

MODEL CONTRACTS FOR SMALL FIRMS

LEGAL GUIDANCE FOR DOING INTERNATIONAL BUSINESS

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International Distribution of Goods

Introduction

This Model Contract is for the **distribution of manufactured goods**, between a Supplier and a Distributor.

1. The contract, like the Model Contract for International Long-Term Supply of Goods, is intended for use in connection with the supply of manufactured goods, whether or not The Supplier is the manufacturer of the goods. Frequently (but not always) the goods in question will be intended for retail sale.
2. A main reason to appoint a Distributor is that the *Supplier is unable to carry out the distribution in a particular Territory alone, or is unwilling to invest in the distribution infrastructure that is required in order to do so*. The Supplier will wish to be assured that the distribution of the goods will be undertaken in an efficient and vigorous manner. The *Distributor will usually seek assurances that its efforts will be protected in some way*, possibly by being appointed as the sole Distributor, or as the exclusive Distributor, in a given Territory. *Conversely, a Supplier may wish to ensure that the Distributor's efforts are concentrated on the Territory in question*. These points are dealt with in Article 1.
3. *Territorial restrictions on either party* may have consequences under applicable law, and these aspects need to be carefully considered.
4. The increasing importance of *electronic commerce* is a further aspect of distribution that needs to be dealt with in the contract.
5. The provisions of the contract dealing with the *supply* of the goods (Article 2), the procedure for *ordering* the goods (Article 3), the *price* of the goods (Article 4), *payment* of the price (Article 5), *warranties* relating to the goods (Article 6) and other terms of supply (schedule 4) are essentially the *same as for the Model Contract for International Long-Term Supply of Goods*.
6. Article 7 deals with the central issue of *how the goods are to be distributed*, and what level of effort will be required. In its turn Article 8 deals with the *support and training* to be given by the Supplier.
7. Frequently the goods to be distributed will be protected by various forms of *Intellectual Property*, in particular Trademarks, which the Distributor will need to use in the course of its marketing and distribution activities, and these are dealt with in Article 9.
8. The remaining provisions of the contract are similar to those of the Model Contract for International Long-Term Supply of Goods, except for Article 13, which deals with the *consequences of termination*, in terms of the repurchase of stock and related matters.

ITC MODEL CONTRACT FOR THE INTERNATIONAL DISTRIBUTION OF GOODS

PARTIES:

Supplier

Name (name of company)

.....

Legal form (e.g. limited liability company)

.....

Country of incorporation and (if appropriate) trade register number

.....

Address (address of place of business of the Supplier, phone, fax, e-mail)

.....

.....

Represented by (surname and first name, address, position, legal title of representation)

.....

.....

Distributor

Name (name of company)

.....

Legal form (e.g. limited liability company)

.....

Country of incorporation and (if appropriate) trade register number

.....

Address (address of place of business of the Distributor, phone, fax, e-mail)

.....

.....

Represented by (surname and first name, address, position, legal title of representation)

.....

.....

collectively “the Parties”

[Add any further information required e.g. the Parties’ fiscal identities]

Background

- A. The Supplier carries on business in the *[manufacture and – delete if not applicable]* supply of *[specify Goods]*.
- B. The Supplier wishes to appoint the Distributor as the Supplier's Distributor in the Territory of *[specify Territory]* (the "Territory") for the resale of certain of the Goods *[manufactured and – delete if not applicable]* supplied by the Supplier, details of which are set out in schedule 1 (the "Goods"), and the Distributor is willing to accept such an appointment, on the terms of this contract.

Operative provisions

1. Appointment of the Distributor

1.1 The Supplier appoints the Distributor as the Supplier's Distributor for the resale of the Goods in the Territory during the period of this contract (the "Term"), subject to the following provisions.

1.2 The appointment of the Distributor is exclusive/non-exclusive *[delete as appropriate]*.

[Comment: The Parties should take into consideration that in some legal systems exclusivity may have competition law implications.]

1.3 For so long as the appointment of the Distributor remains exclusive the Supplier shall not:

- 1.3.1 Appoint any other person as its Distributor for the sale of the Goods in the Territory; or
- 1.3.2 Supply (either by itself or through an agent) any of the Goods to any other person in the Territory; or
- 1.3.3 Supply any of the Goods to any other person outside the Territory if the Supplier knows, or ought reasonably to know, that they are intended for resale in the Territory *[- delete if the appointment is not exclusive.]*

1.4 The Supplier reserves the right to advertise and sell its products (including the Goods through its website (currently at *www [specify domain name]*) to customers in the Territory *[but the Supplier shall pay the Distributor a commission of [ten (10) % – specify any other figure]* of the net sales value received by the Supplier for any Goods sold through its website to customers in the Territory *[- to be deleted if not appropriate.]*

1.5 The Distributor shall not:

- 1.5.1 Obtain any of the Goods (or any Goods which compete with the Goods) for resale from any person other than the Supplier;
- 1.5.2 Be concerned or interested, either directly or indirectly, in the manufacture or distribution in the Territory of any Goods which compete with any of the Goods;
- 1.5.3 Seek customers, establish a warehouse or distribution outlet for any of the Goods or otherwise actively market any of the Goods outside the Territory; or

- 1.5.4 Sell any of the Goods to any person outside the Territory, or inside the Territory if the Distributor knows, or ought reasonably to know, that the person intends to resell the Goods outside the Territory. *[Delete if not appropriate.]*

[Comment: The Parties should take into consideration that in some legal systems restrictions on sale by a Distributor may not be lawful.]

[Option: “1.6 [The Distributor shall not sell the Goods through any mail order or similar system, or via the Internet or any other electronic means, to customers either in or outside the Territory.” [– delete if not appropriate].]

[Comment: The Parties should take into consideration that in some legal systems a restriction on sales through the Internet or otherwise may not be lawful.]

