



2021 NTD HERCULES FLEX PROGRAM EAST

National Tire Distributors offers the Hercules Flex Program to select dealers in an effort to build sales and market share of the Hercules brand in the medium truck replacement tire market. Unless terminated earlier, the 2021 Hercules Flex Program runs from January 1, 2021 (or later if the Dealer signs up after the initial enrollment) to December 31, 2021, and requires that the dealer (“Dealer”) and Hercules sign this Agreement to be effective. The Dealer agrees to use its best efforts to promote the sale of Hercules brand tires in the medium truck market segment.

MINIMUM DISPLAY AND PURCHASE REQUIREMENTS:

A Dealer agrees to display a minimum of two Hercules TBR tire lines. The Dealer must also purchase at least 200 Hercules TBR tires annually per participating location. In addition to its other rights to terminate this Agreement, if the Dealer is not purchasing enough units during the year, based on quarterly reviews, to be on track to meet these requirements, Hercules may terminate this Agreement.

PROGRAM BENEFITS:

A. Quarterly Volume Bonus:

- I. **MULTIPLE LOCATION DEALERS:** Dealers with multiple locations may sign one or more of their locations onto the program. Dealers with multiple locations will be tracked together under the same Hercules member number and assigned a minimum unit goal based on the program level assigned during enrollment. (i.e. A dealer with 2 locations with the same Hercules member number who is signed to Bronze will be required to hit a minimum of 400 units to be compliant).
- II. **PAYOUT STRUCTURE:** The schedule below is the payout structure by location. Dealers with multiple locations tracking together can purchase any combination of the minimum units required for compliance. Payout will be allocated based on the number of units purchased by location (i.e. A dealer with two locations signed to Bronze with a combined goal of 400 units; Store 1 purchased 350 units and Store 2 purchased 50 units the payout for each location will be allocated based on their individual purchases at the Bronze level).

Commitment Level	Annual Units per POS	Quarterly Units per POS	MTR
BRONZE	200-499	50-124	\$5.00
SILVER	500-749	125-187	\$6.50
GOLD	750-1199	188-299	\$8.00
PLATINUM	1200+	300+	\$10.00



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Qualifying Styles	
MTR	Strong Guard H-RA, Strong Guard H-RD, Strong Guard H-TL, Strong Guard H-DO, Strong Guard H-DC, Strong Guard H-MW, H-309, H-804, H-302, H-301, H-307, H-702, H-703, H-803, H-933.
FLEX HIGHWAY	Terra Trac CH4 (no QVB payout or Compliance Advantage payout).

*Terra Trac CH4 is not eligible for VB payout but will count towards a dealers achievement level.

B. Compliance Advantage:

- I. Compliance Advantage is a program exclusive through the Hercules Flex Program that offers program dealers valuable profit enhancing incentives by reaching consistent quarterly and YTD purchase objectives.
- II. Enrolled dealers that achieve their program objectives on a quarterly basis will earn Compliance Advantage Rebates on the following month's eligible brand purchases of Qualifying Styles excluding the Terra Trac CH4.
- III. Compliance Advantage incentives will increase each quarter achieved as long as the dealer continually meets their **Year-to-Date** purchase objectives. Dealers who sign up after the 1st quarter are eligible to participate in Compliance Advantage incentives per the published schedule and calendar quarter of enrollment.
- IV. Dealers who fail to meet a quarterly objective forfeit Compliance Advantage payouts associated with the quarter. However, dealers can earn Compliance Advantage incentives for the following quarter provided they achieve both the quarter and YTD goals. Payout percentage will be calculated off of the "previous unearned" Level. Dealers earn higher incentive levels through consistent quarterly compliance.
- V. There is no reconciliation for the Compliance Advantage. Incentives will be paid as an after-the fact credit following the close of the "earned" month.

JAN.	FEB.	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPT.	OCT.	NOV.	DEC.	JAN.
HIT PROGRAM QUARTERLY OBJECTIVE			Earn 2% Rebate									
			HIT PROGRAM YTD OBJECTIVE			Earn 3% Rebate						
						HIT PROGRAM YTD OBJECTIVE			Earn 4% Rebate			
									HIT PROGRAM YTD OBJECTIVE		Earn 5% Rebate	

ENROLLMENT LEVEL:

The Dealer must select a 2021 commitment level at enrollment ("Enrolled Level"). QVB payouts will occur each calendar quarter at the QVB Percentage level based upon the Dealer's Enrolled Level and the Dealer's volume levels at or above the required level for their Commitment Level.





