



Terms and Conditions

1. Definitions and Interpretation

1.1. The definitions and rules of interpretation in this clause apply in this agreement;

Commencement Date: means the date stated in the Agreement Summary Sheet.

Control: means the ability to direct the affairs of another, whether by virtue of the ownership of shares, contract or otherwise.

Minimum Quantity: means Products to the value stated in the Agreement Summary Sheet in respect of the period commencing from the date of the delivery of the first shipment of Products to the Distributor and thereafter such other amounts as may be agreed in writing between the parties in relation to each Year.

Products: means the products of the type and specification manufactured and packed under the Trade Marks and listed in the Agreement Summary Sheet together with any other products developed by the Supplier and which the Supplier may permit the Distributor, by express notice in writing, to distribute in the Territory.

Territory: means the country listed in the Agreement Summary Sheet and thereafter such additional countries as the parties shall from time to time agree.

Trade Marks: means the trade mark registration and applications for the mark stated in the Agreement Summary Sheet together with any further trade marks which the Supplier may permit or procure permission for the Distributor by express notice in writing to use in the Territory in respect of the Products.

Year: means the period of 12 months from the Commencement Date and each consecutive period of 12 months thereafter during the term of this agreement.

1.2. References to clauses and schedules are to the clauses of and schedules to this agreement.

1.3. Headings are for convenience only and shall be ignored in interpreting this agreement.

2. Appointment

2.1. The Supplier hereby appoints the Distributor as its distributor to import and distribute the Products in the Territory on the terms of this agreement

2.2. The Agreement Summary Sheet sets out whether the Distributor is appointed as an exclusive or a non-exclusive Distributor.

2.3. The Distributor shall during the continuance of this Agreement only re-sell the Products to the Customer Type specified in the Agreement Summary Sheet

2.4. The Distributor shall not represent itself as an agent of the Supplier for any purpose, nor pledge the Supplier's credit or give any condition or warranty or make any representation on the Supplier's behalf or commit the Supplier to any contracts. Further, the Distributor shall not without the Supplier's prior written consent make any promises or guarantees with reference to the Products beyond those contained in the promotional material supplied by the Supplier or otherwise incur any liability on behalf of the Supplier.

2.5. The Distributor shall not sell any of the Products which it purchases from the Supplier to a sub distributor without the express written permission of the Supplier.

2.6. Where the Supplier provides written permission pursuant to Clause 2.4 above, the Distributor shall only sell Products to a sub-distributor on terms and conditions that are consistent with the provisions of this Agreement and, in particular, which restrict the sub-distributor from reselling Products outside of such country or countries within the Territory as have been allocated to it and prohibit the sub-distributor from reselling Products other than to the Customer Type described in the Agreement Summary Sheet.

3. Distributor's Undertakings

The Distributor undertakes and agrees with the Supplier at all times during the term of this agreement:

3.1. to use its best endeavours to promote the distribution and sale of the Products in the Territory;

3.2. to submit written reports at regular intervals to the Supplier showing details of sales, service stock, outstanding customer orders and orders placed by the Distributor with the Supplier still outstanding and any other information relating to the performance of its obligations under this agreement the Supplier may reasonably require from time to time;

3.3. to maintain on its own account an inventory of the Products at levels which are appropriate and adequate for the Distributor to meet all customer delivery requirements for the Products throughout the Territory;

3.4. to keep full and proper books of account and records showing clearly all enquiries, quotations, transactions and proceedings relating to the Products;

3.5. to provide the Supplier, on request, with such other information relating to its accounts and records relating to the Products as the Supplier shall reasonably require;

3.6. to inform the Supplier immediately of any changes in ownership or control of the Distributor and of any change in its organisation or

method of doing business which might affect the performance of the Distributor's duties in this agreement.

4. Supply of Products

4.1. No later than the end of the first Year of this Agreement and at each anniversary thereafter, the Distributor shall inform the Supplier in writing of its forecast of the number of each type of the Products which it expects to purchase from the Supplier for delivery during the ensuing twelve month period commencing on the first day of the month following the latest date for issue of the forecast set out above.