[Alternative 1:

“1.6 The Distributor shall be entitled to resell the Goods via the Internet, e-mail or any other electronic means, provided that any website, e-mail or other electronic means used for this purpose is not specifically targeted at customers outside the Territory.”]

[Alternative 2:

“1.6 The Distributor shall not sell any of the Goods through a sales’ agent or to a sub-Distributor in the Territory without the prior written consent of the Supplier, but the Supplier shall not unreasonably withhold or delay giving such consent.” [delete if not appropriate].]

2. Supply of the Goods

2.1 During The Term the Supplier shall sell and the Distributor shall purchase the Goods ordered by the Distributor for resale, subject to the Terms of this contract.

2.2 The specification of the Goods shall be as set out in schedule 1, but the Supplier reserves the right to make any change in the specification of the Goods that is necessary in order for them to conform with any applicable laws, provided the Supplier promptly informs the Distributor in writing of any such change that it proposes to make.

2.3 The Distributor shall promptly inform the Supplier of any proposed change in the specification of the Goods which is necessary in order for them to conform with any applicable laws in the Territory, in which event the Supplier shall promptly notify the Distributor in writing whether it is willing to change the specification and (if so) any resulting change in the price of the Goods. If the Supplier does not notify the Distributor in writing within a reasonable time (not exceeding *[thirty (30) days – specify any other period]*) that it agrees to the change in the specification, or if it does do so but the Distributor does not notify the Supplier in writing within a reasonable time (not exceeding *[thirty (30) days – specify any other period]*) that it agrees any change in the price of the Goods proposed by the Supplier, the Goods in question shall cease to be subject to this contract, and where the Goods in question form all or a substantial proportion of the Goods covered by this contract, either party may terminate this contract by giving written notice to the other party.

[Option: Minimum purchase obligation

“2.4 In each [year – specify any other period] of the Term the Distributor, unless prevented by force majeure, shall order from the Supplier not less than the minimum quantity of the Goods specified in schedule 2. If the Supplier fails by reason of force majeure or otherwise to supply the Distributor with that quantity of the Goods, the minimum quantity of the Goods for the [year – specify any other period] in question shall be reduced by the quantity of the Goods that the Supplier fails to supply.”.]

2.5 Subject to the provisions of this contract, the supply of the Goods shall be made on the basis of the terms of sale set out in schedule 4. In the event of any conflict between those terms and the terms of this contract, the terms of this contract shall prevail.

3. Procedure for ordering the Goods

3.1 The Distributor shall, not less than *[fifteen (15) – specify any other period]* days before the beginning of each *[month – specify any other period]*, give the Supplier its written order for the Goods to be delivered to the Distributor during that *[month – specify any other period]*.

3.2 Each order for the Goods must be given in writing and shall be subject to confirmation in writing by the Supplier. The Supplier shall confirm the order in writing to the Distributor within *[fifteen (15) days – specify any other period]* after it is given, unless the Supplier has a valid reason not to do so. Upon confirmation by the Supplier each order shall be final, but the Supplier may at its discretion accept an amendment to an order within *[fifteen (15) days – specify any other period]* after it is given.

[Option: “3.3 [Each order for the Goods shall upon confirmation by the Supplier be deemed to constitute a separate contract, and accordingly any breach by the Supplier in relation to any one order shall not entitle the Distributor to terminate this contract as a whole” [– delete if not appropriate].]

3.4 The Distributor shall notify the Supplier in writing of:

- 3.4.1 Its estimated orders for the Goods for each *[year – specify any other period]* during the Term, within *[specify period]* months prior to that *[year – specify any other period]*; and
- 3.4.2 Any revisions to those estimates, as soon as practicable after they are made.

3.5 The Distributor shall be responsible to the Supplier for:

- 3.5.1 Ensuring the accuracy of each order for the Goods given by the Distributor;
- 3.5.2 Promptly giving the Supplier all necessary information relating to the Goods which is reasonably requested by the Supplier to enable the Supplier to fulfil each order in accordance with its terms; and
- 3.5.3 Obtaining any necessary import licences or other requisite documents (except those to be provided by the Supplier in accordance with schedule 4), and otherwise complying with any applicable laws or regulations concerning the importation of the Goods into the Territory, and for paying all applicable customs duties, taxes and charges in respect of the importation of the

goods into the Territory and their resale in the Territory (unless they are exempt).

3.6 Upon confirmation of each order the Supplier shall as soon as is practicable *[and in any event within [specify] days – delete if not appropriate]* inform the Distributor of the Supplier's estimated delivery date for the Goods.

3.7 The Supplier shall *[use its reasonable commercial endeavours to – delete if not appropriate]* deliver the Goods on *[or within [specify] days of – delete if not appropriate]* the estimated delivery date for each order.

3.8 *[Option 1: Liquidated damages for delay]*

"If there is any delay in the delivery of the Goods [of more than [specify] days after the estimated delivery date] then, unless the delay is due to force majeure, the price of the Goods shall be reduced by [specify monetary amount] for every day of the day until delivery of the Goods, subject to a maximum of [specify] % of the price".]

[Option 2: No liability for delay due to Distributor]

"The Supplier shall have no liability for any delay in delivery of the Goods that is due to any failure by the Distributor to provide any required information in good time".]

3.9 The Supplier shall use its reasonable commercial endeavours to manufacture and maintain sufficient stocks of the Goods to fulfil its obligations under this contract, but may *[after consultation with the Distributor – delete if not appropriate]* discontinue the manufacture of all or any of the Goods, in which case the Supplier will give the Distributor *[thirty (30) days' – specify any other period]* notice in writing of the discontinuation, and the Supplier shall fulfil all outstanding orders for the Goods in question which are placed by the Distributor before the date of the notice.