YEAR END REVIEW AND RECONCILIATION:

Hercules will perform a 2021 year-end review and reconciliation of the Dealer's purchases by store. If a store's qualifying unit purchases in 2021 are sufficient to satisfy a commitment level above the Dealer's Enrolled Level, then the Dealer will receive an incremental QVB credit to bring the store's QVB credit to the achieved commitment level. Similarly, if a store's qualifying unit purchases in 2021 are not sufficient to satisfy the Dealer's Enrolled Level, but is at or above the Bronze Level, the Dealer will receive a QVB credit/debit to bring the store's QVB credit to the achieved commitment level. Below is an example showing purchases and corresponding QVB credit for a Silver dealer's store that attains the Gold level:

Silver Level Example	Qualifying Unit Sales Totals		Credit Calculation	
	Quarterly	YTD	MRT (Example)	Statement Credit
Quarter 1 (1/1 – 3/31)	100	100	\$6.50	\$ 0.00
Quarter 2 (4/1 – 6/30)	125	225	\$6.50	\$ 0.00
Quarter 3 (7/1 – 9/30)	200	425	\$6.50	\$ 2,762.50
Quarter 4 (10/1 – 12/31)	575	1000	\$6.50	\$ 3,737.50
	Total & Reconciled Bonus Level		Bonus Level Change	Reconciliation Credit
QVB Year End Reconciliation	1000	Gold	\$1.50	\$ 1,500.00

AUTHORIZED RETAILER:

For the term of this Agreement, Dealer is a non-exclusive, authorized retailer for qualifying Hercules Flex tires.

INCENTIVE TRIPS:

Dealers can also earn a trip to a premier resort location in early 2022. Dates and locations of the incentive trips will be announced in early 2021.

HERCULES "POWERHOUSE" INCENTIVE TRIP: A Dealer that commits to and purchases at least 1,200 qualifying units (see Qualifying Styles under the Quarterly Volume Bonus Above) and achieves the corresponding purchase requirements may opt to attend a "Powerhouse" incentive trip for two to a luxurious, premier resort location in early 2022.

The location and dates of the "Powerhouse" incentive trip will be announced in early 2021.

- Registration invitations will be sent to all qualifying Hercules Flex dealers upon unit attainment. Registration deadline will be January 31, 2022 and each qualifying Dealer selects their trip participants.
- Purchase requirements for incentive trips are not prorated. For example, the purchase requirements are the same (1,200 respectively) to earn a trip regardless of when the Dealer joins the Hercules Flex Program.

Generally each trip provides air, ground transport at the destination, a shared, double occupancy hotel room, food, beverage and a program of activities for two people. For international trips, be sure that all participants have current passports. Passport fees, out of pocket expenses during travel, transportation to the originating airport, room service charges, mini bar charges, other resort charges and other trip expenses are not included. Participants will need to provide a credit card at check in for their non-included resort charges, participants must be 21 years or older, and other conditions may apply.

TERMINATION:

Subject to the Effect of Termination Provision of the attached Flex Program Terms, either party may terminate the Dealer's participation in the Hercules Flex Program and this Agreement with or without cause upon 30 days written notice to the other party.