4.2. The Supplier undertakes to use all reasonable endeavours to meet all orders for the Products forwarded to the Supplier by the Distributor in accordance with the Supplier's terms of delivery to the extent that the orders do not exceed the forecast for each type of the Products provided under clause

4.1 and the Distributor agrees to purchase the Products for its own account for resale pursuant to this agreement.

4.3. Where the Distributor has been appointed as an exclusive Distributor in the Territory, the Distributor shall place orders with the Supplier in respect of the Minimum Quantity of Products for each country listed within the Territory

4.4. In the event that the Distributor fails to place orders in respect of the Minimum Quantity of Products in relation to any country within the Territory then the Supplier shall be entitled, on serving written notice on the Distributor, to vary Clause 4.3 so that the appointment of the Distributor shall be as a non-exclusive Distributor in the country within the Territory in respect of which the Minimum Quantity of Products have not been ordered.

4.5. The Supplier is entitled upon giving one months' written notice to the Distributor to exclude from this agreement one or more of the Products as it thinks fit if for any reason the production of such Products has been permanently discontinued. The Supplier is entitled to make changes to the specifications of the Products which do not adversely affect that Product and shall give notice of such changes to the Distributor as soon as reasonably practicable. The Supplier will consult with the Distributor before implementing any such change.

5. Supplier's Undertakings

The Supplier undertakes:

5.1. to supply the Products only to the Distributor for resale in the Territory.

5.2. to provide any information and support as may reasonably be requested by the Distributor to enable it properly and efficiently to discharge its duties under this agreement.

5.3. to approve or reject any promotional information or material submitted by the Distributor within 28 days of receipt.

6. Prices and Payment

6.1. The prices to be paid by the Distributor to the Supplier for the Products are to be the Supplier's list prices as established by the Supplier from time to time.

6.2. The Supplier shall give the Distributor 14 days notice of any rises in the prices for the Products.

6.3. Any and all expenses, costs and charges incurred by the Distributor in the performance of its obligations under this agreement shall be paid by the Distributor unless the Supplier has expressly agreed beforehand in writing to pay such expenses, costs and charges.

6.4. Unless otherwise stated in the Agreement Summary Sheet the Distributor shall pay the full amount invoiced to it by the Supplier in pounds sterling within 30 days of the date of invoice. The Supplier shall be entitled to cancel any order placed by the Distributor or to suspend or delay delivery of any quantity of Products ordered by the Distributor where any amounts owing to the Supplier have not been settled in accordance with these terms.

6.5. The Distributor shall not be entitled by reason of any set-off, counter-claim, abatement, or other similar deduction to withhold payment of any amount due to the Supplier.

6.6. The Distributor shall be responsible for the collection, remittance and payment of any or all taxes, charges, levies, assessments and other fees of any kind imposed by governmental or other authority in respect of the purchase, importation, sale, lease or other distribution of the Products.

7. Advertising and Promotion

7.1. The Distributor shall:

7.1.1. be responsible for the advertising and promotion of the Products in the Territory provided that the use by the Distributor of any advertising materials and promotional literature shall be subject to the prior written consent of the Supplier;

7.1.2. display advertising materials and other signs provided by the Supplier; and

7.1.3. observe all directions and instructions given to it by the Supplier in relation to promotion and advertisement of the Products and shall not make any written statement as to the quality or manufacture of the Products without the prior written approval of the Supplier.

7.2. The Supplier shall provide the Distributor with information on the advertising and promotion carried out by the Supplier and shall supply such quantities of available promotional and advertising material as the Distributor shall reasonably request at the cost of the Distributor.

7.3. The Supplier shall, where mutually agreed, participate with the Distributor in fairs and exhibitions in the Territory.

8. Compliance with Laws and Regulations



8.1. The Distributor shall be responsible for obtaining any necessary import licences or permits necessary for the entry of the Products into the Territory, or their delivery to the Distributor, and the Distributor shall be responsible for any and all customs duties, clearance charges, taxes, brokers' fees and other amounts payable in connection with the importation and delivery of the Products.

8.2. The Distributor warrants to the Supplier that it has informed the Supplier of all laws and regulations affecting the manufacture, sale, packaging and labelling of Products which are in force within the Territory or any part of it (Local Regulations) at the date of this agreement.

