

Type/Clase :	Contrat-type/Model contract/Modelo de contrato
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**SAMPLE
DISTRIBUTORSHIP
AGREEMENT**



CHAMBER OF COMMERCE AND INDUSTRY
WESTERN AUSTRALIA

- 2.3. The Distributor shall have the right during the continuance of this Agreement to describe itself as the Manufacturer's "Authorised Distributor" for the Products in the Territory, but shall not hold itself out as the Manufacturer's agent or as being entitled to bind the Manufacturer in any way.
- 2.4. Nothing in this Agreement shall entitle the Distributor to any priority of supply in relation to the Products as against the Manufacturer's other distributors or customers or any right or remedy against the Manufacturer if any of the Products are sold in the Territory by any person outside the Territory other than the Manufacturer.
- 2.5. The Distributor shall not:
- 2.5.1. obtain the Products for resale from any person other than the Manufacturer;
 - 2.5.2. be concerned or interested, either directly or indirectly, in the manufacture or distribution in the Territory of any goods which compete with the Products;
 - 2.5.3. seek customers, establish any branch or maintain any distribution depot for the Products outside the Territory.

3. Supply of Products

- 3.1. Subject as provided in Clauses 2.4 and 3.2 the Manufacturer shall use its best endeavours to supply the Products to the Distributor in accordance with the Distributor's orders.
- 3.2. The Manufacturer shall not be under any obligation to continue the manufacture of all or any of the Products, and shall be entitled to make such alterations to the specification of the Products as it may think fit.
- 3.3. Each order for the Products shall constitute a separate contract, and any default by the Manufacturer in relation to any one order shall not entitle the Distributor to treat the Agreement as terminated.
- 3.4. The Distributor shall, in respect of each order for the Products to be supplied hereunder, be responsible for:
- 3.4.1. ensuring the accuracy of the order;
 - 3.4.2. providing the Manufacturer with any information necessary to enable the Manufacturer to process the order;
 - 3.4.3. complying with all labelling, marketing and other applicable legal requirements in the Territory; and
 - 3.4.4. obtaining any necessary import licences or other requisite documents, and paying all applicable customs charges, duties and taxes in respect of the importation of the Products into the Territory and their resale in the Territory.
- 3.5. The Manufacturer shall in respect of each order for Products be responsible for obtaining any export licences, certificates of origin or other governmental approval required to export the Products from [].

- 3.6. During the continuance of this Agreement the Distributor shall not later than [] days before the first day of each Quarter give a written estimate to the Manufacturer of the quantities of Products required to be delivered hereunder by the Manufacturer in each such Quarter, and shall promptly notify the Manufacturer of any changes in circumstances which may affect its requirements. The estimate referred to in this Clause shall be for information only and shall not be binding upon either the Manufacturer or Distributor.
- 3.7. An order shall state the quantity of Products required and upon receipt of each order the Manufacturer shall as soon as is practicable inform the Distributor of the Manufacturer's estimated delivery date for the consignment. On receipt of any order the Manufacturer shall immediately confirm acceptance of the order. The Manufacturer shall use all reasonable endeavours to meet the delivery date, but time of delivery shall not be of the essence and accordingly the Manufacturer shall have no liability to the Distributor if, notwithstanding such endeavours, there is any delay in delivery.
- 3.8. The title to any consignment of the Products shall not pass to the Distributor until the Manufacturer has received payment in full of the price therefor
- 3.9. Risk of loss of or damage to any consignment of the Products shall pass to the Distributor from the time the Manufacturer notifies the Distributor that the Products are available for collection or from the time of delivery to the carrier at the Manufacturer's premises, whichever is earlier.
- 3.10. The standard conditions of sale of the Manufacturer from time to time (a copy of the current form of which is attached as Appendix A hereto) shall apply to all sales of the Products to the Distributor pursuant to this Agreement, except to the extent that any terms of which are inconsistent with any of the provisions of this agreement, in which case the terms of this Agreement shall prevail. The Manufacturer shall give to the Distributor notice in writing of any material change in such standard conditions of sale not less than one month prior to such change taking effect for the purposes of this Agreement.