3.10 If the Distributor's orders for the Goods exceed (or it appears from any estimate or revised estimate given by the Distributor that they will exceed) the output capacity or available stocks of the Supplier:

3.10.1 The Supplier shall as soon as practicable notify the Distributor;

3.10.2 The Distributor shall be entitled to obtain from any other person such quantity of the Goods as the Supplier is unable to supply in accordance with the Distributor's orders until such time as the Supplier has given the Distributor written notice (together with such supporting evidence as the Distributor may reasonably require) that it is able and willing to resume the supply of the Goods in accordance with the Distributor's orders and the Distributor has had a reasonable time to terminate any alternative supply arrangements which it may have made with any other person; and

3.10.3 *[That quantity shall be deemed for the purposes of Article 2.4 to have been ordered from the Supplier – delete if there is no minimum purchase obligation under Article 2.4.]*

3.11 *[Option (where there is a minimum purchase obligation):]*

"Within [sixty (60) days – specify any other period] after the end of each [year – specify any other period] during the Term the Distributor shall submit to the Supplier a written report showing the total quantity of the Goods (or any other Goods of the same description) of which the Distributor has taken delivery from any person (including the Supplier) in that year."]

4. Price of the Goods

4.1 Except as otherwise agreed in writing between the Supplier and the Distributor, the prices for all Goods to be supplied under this contract shall be the Supplier's *[Ex works/FOB – specify any other basis]* list prices from time to time.

4.2 The Supplier shall:

4.2.1 Supply the Distributor with copies of the Supplier's *[Ex works/FOB – specify any other basis]* price lists for the Goods in force from time to time; and

4.2.2 Give the Distributor not less than *[specify period]* months' notice in writing of any alteration in those prices, and the prices as so altered shall apply to all Goods delivered on and after the applicable date of the increase, including outstanding orders.

[Alternative to Article 4.2.2: Give the Distributor not less than [specify period] months' notice in writing of any alteration in those prices, and the prices as so altered shall apply to all Goods ordered after the applicable date of the increase.]

[Option: Cost related price increase

“4.3 The Supplier reserves the right to increase the price of the Goods to reflect any material increase in the cost to the Supplier of [manufacturing or – delete if not appropriate] supplying the Goods subject to giving not less than [specify period] notice to the Distributor [provided that the Supplier shall not increase the price of any of the Goods by more than [specify] % in any [year – specify any other period] of the Term – delete if not appropriate], and the prices as so altered shall apply to all Goods ordered after the applicable date of the increase.”]

[Option: Distributor's right of termination for price increase

“4.4 If pursuant to Article 4.2 [or 4.3] the Supplier increases or proposes to increase the price of the Goods [by more than [specify] % in any year [specify any other period]], the Distributor may terminate this contract by giving not less than [specify period] written notice to the Supplier.”]

[Option: Price comparison

“4.5 If at any time the Distributor can establish that the price of any of the Goods exceeds the price at which a bona fide third party is supplying Goods of a similar specification in commercially significant quantities and on a regular basis in the Territory of the Distributor, the price of the Goods shall, at the request of the Distributor in writing, be reduced accordingly. If the Supplier does not agree in writing to such a request within a reasonable time (not exceeding [thirty (30) days – specify any other period]), the Goods in question shall cease to be subject to this contract, and where the Goods in question form all or a substantial proportion of the Goods covered by this contract, either party may terminate this contract by giving written notice to the other party.”]

4.6 The prices of the Goods are *[exclusive/inclusive – delete as appropriate]* of any applicable value added tax or similar tax, for which the Distributor shall be liable in addition to the price.

4.7 If the Supplier agrees to deliver the Goods otherwise than on an *[Ex works/FOB – specify as appropriate]* basis, the price is exclusive of the Supplier's charges for transport, packaging and insurance up to the point of delivery, for which the Distributor shall be liable in addition to the price.

5. Payment

5.1 The price of the Goods shall be payable within *[thirty (30) days – specify any other period]* of the Supplier's invoice (which may be submitted at any time after the Goods are despatched) or as otherwise agreed in writing between the Parties.

5.2 All payments shall be made by transfer to a bank account specified by the Supplier in writing, without any set-off, deduction or withholding except for any tax that the Distributor is required by law to deduct or withhold.

5.3 *[Option 1: Payment in advance]*

“The Supplier may invoice the Distributor for the price of the Goods at any time before delivery, and the Distributor shall pay the sum due in cleared funds to the bank nominated by the Supplier on or before delivery.”.]

[Option 2: Other methods of payment]

*“The Supplier may require the Distributor to pay the price of any Goods by *[specify payment method, e.g. payment by documentary collection / payment by irrevocable documentary credit]*.”.]*

5.4 Time for payment of the Goods shall be of the essence of this contract. *[delete if not applicable.]*

5.5 If the Distributor fails to pay the price for any Goods in accordance with this contract, the Supplier may (without limiting any other right or remedy):

5.5.1 Cancel or suspend any further delivery to the Distributor under any order;

5.5.2 Sell or otherwise dispose of any Goods which are the subject of any order by the Distributor, whether or not appropriated to the order, and apply the proceeds of sale to the overdue payment; and

5.5.3 Charge the Distributor interest on the outstanding amount (both before and after any judgment) at the rate of *[specify]* % from the due date until the outstanding amount is paid in full.

[Comment: The Parties should take into consideration that in some legal systems payment of interest is unlawful, or is subject to a legal maximum rate, or there is provision for statutory interest on late payments.]

6. Warranties relating to the Goods

6.1 Subject to the following provisions, the Supplier warrants to the Distributor that:

6.1.1 The Supplier has *[or at the time of delivery will have – delete if not appropriate]* good title to the Goods supplied under this contract;

6.1.2 *[The importation of the Goods and the resale of the Goods by the Distributor [and their use by any customer of the Distributor – delete if not appropriate] will not infringe the patent, design, copyright, Trademark or other Intellectual Property rights of any other person – delete if not appropriate]; and*

6.1.3 Subject to Article 6.2, the Goods supplied under this contract *[and their use by any customer of the Distributor will comply with any specification agreed for them and be free from defects in material and workmanship for a period of [ninety (90) days – specify any other period]* from delivery to the Distributor and comply with all health and safety and other applicable legal requirements.