8.3. The Supplier in turn warrants to the Distributor that the Products comply with the Local Regulations in force at the date of this agreement.

8.4. The Distributor shall give the Supplier as much advance notice as reasonably possible of any prospective changes in the Local Regulations.

8.5. On receipt of notification from the Distributor under clause 8.4, the Supplier shall endeavour to ensure that the Products comply with any change in the Local Regulations by the date of implementation of that change or as soon as is reasonably possible thereafter.

9. Conditions of Purchase

The conditions of purchase as notified by the Supplier to the Distributor from time to time shall apply to all sales by the Supplier to the Distributor under this agreement. If there is any inconsistency between such conditions of sale and the terms of this agreement, the latter shall prevail.

10. Trade Marks

10.1. The Supplier hereby grants to the Distributor the non-exclusive right in the Territory to use the Trade Marks in the promotion, advertisement and sale of the Products in accordance with the terms of and for the duration of this agreement.

10.2. The Products shall be sold under the Trade Marks and on all Products, containers and advertisements for the Products the symbol ® shall be used in conjunction with the registered Trade Marks or "TM" in conjunction with any Trade Mark applications or unregistered trade marks.

10.3. All representations of the Trade Marks which the Distributor intends to use shall first be submitted to the Supplier for approval.

10.4. The Distributor shall not, without the prior written consent of the Supplier, alter or make any addition to the labelling or packaging of the Products displaying the Trade Marks, and shall not alter, deface or remove in any manner any reference to the Trade Marks, any reference to the Supplier or any other name attached or affixed to the Products or their packaging or labelling.

10.5. The Supplier makes no representation or warranty as to the validity or enforceability of the Trade Marks nor as to whether the same infringe on any intellectual property rights of third parties in the Territory.

10.6. The Distributor shall forthwith enter into any document necessary for the recording, registration or safeguarding of the Supplier's Trade Mark rights with the Supplier in respect of the marketing of the Products under the Trade Marks in a form satisfactory to the Supplier.

10.7. With respect to trade mark infringement:

10.7.1. each party shall promptly give notice in writing to the other in the event that it becomes aware of:

10.7.1.1. any infringement or suspected infringement within the Territory of the Trade Marks or any other intellectual property rights in or relating to the Products; and

10.7.1.2. any claim that any Product or the manufacture, use, sale or other disposal of any Product within the Territory, whether or not under the Trade Marks, infringes the rights of any third party.

10.8. In the case of any matter falling within clause 10.7.1.1.;

10.8.1. the Supplier shall, in its absolute discretion, determine what action if any shall be taken in respect of the matter;

10.8.2. the Supplier shall have sole control over and shall conduct any action as it shall deem necessary in pursuance of clause 10.7.1.1. and

10.9. In the case of any matter falling within clause 10.7.1.2.:

10.9.1. the Supplier and the Distributor shall consult to decide what steps shall be taken to prevent or terminate the infringement and the proportions in which they shall share the cost of those steps and any damages and other sums which may be awarded in their favour or against them; and

10.9.2. failing agreement between the parties, either party shall be entitled to take all action as it shall consider to be necessary or appropriate at its own expense to defend such a claim and shall be entitled and subject to all damages and other sums which may be recovered or awarded against it as a result of any such action.

10.10. Each party shall, at the request and expense of the other, provide all reasonable assistance to the other (including but not limited to the use of its name in or being joined as a party to proceedings) in connection with any action to be taken by the other party pursuant to this clause 10, provided that that party is given such indemnity as it may reasonably require against any damage to its name.

11. Product Liability and Insurance

11.1. Subject to fulfilment by the Distributor of all the conditions contained in this clause 11, the Supplier shall indemnify the Distributor against any liability incurred by the Distributor in respect of damage to

property, death or personal injury arising from any fault or defect in the materials or workmanship of the Products and any reasonable costs, claims, demands and expenses arising out of or in connection with that liability (Relevant Claim), except to the extent that the liability arises as a result of the action or omission of the Distributor.