4. Payment for Products

- 4.1. All Products to be supplied by the Manufacturer pursuant to this Agreement shall be sold on an ex works (EXW 1990 Incoterms) basis, and accordingly the Distributor shall, in addition to the price, be liable for arranging and paying all costs of transport and insurance.
- 4.2. Where the Manufacturer agrees at the request of the Distributor to arrange for transport and insurance as agent for Distributor, the distributor shall reimburse to the Manufacturer the full costs thereof and all the applicable

provisions of this Agreement shall apply with respect to the payment of such costs as they apply to payment of the price of the Products.

- 4.3. The prices for all Products to be supplied hereunder shall be the Manufacturer's EXW 1990 Incoterms list prices from time to time [inclusive of packaging costs] less [] per cent. The Manufacturer shall supply to the Distributor up to date copies of all price lists for the Products from time to time and give the Distributor not less than [] day's notice in writing of any alteration in such list prices. The prices as so altered shall apply to all Products delivered on and after the applicable date of the increase, including outstanding orders.
- 4.4. If the Distributor fails to pay the price for any Products within [] days after the date of invoice therefor, the Manufacturer shall be entitled (without prejudice to any other right or remedy it may have) to:
 - 4.4.1. cancel or suspend any further delivery to the Distributor under any order;
 - 4.4.2. sell or otherwise dispose of any Products which are the subject of any order by the Distributor, whether or not appropriated thereto, and apply the proceeds of sale to the overdue payment; and
 - 4.4.3. charge the Distributor interest on the price at the rate of [] per cent per annum above [] Bank base rate in force from time to time from the date the payment became due until actual payment is made (irrespective of whether the date of payment is before or after any judgement or award in respect of the same).
- 4.5. All prices for the Products are exclusive of any applicable value added or any other sales tax, for which the Distributor shall be additionally liable.
- 4.6. All payments shall be made by the Distributor in [] by transfer to such bank account as the Manufacturer may from time to time notify in writing to the Distributor.

5. Marketing of Products

- 5.1. The Distributor shall use its best endeavours to promote the sale of the Products throughout the Territory and, subject to compliance by the Manufacturer of its obligation under Clause 3.1, to satisfy market demand therefor.
- 5.2. The Distributor shall be entitled, subject as provided in this Agreement, to promote and market the Products in the Territory in such manner as it may think fit, and in particular shall be entitled to resell the products to its customers at such prices as it may determine.
- 5.3. The Distributor shall maintain such stocks of the Products as may be necessary to meet its customers' requirements.

5.4. In connection with the promotion and marketing of the Products, the Distributor shall

- 5.4.1. make clear, in all dealings with customers and prospective customers, that it is acting as distributor of the Products and not as agent of Manufacturer;
- 5.4.2. comply with all legal requirements from time to time in force relating to the storage and sale of the Products;
- 5.4.3. provide to the Manufacturer copies of its up to date price lists;
- 5.4.4. provide the Manufacturer on a monthly basis with a report, in such form as the Manufacturer may reasonably require, of sales of products which it has made in the preceding month and containing such other information as the Manufacturer may reasonably require;
- 5.4.5. from time to time consult with the Manufacturer's representatives for the purpose of assessing the state of the market in the Territory and permit them to inspect any premises or documents used by the Distributor in connection with the sale of the Products;
- 5.4.6. at the request of the Manufacturer provide to it copies of such sales aids, including (without limiting the foregoing) catalogues, sales brochures and sales manuals as relate to the Products;
- 5.4.7. use in relation to the Products only such advertising, promotional and selling materials as are approved in writing by the Manufacturer;
- 5.4.8. maintain an active and, subject to implementation of Clause 6.2, suitably trained sales force;
- 5.4.9. spend not less than [] on advertising the products in the Territory during each Year of this Agreement.

6. Support and Training

6.1. The Manufacturer shall from time to time provide the Distributor (free of charge) with such samples, catalogues, brochures and up to date information concerning the Products as the Manufacturer may consider appropriate or as the Manufacturer may reasonably require in order to assist the Distributor with the sale of the Products in the Territory, and the Manufacturer shall endeavour to answer as soon as practicable any technical enquires concerning the Products which are made by the Distributor or its customers

6.2. During the first year of this agreement.

- 6.2.1. the Manufacturer shall make available to the Distributor at such time as may be agreed and for a period not exceeding [] working days, the services of a suitably qualified employee of the Manufacturer to assist the Distributor in the marketing of the Products; and
- 6.2.2. the Distributor shall be entitled to send to the Manufacturer's premises at such time as may be agreed and for a period not exceeding [] working days, up to [] suitable qualified employees of the Distributor for training by the Manufacturer in matters relating to the Products and their marketing.