6.2 The Supplier shall be under no liability in respect of any defect in the Goods arising from fair wear and tear, or any wilful damage, negligence, subjection to abnormal working conditions, failure to follow the Supplier's written instructions, misuse or alteration or repair of the Goods without the Supplier's approval, or any other act or omission on the part of the Distributor, its employees or agents or any third party.

[Option: "6.3 In the event of any breach of the Supplier's warranty under Article 6.1.3 the Supplier's liability shall be limited to:

6.3.1 *Repair or (if that is not practical) replacement of the product in question; or*

6.3.2 *Repayment of any part of the price for the product in question which has been paid" [– delete if not appropriate.]*

[Option: "6.4 [Where the Supplier is not the manufacturer of the Goods, the Supplier shall, without limiting its other obligations, extend to the Distributor the benefit of any warranty given by the manufacturer" [– delete if not appropriate.]

[Option (in common law systems) "6.5 All other warranties or other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law."]

7. Distribution of the Goods

7.1 The Distributor shall use its reasonable commercial endeavours to promote, market and distribute the sale of the Goods throughout the Territory.

7.2 The Distributor shall use its reasonable commercial endeavours to distribute the sale of the Goods in accordance with a Business Plan for the marketing and sale of the Goods (the "Business Plan"), the first Business Plan being in the form annexed to this contract. The Distributor shall update the Business Plan on an annual basis, and pending any such updating the previous year's Business Plan shall continue to apply.

7.3 In connection with the promotion, marketing and sale of the Goods the Distributor shall:

7.3.1 Make it clear in all dealings with customers and prospective customers that it is acting as Distributor of the Goods and not as the agent of the Supplier;

7.3.2 Comply with all applicable legal requirements;

7.3.3 (Subject to Article 3.10) maintain a level of stocks of the Goods necessary to meet its customers' requirements;

- 7.3.4 Keep all stocks of the Goods which it holds in conditions that are appropriate for their storage and provide appropriate security for the Goods;
 - 7.3.5 Insure at its own cost with a reputable insurance company all stocks of the Goods held by it against all risks which would normally be insured against by a prudent businessman to at least their full replacement value, and produce to the Supplier on demand full particulars of that insurance and the receipt for the then current premium;
 - 7.3.6 *[Provide the Supplier with copies of its up to date price lists – delete if not appropriate.]*
[Comment: The Parties should take into consideration that in some legal systems such a provision may have competition law implications.]
 - 7.3.7 Provide the Supplier on request with copies of brochures, catalogues, manuals and other marketing materials used by the Distributor in relation to the Goods;
 - 7.3.8 Use in relation to the Goods only advertising, promotional and marketing materials which are approved in writing by the Supplier;
 - 7.3.9 Observe all directions and instructions reasonably given to it by the Supplier in relation to the promotion and advertisement of the Goods, and not make any written or oral statements as to the quality or fitness of the Goods without the prior written approval of the Supplier;
 - 7.3.10 Employ a sufficient number of suitably qualified personnel to fulfil its obligations under this contract; and
 - 7.3.11 Provide an after-sales and maintenance service for customers in relation to the Goods to the Supplier's reasonable satisfaction during the Term and for a period of *[six (6) months – specify any other period]* after the termination of this contract.
- 7.4 The Distributor shall:
- 7.4.1 Keep full and proper books of account and records showing clearly all enquiries, quotations, transactions and proceedings relating to the Goods, and allow the Supplier, on reasonable notice, access to its accounts and records relating to the Goods for the purpose of inspection;
 - 7.4.2 Provide the Supplier on a monthly basis with a report, in such form as the Supplier may reasonably require, of all sales of the Goods that it has made in the preceding month and containing such other information as the Supplier may reasonably require;
 - 7.4.3 Inform the Supplier immediately of any changes in the ownership or control of the Distributor and of any change in its organization or method of doing business which might affect the performance of the Distributor's duties under this contract; and
 - 7.4.4 Consult with the Supplier's representatives from time to time in order to assess the state of the market in the Territory, and permit them to inspect any premises used by the Distributor in connection with the sale of the Goods.

7.5 The Distributor shall carry out its obligations in relation to the marketing, promotion and sale of the Goods and the provision of after-sales and maintenance services at its own expense and with all due skill, care and diligence, and shall at all times act towards the Supplier dutifully and in good faith in all matters relating to this contract.

7.6 *[Option 1: Supplier's contribution to advertising]*

"The Supplier shall in each [year – specify any other period] of The Term spend not less than [specify amount] on advertising and promoting the Goods in the Territory.".]

[Option 2: Distributor's contribution to advertising]

"During each [year – specify any other period] of the Term the Distributor shall spend not less than the amount specified in the Business Plan for that [year – specify any other period] on advertising and promoting the Goods in the Territory.".]

8. Support and training

8.1 The Supplier shall from time to time provide the Distributor *[free of charge – delete if not appropriate]* with reasonable samples of the Goods, and such brochures, catalogues, manuals and up to date promotional and advertising information concerning the Goods as the Supplier may consider appropriate or as the Distributor may reasonably request, in order to assist the Distributor with the sale of the Goods in the Territory.

8.2 The Supplier shall endeavour to answer as soon as practicable any technical enquiries concerning the Goods which are made by the Distributor or its customers, and provide the Distributor with support in dealing with any defective Goods.