11.2. The Distributor shall, immediately it becomes aware of a matter which may result in a Relevant Claim:

11.2.1. give notice to the Supplier of the details of the matter;

11.2.2. afford access to the Supplier and permit copies to be taken of any materials, records or documents as the Supplier may require to take action under clause 11.2.3;

11.2.3. allow the Supplier the exclusive conduct of any proceedings and take whatever action as the Supplier shall direct to defend or resist the matter, including the use of professional advisers nominated by the Supplier; and

11.2.4. not admit liability or settle the matter without the written consent of the Supplier.

11.3. Where the matter concerns a failure by a customer to use a Product correctly or in accordance with instructions then the Distributor shall be responsible for handling such matter and dealing with the customer.

11.4. The Supplier shall maintain product liability insurance for the duration of this agreement of not less than £5 million per annum with a reputable insurer and shall provide a copy of the insurance policy to the Distributor on request by the latter.

11.5. The Distributor undertakes to maintain appropriate up-to-date and accurate records to enable the immediate recall of any batches of the Products or any of them from the retail or wholesale markets. These records shall include records of deliveries to customers (including details of batch numbers, delivery date, name and address of customer, and telephone number and fax or telex number if available).

11.6. The Distributor shall, at the Supplier's cost, give such assistance as the Supplier shall require for the purpose of recalling as a matter of urgency any quantities of the Products or any of them from the retail or wholesale market.

12. Duration and Termination

12.1. This agreement shall come into effect on the Commencement Date and, subject to clause 12.2, clause 12.3 and clause 15.2, shall continue in force for the Term stated in the Agreement Summary Sheet.

12.2. Without prejudice to any other rights to which it may be entitled, either party may give notice in writing to the other terminating this agreement with immediate effect if:

12.2.1. the other party commits any material breach of any of the terms of this agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified of the breach; or

12.2.2. an order is made or a resolution is passed for the winding up of the other party, or an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or such an administrator is appointed, or documents are filed with the Court for the appointment of an administrator, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding-up order, or the other party takes or suffers any similar or analogous action in consequence of debt, or an arrangement or composition is made by the other party with its creditors or an application to a court for protection from its creditors is made by the other party; or

12.3. The Supplier may terminate this agreement forthwith by notice in writing if:

12.3.1. the Distributor fails to purchase the Minimum Quantity of Products (where the Distributor is the exclusive distributor in a Territory);

12.3.2. if there is a change of Control of the Distributor;

12.3.3. the Distributor at any time challenges the validity of the Trade Marks;

12.3.4. the Distributor breaches clauses 2.2 or 3.1 of this Agreement; or

12.3.5. the Distributor purports to assign its rights or obligations under this Agreement.

13. Effects of Termination

13.1. Termination of this agreement however caused shall be without prejudice to any rights or liabilities accrued at the date of termination.

13.2. On termination:

13.2.1. the Supplier shall have the option to buy from the Distributor all stocks of the Products as are in first class order and condition at the same price as was paid by the Distributor for the Products. The option must be exercised within 30 days of termination and the purchase shall take place and the price shall be paid within 30 days of the exercise of the option and the costs of shipping the Products to the Supplier shall be borne by the Distributor through deduction from the price paid by the Supplier. The Distributor shall dispose of all remaining stocks of the Products as the Supplier may instruct;

13.2.2. if the Supplier chooses not to exercise its option under clause 13.2.1 to re-purchase the Products, the Distributor shall be permitted for a period of three (3) months following termination of this agreement to sell and distribute any stocks of the Products as it may at the time have in store or under its control; thereafter, the Distributor shall promptly return all remaining stocks of



the Products to the Supplier at the expense of the Distributor or otherwise dispose of the stocks as the Supplier may instruct;

13.2.3. on the exercise of the Supplier's option to repurchase the Products under clause 13.2.1, or on the expiration of the three (3) month period under clause 13.2.2, the Distributor shall promptly return to the Supplier or otherwise dispose of as the Supplier may instruct all samples, technical pamphlets, catalogues, advertising materials, specifications and other materials, documents or papers whatsoever sent to the Distributor and relating to the Supplier's business (other than correspondence which has passed between the parties) which the Distributor may have in its possession or under its control; and

13.2.4. the termination of this agreement shall not of itself give rise to any liability on the part of the Supplier to pay any compensation to the Distributor, including but not limited to, for loss of profits or goodwill.