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FLEX PROGRAM TERMS

- UNAUTHORIZED SALES:** Dealer shall not, directly or indirectly, sell or trade Hercules branded passenger or light truck tires purchased under this Agreement anywhere other than at one of its enrolled stores. The restriction includes, without limitation, selling to online aggregators, via the internet or otherwise.
- DEALER EXPANSION, DEALER CHANGE OF CONTROL:** If the Dealer expands and adds an additional store, the dealer will be automatically eligible to market Hercules products in the expanded trade area after updating the enrollment section. Dealer agrees to notify Hercules at least thirty days prior to any new store opening. If the Dealer is purchased by another company or otherwise experiences a change of control, we urge the new owner to submit an application so that they may be considered for the Program, but the Program membership is not automatically transferrable.
- NONEXCLUSIVE APPOINTMENT:** Hercules has the right to designate other dealers and store locations, as Hercules dealers (e.g., Hercules Flex Program Dealers) without regard to existing participants and their locations/trade areas. There is no exclusive market or territory for the Dealer, even if the Dealer designates a trade area that the store draws from on the attached forms.
- HERCULES BRAND AND PROGRAM RIGHTS:** Hercules has the right to change its service policies, offer additional or different targeted or nationwide programs and discounts, change its financial requirements, change the prices for its products, change the design of its products, discontinue sales products in its product offerings, add new products to its product offerings at any time, all without notice and make other changes effecting the Hercules brand and programs. The Dealer shall have no claim against Hercules for costs, expenses or other damage by reason of any such change or changes.
- ADDITIONAL PURCHASE CALCULATION LIMITATIONS:** Purchase calculations for the various reward and incentive programs offered in this Agreement or otherwise, do not include warranty replacement tires, tires purchased from a source other than Hercules's authorized distributor, NTD.
- COMPLIANCE WITH LAWS:** Dealer will comply with all applicable laws and regulations in connection with this Agreement and any products purchased in connection with the Agreement.
- RELATIONSHIP OF PARTIES:** Dealer and Company have a relationship of an independent contractor and no act of Dealer or Company or any of their respective employees or representatives shall make the parties and agent of one another for any purpose whatsoever or bind or obligate the other party in any way. This Agreement does not constitute a franchise relationship between the parties. Dealer hereby acknowledges that Dealer has not paid a fee or other consideration to Company for the right to sell Hercules products.
- USE OF TRADEMARKS AND TRADE NAMES:** Hercules owns or has a license to use all trademarks, trade names, trade dress, endorsements, designs and logos, as well as any other text or images that appear on packaging or collateral materials, that are used in connection with the marketing, promotion and/or distribution of Hercules products (collectively, the "Trademarks"). Hercules grants to Dealer a limited license, non-exclusive, non-transferable, and revocable license to use the Trademarks during the term of the Agreement, solely in connection with and for the purpose of its distribution and sale of Hercules products, and only in a manner that is (1) consistent with the maintenance of Trademarks and (2) that preserves and protects the Trademarks under applicable state and federal law. Dealer has no right to develop any trademarks, trade name, trade dress or packaging in connection with the sale or distribution of the products, or to "private label" any Hercules Products without the express written consent of Hercules. When using Trademarks, Dealer will comply with all of Hercules's requests with respect to TM symbol and ® designations. Dealer agrees that it will not challenge Hercules's ownership of or right to use the Trademarks, nor will it attempt to own or obtain the right to use any of the Trademarks or rights that are substantially similar to the Trademarks, either by outright ownership or license from a third party. The immediately preceding sentence shall survive termination or expiration of the Agreement for any reason.
- INDEMNIFICATION:** Dealer agrees to defend, indemnify, and hold harmless Hercules and its affiliates, or their respective officers, directors, employees, shareholders, agents, successors, or assigns from all liabilities, claims, and expenses, including attorney's fees, that arise from Dealer's (a) breach of this Agreement; (b) any other act, omission or negligence of Dealer or any of Dealer's employees or agents. Hercules reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by Dealer, in which event Dealer will cooperate with Hercules in asserting any available defenses.
- Hercules agrees to defend, indemnify, and hold harmless Dealer and its affiliates, or their respective officers, directors, employees, shareholders, agents, successors, or assigns from all liabilities, claims, and expenses, including attorneys fees that arise from Seller's (a) the breach of the Agreement; (b) any other act, omission or negligence of Hercules or any of Hercules's employees or agents; (c) third party infringement claims related to any intellectual property, including trademarks, used to carry out the Agreement.
- EFFECT OF TERMINATION:** Following notice of termination of this Agreement, whether or not for cause, and regardless of who initiated the termination: (1) On and after the termination date, Hercules may cancel Dealer's outstanding purchase orders and withhold shipment of any Products not yet shipped to Dealer; (2) Dealer shall immediately cease use of the name "Hercules" or any Trademark, and shall stop holding itself out as a Hercules retailer; and, (3) Dealer shall have reasonable period of time upon termination by either party to sell-off existing inventory of Hercules products and utilize the Hercules name and Trademarks for this limited purpose. Hercules shall have the right, but not the obligation, to buy back any Hercules inventory. After such inventory is sold or after a reasonable period of time Dealer shall immediately cease use any Trademark of Hercules.
- WARRANTY DISCLAIMER AND MANUFACTURER WARRANTY.** As above, purchases of product are between Hercules' affiliate NTD and Dealer and are subject to NTD's terms of sale, product availability and acceptance of product orders, as applicable. All such sales include, without limitation, that other than NTD's warranty of title, **AS TO DEALER, NTD AND HERCULES DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED; INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** Dealer acknowledges and agrees that NTD is only a wholesale distributor and Hercules a Brand Name owner of the Products and that the only warranties applicable to the Products are those end user warranties expressly provided by the manufacturer of the Products (the "Manufacturer").
- LIMITATION OF LIABILITY.** NEITHER HERCULES, NOR NTD UNDER THIS AGREEMENT OR ANY RELATED SALE DOCUMENT, NOR DEALER WILL BE LIABLE FOR ANY INCIDENTAL CONTINGENT, SPECIAL, CONSEQUENTIAL, OR OTHER DAMAGES INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUE OR USAGE, COST OF SUBSTITUTE PRODUCTS, ADDITIONAL COSTS INCURRED BY THE OTHER PARTY OR CLAIMS BY EITHER PARTY CUSTOMERS OR THIRD PARTIES. TOTAL LIABILITY OF THE PARTIES TO ONE ANOTHER FOR DAMAGE OR LOSS ARISING OUT OF, OR IN ANY WAY RELATED TO, THE SALE OF PRODUCTS HEREUNDER, WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTY OR ANY OTHER CAUSE ("CLAIM") SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE PARTICULAR PRODUCTS WITH RESPECT TO WHICH SUCH CLAIM RELATES. HOWEVER, THIS LIMITATION OF LIABILITY SECTION SHALL NOT APPLY TO INDEMNIFICATION OBLIGATIONS FOR VIOLATIONS OF SECTIONS 1, 6, 5, 8 and/or 11.
- FORCE MAJEURE:** Each party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or services as a result of causes beyond its reasonable control, and without its fault or negligence, including without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, communication line failure and power failures. Nothing in the foregoing shall be deemed to (1) excuse a Dealer's obligation to pay any and all amounts owed to Hercules or its affiliates (e.g., ATD) or (2) excuse a Dealer for not meeting a specific unit purchase obligation- For example, if the related purchase obligation is not met, whether or not there is a force majeure event: (a) credits will not be earned or paid for the unit purchase obligation that is not met, and (b) no incentive trip will be earned unless the Dealer meets the required unit purchase obligation, or (3) excuse Hercules from not providing to the Dealer any credit it earned via meeting a specific unit purchase obligation under the applicable program. Note that the provision of incentive trips by Hercules is subject to, for obvious reasons, force majeure.
- GENERAL:** This Agreement supersedes any and all prior agreements relating to Hercules passenger and light truck tires offered by Hercules or any affiliate or parent of Hercules. Notwithstanding any waiver, or not, by either party of any term, any modification of this Agreement must be in writing and signed by both parties.