[Option: "8.3 During the first year of the Term:

8.3.1 The Supplier shall make available to the Distributor (at times to be agreed and for up to [specify number] working days) the services of a suitably qualified employee of the Supplier to assist the Distributor in the marketing of the Goods; and

8.3.2 The Distributor may send to the Supplier's premises (at times to be agreed and for up to [specify number] working days) up to [specify number] suitably qualified employees of the Distributor for training by the Supplier in relation to the Goods and their marketing – delete if not appropriate.".]

8.4 The Distributor shall:

8.4.1 Reimburse the Supplier for all travelling, accommodation and other expenses reasonably incurred by any employees of the Supplier in providing those services; and

8.4.2 Remain liable for all salaries and other employment costs of, and all travelling, accommodation and other expenses incurred by, employees of the Distributor who are sent to the Supplier's premises." *[Delete if not appropriate.]*

9. Intellectual Property

9.1 The Supplier grants to the Distributor the exclusive/non-exclusive [*delete as appropriate*] right to use in the Territory in relation to the promotion, marketing and sale of the Goods the Supplier's Trademarks details of which are given in schedule 5 and any other Trademarks used by the Supplier in relation to the Goods at any time during the Term which are notified in writing to the Distributor (the "Trademarks") and any patent, copyright, design right or other Intellectual Property rights ("Intellectual Property") of the Supplier, to the extent necessary for the purposes of exercising its rights and performing its obligations under this contract.

9.2 The Distributor shall ensure that each reference to and use of any of the "Trademarks" by the Distributor in relation to the Goods in any advertising or marketing material or otherwise is in a manner from time to time approved by the Supplier and accompanied by an acknowledgement, in a form approved by the Supplier, that it is a Trademark (or registered Trademark) of the Supplier.

9.3 The Distributor shall not:

- 9.3.1 Modify the Goods or their packaging, except to the extent that this is required in accordance with applicable law;
- 9.3.2 Alter or remove from the Goods any of the Trademarks, or the numbers or other means of identification used on or in relation to the Goods;
- 9.3.3 Use any of the Trademarks in any way which might prejudice their distinctiveness or validity or the goodwill of the Supplier;
- 9.3.4 Use in relation to the Goods any Trademarks other than the Trademarks without obtaining the prior written consent of the Supplier;
- 9.3.5 Use in the Territory any Trademarks or trade names which so resemble any of the Trademarks as to be likely to cause confusion or deception;
- 9.3.6 Use any of the Trademarks as part of the Distributor's corporate or business name; or
- 9.3.7 Apply for or register as a Trademark or as a domain name in the Territory or elsewhere any name or mark which is the same as or similar to any of the Trademarks or any domain name of the Supplier, but if the Distributor applies for or registers any Trademark or domain name in breach of this Article, it shall [*hold the benefit of the application or the registration on trust for the Supplier and – delete if not appropriate*] transfer it to the Supplier on demand.

9.4 Except as provided in this contract, the Distributor shall have no rights in respect of any trade names or Trademarks used by the Supplier in relation to the Goods or of the goodwill associated with them, or any other Intellectual Property of the Supplier in respect of the Goods.

9.5 The Distributor shall, at the request and expense of the Supplier, execute a "formal licence in respect of the use by the Distributor in the Territory of the Trademarks or any other Intellectual Property of the Supplier in respect of the Goods, in a form which the Supplier may reasonably require, provided that the provisions of the licence are not more onerous or restrictive than those of this

contract, and shall where appropriate assist the Supplier in effecting the registration of any such licence in the Territory.

9.6 The Distributor shall, at the request and expense of the Supplier, take all steps that the Supplier may reasonably require to assist the Supplier in maintaining the validity and enforceability of the Trademarks or any other Intellectual Property of the Supplier in respect of the Goods.

9.7 The Distributor shall not do or authorize any third party to do any act which would or might invalidate or be inconsistent with any of the Trademarks or any other Intellectual Property of the Supplier or its licensor in respect of the Goods, and shall not authorize any third party to do so.

9.8 The Distributor shall promptly and fully notify the Supplier of any actual, threatened or suspected infringement in the Territory of any of the Trademarks or any other Intellectual Property of the Supplier in respect of the Goods which comes to the Distributor's notice, and of any claim or threatened claim by any third party that the importation of the Goods into the Territory, or their sale in the Territory, infringes the Trademark or other Intellectual Property rights of any other person.

9.9 In the event of any such infringement or claim:

9.9.1 The Distributor shall at the request and expense of the Supplier take all steps reasonably necessary to assist the Supplier in taking or resisting any proceedings in relation to the infringement or claim; *[and*

9.9.2 *The Supplier shall have sole control over any proceedings or negotiations in connection with the infringement or claim – delete if not appropriate.]*

[Option: Indemnity for Intellectual Property infringement

"9.10 The Supplier shall indemnify the Distributor against any loss, damages, costs or expenses which are awarded against or incurred by the Distributor as a result of any claim or threatened claim by any third party that the importation of the Goods into the Territory, or their sale in the Territory, or the exercise by the Distributor of any other rights granted by the Supplier under this contract, infringes the Trademark or other Intellectual Property rights of any other person, provided that:

9.10.1 Except pursuant to a final award, the Distributor shall not pay or accept any such claim, or compromise any such proceedings, without the consent of the Supplier;

9.10.2 The Distributor shall not do anything which could invalidate any insurance policy or cover which the Distributor may have in relation to any such claim or threat, [and this indemnity shall not apply to the extent that the Distributor recovers any sums under any such policy or cover (which the Distributor shall use its reasonable endeavours to do) – delete if not appropriate];

9.10.3 The Distributor shall account to the Supplier for any damages and costs which are awarded against, or which are agreed to be paid by, any other person in respect of any such claim or threat; [and]

9.10.4 The Distributor shall take any steps which the Supplier may reasonably require to mitigate or reduce any loss of the Distributor – delete if not appropriate.".]