13.3. Subject to clause 13.2, all other rights and licences of the Distributor under this agreement shall terminate on the termination date.

13.4. The provisions of clauses 11, 13, 14, 21 and 24 shall continue to apply after the date of termination.

14. Confidentiality

14.1. Each party agrees and undertakes that during the term of this agreement and thereafter it shall keep confidential and shall not use for its own purposes, nor without the prior written consent of the other party disclose to any third party, all information of a confidential nature (including, without limitation, information relating to a party's products, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets and information of commercial value) which may become known to that party from the other party (Confidential Information), unless the information is public knowledge or already known to that party at the time of disclosure or subsequently becomes public knowledge other than by breach of this agreement or subsequently comes lawfully into the possession of that party from a third party.

14.2. To the extent necessary to implement the provisions of this agreement, each party may disclose Confidential Information to those of its employees as may be reasonably necessary or desirable, provided that before any such disclosure each party shall make those employees aware of its obligations of confidentiality under this agreement and shall at all times procure compliance by those employees with them.

15. Force Majeure

15.1. The obligations of each party under this agreement shall be suspended during the period and to the extent that that party is prevented or hindered from complying with them by any cause beyond its reasonable control including (insofar as beyond such control but without prejudice to the generality of the foregoing expression) strikes, lock-outs, labour disputes, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, difficulty or increased expense in obtaining workmen, materials, goods or raw materials in connection with the performance of this agreement.

15.2. In the event of either party being so hindered or prevented, the party concerned shall give notice of suspension as soon as reasonably possible to the other party stating the date and extent of the suspension and its cause, and the omission to give such notice shall forfeit the rights of that party to claim suspension. Any party whose obligations have been suspended as aforesaid shall resume the performance of those obligations as soon as reasonably possible after the removal of the cause and shall so notify the other party. In the event that the cause continues for more than 6 months either party may terminate this agreement on 30 days notice.

16. Entire Agreement

This agreement constitutes the entire understanding between the parties with respect to the subject matter of this agreement and supersedes all prior agreements, negotiations and discussions between the parties relating to it.

17. Amendments

Save as expressly provided in this agreement, no amendment or variation of this agreement shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it.

18. Assignment

18.1. This agreement is personal to the Distributor which may not, without the prior written consent of the Supplier assign, transfer, charge or deal in any other manner with this agreement or its rights under it or part of it, or purport to do any of the same, nor sub-contract any or all of its obligations under this agreement.

18.2. The Supplier may assign this agreement and the rights and obligations under this agreement.

19. Freedom of Contract

The parties declare that they each have the right, power and authority and have taken all action necessary to execute and deliver and to exercise their rights and perform their obligations under this agreement.

20. Waiver

The failure of a party to exercise or enforce any right under this agreement shall not be deemed to be a waiver of that right, nor operate to bar the exercise or enforcement of it at any time or times thereafter.

21. Severability

If any part of this agreement becomes invalid, illegal or unenforceable, the parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the invalid, illegal or unenforceable provision which as nearly as possible validly gives effect to their intentions as expressed in this agreement. Failure to agree on such a provision within six months of commencement of those negotiations shall result in automatic termination of this agreement. The obligations of the parties under any invalid, illegal or unenforceable provision of the agreement shall be suspended during such a negotiation.

22. Notices

Any notice required to be given pursuant to this agreement shall be in writing and shall be given by delivering the notice by hand at, or by sending the same by prepaid first class post (airmail if to an address outside the country of posting) to, the address of the relevant party as set out in this agreement or such other address as either party notifies to the other from time to time. Any notice given according to the above procedure shall be deemed to have been given at the time of delivery (if delivered by hand) and when received (if sent by post).

23. Rights of third parties

A person who is not a party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

24. Governing Law and Jurisdiction

This agreement shall be governed by and construed in accordance with English law and each party hereby irrevocably submits to the jurisdiction of the English Courts.