6.3. The services to be provided by the Manufacturer pursuant to Clauses 6.1 and 6.2 shall be free of charge, but the Distributor shall:

6.3.1. Reimburse to the Manufacturer all travelling, accommodation and other expenses reasonably incurred by any employees of the Manufacturer in providing such services; and

6.3.2. Remain liable for all salaries and other employment costs of, and all travelling, accommodation and other expense incurred by, employees of the Distributor who are sent to the Manufacturer's premises.

6.4. In any case where employees of either party visit the premises of the other for the purposes of this Agreement, the first mentioned party shall:

6.4.1. Procure that each such employee complies with all security, safety and other regulations which apply to or are in force at the other party's premises; and

6.4.2. Indemnify the other party against all liabilities, costs, damages and expenses to the extent that the same are caused by any negligent act or omission by any such employee at the other party's premises.

7. Trade Marks and other Intellectual Property

7.1. The Manufacturer hereby authorises the Distributor to use the Trade Marks in the Territory on or in relation to the Products for the purposes only of exercising its rights and performing its obligation under this Agreement.

7.2. The Distributor shall ensure that each reference to and use of any of the Trade Marks by the Distributor is in a manner from time to time approved by the Manufacturer and accompanied by an acknowledgment, in a form approved by the Manufacturer, that the same is a trade mark (or registered trade mark) of the Manufacturer.

7.3. The Distributor shall not;

7.3.1. Make any modifications to the Products or their packaging;

7.3.2. Alter, remove or tamper with any Trade Marks, numbers, or other means of identification used on or in relation to the Products;

7.3.3. Use any of the Trade Marks in any way which might prejudice their distinctiveness or validity or the goodwill of the Manufacturer therein;

7.3.4. Use in relation to the Products any trade marks other than the Trade Marks without obtaining the prior written consent of the Manufacturer; or

7.3.5. Use in the Territory any trade marks or trade names so resembling any trade mark or trade names of the Manufacturer as to be likely to cause confusion or deception.

7.4. Except as provided in Clause 7.1 the Distributor shall have no rights in respect of any trade names or Trade Marks used by the Manufacturer in relation to the Products or of the goodwill associated therewith, and the Distributor hereby acknowledges that, except as expressly provided in this

Agreement, it shall not acquire any rights in respect thereof and that all such rights and goodwill are, and shall remain, vested in the Manufacturer.

- 7.5. The Distributor shall take all such steps as the Manufacturer may reasonably require to assist the Manufacturer in maintaining the validity and enforceability of the Intellectual Property of the Manufacturer during the term of this Agreement provided that the Manufacturer shall indemnify the Distributor against all costs, claims, damages, responses or other liabilities arising from or in connection with such steps.
- 7.6. The Distributor shall, at the request of the Manufacturer, execute such registered user agreements or licences in respect of the use of the Trade Marks in the Territory as the Manufacturer may reasonably require, provided that the provisions thereof shall not be more onerous or restrictive than the provisions of this agreement.
- 7.7. Without prejudice to the right of the Distributor or any third party to challenge the validity of any Intellectual Property of the Manufacturer, the Distributor shall not do or authorise any third party to do any act which would or might invalidate or be inconsistent with any Intellectual Property of the Manufacturer.
- 7.8. The Distributor shall promptly and fully notify the Manufacturer of any actual, threatened or suspected infringement in the Territory of any Intellectual Property of the Manufacturer which comes to the Distributor's notice, and of any claim by any third party so coming to its notice that the importation of the Products into the Territory, or their sale therein, infringes any rights of any other person, and the Distributor shall at the request and expense of the Manufacturer do all such things as may be reasonably required to assist the manufacturer in taking or resisting any proceedings in relation to any such infringement or claim.