10. Confidentiality

10.1 Both parties understand and acknowledge that, by virtue of this contract, they may both receive or become aware of information belonging or relating to the other party, its business, Business Plans, affairs or activities, which information is confidential and proprietary to the other party and/or its Suppliers and/or customers and in respect of which they are bound by a strict duty of confidence (“Confidential Information”).

10.2 In consideration of such Confidential Information being disclosed or otherwise made available to either party for the purposes of the performance of this contract, each party undertakes that it will not at any time, either before or after the termination of the present contract, and either directly or indirectly, disclose, divulge or make unauthorized use of any Confidential Information, except to the extent to which such confidential information:

- 10.2.1 Is publicly known at the time of its disclosure or being made available to it;
- 10.2.2 After such disclosure or being made available to them, becomes publicly known otherwise than through a breach of this provision;
- 10.2.3 Is required by law, regulation or order of a competent authority (including any regulatory or governmental body or securities exchange) to be disclosed by the party in question, provided that, where practicable, the other party is given reasonable advance notice of the intended disclosure.

10.3 Upon the earlier of a request from the other party or the termination of this contract, each party shall return to the other or destroy all documents or records in any medium or format containing any Confidential Information which are in its possession or control and shall not retain any copies of them.

10.4 The provisions of this Article 10 shall continue without limit of time, notwithstanding the termination of this contract for any reason.

11. Liability

11.1 In any case where employees of one party visit the premises of the other party for the purposes of this contract, the party sending them shall:

- 11.1.1 Procure that such employees comply with all security, safety and other regulations which are in force at the other party’s premises; and
- 11.1.2 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.

[Option: Limitation of Supplier’s liability]

“11.2 Except in respect of death or personal injury caused by the Supplier’s negligence, the Supplier shall not be liable to the Distributor by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, for any loss of profit or any indirect, special or consequential loss or damage (whether caused by the negligence of the Supplier, its servants or agents or otherwise) in relation to the supply of the Goods (or any

failure to supply them) or their resale by the Distributor, or otherwise arising out of or in connection with this contract.”]

[Comment: The Parties should take into consideration that in some legal systems limitations or exclusions of liability may not be effective, or may be subject to restrictions, and that the wording of such a provision should otherwise reflect the applicable law of the contract.]

12. Duration and termination

12.1 This contract will take effect on the date of its signature by both parties or, if signatures do not occur simultaneously, when the latest signature is given. Unless sooner terminated pursuant to Articles 12.2, 12.3 or 12.4, this contract shall continue for a period of *[specify period]*.

[Comment: The duration of the contract may be limited for reasons of applicable law (for example, it may need to be limited to 5 years where the EU vertical agreements block exemption is relevant).]

[Option: Termination for convenience

*“12.2 Either party shall be entitled to terminate this contract at any time by giving not less than *[specify period]* written notice to the other.”.]*

12.3 The Supplier may (without limiting its rights under Article 5.5) terminate this contract with immediate effect by giving written notice to the Distributor, if the latter fails to pay any sum payable by it under this contract within *[specify figure]* days of the due date for payment.

12.4 Either party may (without limiting any other remedy) at any time terminate this contract by giving written notice to the other if:

12.4.1 The other party commits any breach of this contract and (if capable of remedy) fails to remedy the breach within *[thirty (30) – specify any other figure]* days after being required by written notice to do so; or

12.4.2 The other party goes into liquidation, becomes bankrupt, makes a voluntary arrangement with its creditors or has a receiver or administrator appointed.

Comment: References to events of insolvency will need to be adapted for the legal system in question.

12.5 For the purposes of the Article 12.4.1, a breach of any provision of this contract 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.

[Comment: In some legal systems it may be desirable not to include a provision for termination on breach, or to include more detailed provisions concerning the rights and remedies of the Parties in this respect.]

12.6 The termination of this contract for any reason shall not affect:

12.6.1 Either party’s accrued rights, remedies or liabilities including payments due at the effective date of termination; or

- 12.6.2 The coming into force or the continuance in force of any provision of this contract which is expressly or by implication intended to come into or continue in force on or after termination.

13. Consequences of termination

13.1 The following provisions shall take effect upon the termination of this agreement for any reason.

13.2 The Supplier shall be entitled to repurchase from the Distributor all or part of any stocks of the Goods 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, subject to the following provisions:

13.2.1 The Supplier shall be responsible for arranging and for the cost of transport and insurance;

13.2.2 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 Supplier does not, by giving written notice to the Distributor within *[specify period]* after the date of termination, exercise its right to repurchase; and

13.2.3 For those purposes and to the necessary extent, the provisions of this contract shall continue in full force and effect.

13.3 The Distributor shall at its own expense within *[specify period]* send to the Supplier or otherwise dispose of in accordance with the directions of the Supplier all samples of the Goods and any advertising, promotional or sales material relating to the Goods then in the possession of the Distributor.

13.4 Outstanding unpaid invoices rendered by the Supplier in respect of the Goods shall become immediately payable by the Distributor and invoices in respect of goods ordered prior to termination but for which an invoice has not been submitted shall be payable immediately upon submission of the invoice.

13.5 The Distributor shall cease to promote, market or advertise the Goods or to make any use of the Trademarks or any other Intellectual Property of the Supplier except for the purpose of selling any goods in respect of which the Supplier does not exercise its right or repurchase.

13.6 The Distributor shall at its own expense join with the Supplier in procuring the cancellation of any registration effected pursuant to Article 9.5.

[Option: Post-term non-compete provision]

“13.7 The Distributor shall not for a period of [one year – specify any shorter provision] after termination of this contract be concerned or interested, either directly or indirectly, in the manufacture or distribution in the Territory of any goods which compete with any of the Goods.”

Comment: The competition law implications of such a provision under any applicable law will need to be considered. This wording is intended to comply with the EU vertical agreements block exemption.]