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ENROLLMENT SECTION

Please review and confirm the details below for the 2021 Hercules Flex Program

BRONZE
(200-499/POS)

SILVER
(500-749/POS)

GOLD
(750-1199/POS)

PLATINUM
(1200+/POS)

Dealer Location #: _____ Business Name: _____

Business Address: _____

City: _____ Province: _____ Postal Code: _____

Business Owner Email Address: _____ Ph#: _____

Primary Contact Name: _____

Primary Contact Email: _____

Primary Contact Phone: _____

Additional Location - Will be tracked separately:

Dealer Location #: _____ Business Name: _____

Business Address: _____

City: _____ Province: _____ Postal Code: _____

Business Owner Email Address: _____ Ph#: _____

Primary Contact Name: _____

Primary Contact Email: _____

Primary Contact Phone: _____

Dealer Location #: _____ Business Name: _____

Business Address: _____

City: _____ Province: _____ Postal Code: _____

Business Owner Email Address: _____ Ph#: _____

Primary Contact Name: _____

Primary Contact Email: _____

Primary Contact Phone: _____



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I have read, acknowledge and accept the terms and conditions of the 2021 Hercules Flex Program participation agreement which will apply to my continued participation in the program.

Print Name: _____

Owner Signature: _____ Date: _____

No, I do not wish to continue on the Hercules Flex Program



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