8. Confidentiality

Each party acknowledges that in the course of performing its obligations hereunder it will receive information which is confidential and proprietary to the other. Each party agrees not to use such information except in performance of this Agreement and not to disclose such information to third parties except in the normal course of business in its performance of this Agreement under an appropriate non-disclosure agreement with such third party. Such confidential and proprietary information includes, without limitations, any information which is stamped or marked as confidential if it is or hereafter enters into the public domain by a source other than the recipient or is acquired by the recipient from an independent source not through breach of this clause 8. This obligation shall survive the expiry or termination of this agreement and shall subsist for so long as the information remains confidential.

9. Warranties and Liability

- 9.1 Subject as herein provided the Manufacturer warrants to the Distributor that:
- 9.1.1 All Products supplied thereunder will at the time of delivery (and at the time of the Distributor's subsequent sale) be of merchantable quality and will comply with any specification agreed for them;
 - 9.1.2 The Trade Marks given in Schedule 2 are registered in the name of the Manufacturer and the Manufacturer has disclosed to the Distributor all Trade Marks and Trade Names used by the Manufacturer in relation to the Products at the date of this Agreement; and
 - 9.1.3 It is not aware of any rights of any third party in the Territory, which would or might render the sale of the Products, or the use of any of the Trade Marks on or in relation to the Products, unlawful.
- 9.2 In the event of any breach of the Manufacturer's warranty in Clause 9.1.1. (whether by reason of defective materials, production faults or otherwise) the Manufacturer's liability shall be limited to:
- 9.2.1 replacement of the Products in question; or
 - 9.2.2 at the Manufacturer's option, repayment of the price (where this has been paid).
- 9.3 Notwithstanding anything to the contrary in this Agreement, the Manufacturer shall not, except in respect of death or personal injury caused by the negligence of the Manufacturer, be liable to the Distributor by reason of any representation or implied warranty, condition or other term of any duty at common law, or under the express terms of this Agreement, for any consequential loss or damage (whether for loss of profit or otherwise and whether occasioned by the negligence of the Manufacturer or its employees or agents or otherwise) arising out of or in connection with any act or omission of the Manufacturer relating to the manufacturer or supply of the Products, their resale by the Distributor or their use by any customer.

10. Force Majeure

- 10.1 Neither party shall be deemed to be in breach of this Agreement to the extent that performance of its obligations (except for the payment of monies due hereunder) is delayed or prevented by the circumstances beyond the reasonable control of that party ("Force Majeure") provided that each party gives the other party written notice promptly and uses its good faith efforts to cure the breach.
- 10.2 In the event of Force Majeure the time for performance or care will be extended for a period equal to the duration of the event of Force Majeure.

- 10.3 If the Force Majeure in question prevails for a continuous period in excess of six months the parties shall enter into bona fide discussions with a view to alleviating its effects or to agreeing upon such alternative arrangements as may be fair and reasonable.

11. Duration and Termination

- 11.1 This agreement shall come into force on the date hereof or and, subject as provided in Clauses 11.2 and 11.3, shall continue in force for an initial period of [] years and thereafter unless or until terminated by either party giving to the other not less than [] months' written notice expiring at or at any time after the end of the initial period.
- 11.2 The Manufacturer shall be entitled to terminate this Agreement by giving not less than 30 days' written notice to the Distributor if there is at any time a material change in the management, ownership or control of the Distributor.
- 11.3 Without prejudice to Clause 3.3, either party shall be entitled forthwith to terminate this Agreement by written notice of the other if:
- 11.3.1 That other party commits any material breach of any of the provisions of this Agreement and, in the case of a breach capable of remedy, fails to remedy the same within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;
 - 11.3.2 An encumbrancer take possession or a receiver is appointed over any of the property of assets of that other party;
 - 11.3.3 That other party makes any voluntary arrangement with its creditors or becomes subject to an administration order;
 - 11.3.4 That other party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other party under this Agreement);
 - 11.3.5 Anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to that other party; or
 - 11.3.6 That other party ceases, or threatens to cease, to carry on business.
- 11.4 For the purposes of Clause 11.3.1, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).
- 11.5 Any waiver by either party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision thereof.

11.6 Any termination of this Agreement shall be without prejudice to any other rights or remedies of either party in respect of the breach concerned (if any) or any other breach.