14. Change of circumstances (hardship)

[Comment: The Parties should be free to consult each other in the event of a major change in circumstances – particularly one creating hardship for a particular party. However, an SME should only include the option at the end of Article 14.4 (right to refer to the courts/arbitral tribunal to make a revision or to terminate the contract) if (i) the SME considers that it is not likely to be used against that party's interests by a party in a stronger tactical position or (ii) the right to refer to a court/tribunal is already an existing right under the applicable governing law in the event of hardship.]

14.1 Where the performance of this contract becomes more onerous for one of the Parties, that party is nevertheless bound to perform its obligations subject to the following provisions on change of circumstances (hardship).

14.2 If, however, after the time of conclusion of this contract, events occur which have not been contemplated by the Parties and which fundamentally alter the equilibrium of the present contract, thereby placing an excessive burden on one of the Parties in the performance of its contractual obligations (hardship), that party shall be entitled to request revision of this contract provided that:

14.2.1 The events could not reasonably have been taken into account by the affected party at the time of conclusion of this contract;

14.2.3 The events are beyond the control of the affected party; and

14.2.4 The risk of the events is not one which, according to this contract, the party affected should be required to bear.

14.3 Each party shall in good faith consider any proposed revision seriously put forward by the other party in the interests of the relationship between the Parties.

[Option (add if wished; otherwise delete if not applicable or not enforceable under the law governing the contract – see comment at beginning of Article 14):

“14.4 If the Parties fail to reach agreement on the requested revision within [specify time limit if appropriate], a party may resort to the dispute resolution procedure provided in Article 23. The [court/arbitral tribunal] shall have the power to make any revision to this contract that it finds just and equitable in the circumstances, or to terminate this contract at a date and on terms to be fixed.”.]

15. Force majeure

15.1 “Force majeure” means war, emergency, accident, fire, earthquake, flood, storm, industrial strike or other impediment which the affected party proves was beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of this contract or to have avoided or overcome it or its consequences.

15.2 A party affected by *force majeure* shall not be deemed to be in breach of this contract, or otherwise be liable to the other, by reason of any delay in performance, or the non-performance, of any of its obligations under this contract to the extent that the delay or non-performance is due to any *force majeure* of which it has notified the other party in accordance with Article 15.3. The time for performance of that obligation shall be extended accordingly, subject to Article 15.4.

15.3 If any *force majeure* occurs in relation to either party which affects or is likely to affect the performance of any of its obligations under this contract, it shall notify the other party within a reasonable time as to the nature and extent of the circumstances in question and their effect on its ability to perform.

15.4 If the performance by either party of any of its obligations under this contract is prevented or delayed by *force majeure* for a continuous period in excess of three [*specify any other figure*] months, the other party shall be entitled to terminate this contract by giving written notice to the party affected by the *force majeure*.

[Alternative: If preferred, replace 15.4 with the following alternative:

“15.4 If the performance by either party of any of its obligations under this contract is prevented or delayed by force majeure for a continuous period in excess of three [specify any other figure] months, the Parties shall negotiate in good faith, and use their best endeavours to agree upon such amendments to this contract or alternative arrangements as may be fair and reasonable with a view to alleviating its effects, but if they do not agree upon such amendments or arrangements within a further period of 30 [specify any other figure] days, the other party shall be entitled to terminate this contract by giving written notice to the party affected by the force majeure.”.]

16. General warranties

16.1 Each party warrants to the other that:

16.1.1 It has the authority to enter into this contract;

16.1.2 The signatory to this contract for and on behalf of that party is authorized and fully empowered to execute this contract on that party's behalf;

16.1.3 The entry into and performance of this contract by that party will not breach any contractual or other obligation owed by that party to any other person, any rights of any other person or any other legal provision;

16.1.4 The entry into and performance of this contract by that party require no governmental or other approvals or, if any such approval is required, it has been obtained; and

16.1.5 It will at all times during the Term of this contract comply with the terms of and maintain in force any necessary governmental or other approvals, consents, notifications, registrations or other legal requirements for the performance by that party of its obligations under this contract.

17. Entire agreement

17.1 This contract sets out the entire agreement between the Parties. Neither party has entered into this contract in reliance upon any representation, warranty or undertaking of the other party that is not expressly set out or referred to in this contract. This Article shall not exclude any liability for fraudulent misrepresentation. *[Add where relevant: This contract supersedes any previous agreement or understanding relating its subject matter.]*

17.2 This contract may not be varied except by an agreement of the Parties in writing (which may include e-mail) [*Add where Article 14.4 is included: "Or in accordance with Article 14.4"*].

18. Notices and writing

18.1 Any notice under this contract shall be in writing (which may include e-mail) and may be served by leaving it or sending it to the address of the other party as specified in Article 18.2 below, in a manner that ensures receipt of the notice can be proved.

18.2 For the purposes of Article 18.1, notification details are the following, unless other details have been duly notified in accordance with this Article:

- (a) For the Supplier;
- (b) For the Distributor.

19. No partnership or agency

Nothing in this contract shall (i) be deemed to constitute a partnership in law between the Parties, (ii) constitute either party the agent of the other for any purpose or (iii) entitle either party to commit or bind the other (or any member of its respective Group) in any manner.

20. Assignment and subcontracting

20.1 This contract is personal to the Parties and, except to the extent necessary for the collection of outstanding bills through a factoring agent, neither party shall without the prior written approval of the other:

- 20.1.1 Assign, mortgage, charge or otherwise transfer or deal in, or create any trust over, any of its rights; or
- 20.1.2 Subcontract or otherwise delegate the whole or any part of its rights or obligations under this contract to another person.

