervening conditions beyond that party's control, including but not limited to, power outages, community service interruptions, acts of God, civil commotion, strikes, labor disputes, and governmental demands or requirements.

Item 11 - Miscellaneous:

A. This Agreement is the complete and exclusive statement of the understanding between the parties with the respect to the subject matter, superseding all prior agreements, representations, statements, and proposals, oral or written. Any amendments or modifications to this Agreement shall be in writing, signed by both parties.

B. No term or provision hereof shall be deemed waived and no breach excuses, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented to, waiver of, or excuse for any other different or subsequent breach.

C. DMS will not be liable for any delay or failure of performance resulting from causes beyond its reasonable control and without its fault or negligence.

D. All provisions of this Agreement relating to the protection of confidential and proprietary information shall survive the termination or expiration of this Agreement.

IN WITNESS WHEREOF, the parties hereto have read and agree to the terms on both sides of this Agreement, agree to be bound hereby, and have executed this Agreement by their duly authorized signatures as of the effective Date written above.

Customer _____
By _____
Title _____ Date _____

Dealer Marketing Services Inc.
By _____
Title _____ Date _____