12. Consequences of Termination

12.1 Upon the termination of this Agreement for any reason:

12.1.1 The Manufacturer shall be entitled (but not obliged) to repurchase from the Distributor all or part of any stocks of the Products then held by the Distributor at their Invoice Value or the value at which they stand in the books of the Distributor, whichever is lower; provided that:

- a) the Manufacturer shall be responsible for arranging and for the cost of, transport and insurance; and
- b) the Distributor may sell stocks for which it has accepted orders from customers prior to the date of termination, or in respect of which the Manufacturer does not, by written notice given to the Distributor within 7 days after the date of termination exercise its right to repurchase, and for those purposes and to the extent the provisions of this Agreement shall continue in full force and effect;

12.1.2 The Distributor shall at its own expense within 30 days send to the Manufacturer or otherwise dispose of in accordance with the directions of the Manufacturer all samples of the Products and any advertising, promotional or sales material relating to the Products then in the possession of the Distributor;

12.1.3 Outstanding unpaid invoices rendered by the Manufacturer in respect of the Products shall become immediately payable by the Distributor and invoices in respect of Products ordered prior to termination but for which an The Distributor shall at its own expense within 30 days send to the invoice has not been submitted shall be payable immediately upon submission of the invoice;

12.1.4 The Distributor shall cease to promote, market or advertise the Products or to make any use of the Trade Marks other than for the purpose of selling stock in respect of which the Manufacturer does not exercise its right or repurchase;

12.1.5 The Distributor shall at its own expense join with the Manufacturer in procuring the cancellation of any registered user agreements entered into pursuant to Clause 7.6;

12.1.6 The provisions of Clauses 8 and 9 shall continue in force in accordance with their respective terms;

12.1.7 The Distributor shall have no claim against the Manufacturer for compensation for loss of distribution rights, loss of goodwill or any similar loss; and

12.1.8 Subject as otherwise provided herein and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under the Agreement.

13. **General Provision**

- 13.1 The Manufacturer shall be entitled to perform any of the obligations undertaken by it and to exercise any of the rights granted to it under this Agreement through any other company or subsidiary or the subsidiary of any such holding company and any act or omission of any such company shall for the purposes of this Agreement be deemed to be the act or omission of the Manufacturers.
- 13.2 The Manufacturers may assign this Agreement and the rights and obligations thereunder.
- 13.3 This Agreement is personal to the Distributor, which may not without the written consent of the Manufacturer, assign, mortgage, charge (otherwise than by floating charge) or dispose of any of its right hereunder, or sub-contract or otherwise delegate any of its obligations hereunder.
- 13.4 Nothing in this Agreement shall create, or be deemed to create, a partnership or the relationship of principal and agent or employer and employee between the parties.
- 13.5 This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, supersedes all previous agreements and understandings between the parties (whether written or oral) with respect thereto, and may not be modified except by an instrument in writing signed by the duly authorised representatives.
- 13.6 Each party acknowledges that, in entering into this Agreement, it does not do so on the basis of, and does not rely on, any representation, warranty or other provision except as expressly provided therein, and all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.
- 13.7 If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.
- 13.8 Failure by either party of insist upon the strict performance of any of the terms and conditions of this Agreement shall not be construed as a waiver of that term or conditions and shall in no way affect the part's right to inter enforce such provision.

14. **Jurisdiction and Proper Law**

This agreement shall be governed by and construed in accordance with the laws of [] and each party hereby submits to the non-exclusive jurisdiction of [] for the purposes of resolving any dispute and /or enforcing any claim arising hereunder.

15. **Notices and Services**

Any notice hereunder shall be in writing and served by personal service or post at the address of the receiving party set forth in this Agreement (or at such different address as may be designated by such party by written notice to the other party). All notices or demands by post shall be by facsimile or by certified or registered post and shall be deemed effective upon actual receipt.

**IN WITNESS WHEREOF, THE PARTIES HERETO HAVE CAUSED THE
PRESENT AGREEMENT TO BE DULY EXECUTED.**

For and on behalf of

[_____]

Name _____

Title _____

Date _____

For and on behalf of

[_____]

Name _____

Title _____

Date _____

APPENDIX A

Manufacturer's Standard Conditions of Sale

[]