21. Effect of invalid or unenforceable Articles

21.1 If any provision of this contract is held by any court or other competent authority to be invalid or unenforceable in whole or in part, this contract shall continue to be valid as to its other provisions and the remainder of the affected provision, unless it can be concluded from the circumstances that, in the absence of the provision found to be null and void, the Parties would not have concluded this contract.

21.2 The Parties shall use all reasonable efforts to replace all provisions found to be null and void by provisions that are valid under the applicable law and come closest to their original intention.

***[Add where relevant:]* 22. Authorizations**

22.1 This contract is conditional upon the following authorizations first being obtained [*specify the authorization(s) or other conditions required e.g. of a governmental or regulatory authority*].

22.2 The relevant party shall use all reasonable efforts on its part to obtain such authorizations and shall notify the other party promptly of any difficulty encountered.

23. Dispute resolution

Any dispute, controversy or claim arising out of or relating to this contract, including its conclusion, interpretation, performance, breach, termination or invalidity, shall be finally settled under the rules of *[specify the arbitration institution]* by *[specify the number of arbitrators, e.g. sole arbitrator or, if appropriate, three arbitrators]* appointed in accordance with the said rules. The place of arbitration shall be *[specify]*. The language of the arbitration shall be *[specify]*.

[The following are alternatives to a specified arbitral institution under Article 23:

Alternative 1: Ad hoc arbitration

Any dispute, controversy or claim arising out of or relating to this contract, including its conclusion, interpretation, performance, breach, termination or invalidity, shall be finally settled under the rules of UNCITRAL [specify other rules] by [specify the number of arbitrators, e.g. sole arbitrator or, if appropriate, three arbitrators] appointed by [specify name of appointing institution or person]. The place of arbitration shall be [specify]. The language of the arbitration shall be [specify].]

[Alternative 2: State courts

Any dispute, controversy or claim arising out of or relating to this contract, in particular its conclusion, interpretation, performance, breach, termination or invalidity, shall be finally settled by the courts of [specify place and country] which will have exclusive jurisdiction.]

24. Language of contract

This contract has been negotiated and concluded in *[English]*. It may be translated into any other language for practical purposes, but the *[English]* version shall prevail in the event of any doubt.

25. Applicable law

[Alternative 1: “Questions relating to this contract which are not settled by the provisions contained in this contract itself shall be governed by the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention of 1980, hereafter referred to as CISG) as well as the UNIDROIT Principles of International Commercial Contracts, and to the extent that such questions are not covered by CISG or the UNIDROIT Principles, by reference to [specify the relevant national law].”]

[Alternative 2: “[Specify national law] shall apply to this contract.”]

Schedule 1: The Goods

Schedule 2: Minimum purchase quantities

Schedule 3: Minimum/maximum order quantities

Schedule 4: Terms of supply

1. Quantity of the Goods

1.1 *[Subject to Article 2.4 of this contract – delete if not applicable], the quantity of the Goods to be supplied by the Supplier shall be as set out in each order submitted by the Distributor (if confirmed by the Supplier).*

1.2 *[Each order shall be subject to the minimum/maximum quantities specified in schedule 3 – delete if not applicable.]*

1.3 *[The Supplier reserves the right to deliver up to [specify] % more or [specify] % less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered – delete if not applicable.]*

2. Delivery of the Goods

The Goods shall be delivered to the Supplier on the following basis (references being to the latest Incoterms of the International Chamber of Commerce at the date of conclusion of this contract): Ex works/FOB [specify sea or air port] / Other (specify).

[Comment: Delete or fill in as applicable.]

3. Inspection of the Goods

[Option 1: Inspection before delivery]

“The Supplier shall *[at its own cost – delete if not applicable]* arrange for testing and inspection of the Goods at the Supplier’s premises before shipment *[by – specify body]*. *[The Supplier shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which made after shipment – delete if not applicable.]*”

[Option 2: Inspection after delivery]

“The Distributor shall, within *[seven (7) – specify any other period]* days of the arrival of each delivery of the Goods at the Distributor’s premises, inspect the Goods at its own cost and notify the Supplier in writing of any defect in goods or any other matter by reason of which the Distributor alleges that the Goods delivered do not comply with this contract, and which should be apparent on inspection – delete if not applicable]”.

4. Documents

The Supplier shall make available to the Distributor (or shall present to the bank specified by the Distributor) the following documents:

[specify documents e.g. packing list / insurance documents / certificate of origin / certificate of inspection / customs documents / other documents.]

5. Transfer of risk

Risk of damage to or loss of the Goods *[and the property in the Goods – delete if not applicable]* shall pass to the Distributor in accordance with the relevant Incoterms or otherwise at the time of delivery of the Goods.

[Option: 6. Retention of title]

6.1 Notwithstanding the delivery of and the passing of risk in the Goods, or any other provision of this contract, the property in the Goods shall not pass to the Distributor until the Supplier has received payment in full of the price of the Goods.

6.2 Until property in the Goods passes to the Distributor:

6.2.1 The Distributor shall hold the Goods on behalf of the Supplier, and shall keep the Goods separate from those of the Distributor and third parties and properly stored, protected and insured and identified as the Supplier’s property;

6.2.2 Provided none of the events referred to in Article 12.4.2 of this contract has taken place in relation to the Distributor, the Distributor may resell or use up the Goods in the ordinary course of its business (in which case property in the Goods will be deemed to pass to the Distributor);

6.2.3 Provided the Goods have not been sold or used up, the Supplier may at any time require the Distributor to deliver up to the Supplier the Goods for which the Supplier has not received payment in full of the price and, if the Distributor fails to do so forthwith, the Supplier may enter upon any premises of the Distributor or any third party where the Goods are stored and repossess the Goods; and

6.2.4 The Distributor shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Supplier, but if the Distributor does so all money owing by the Distributor to the Supplier shall become due and payable.”]

[Comment: The Parties should take into consideration that in some legal systems a retention of title provision is not possible, or may be ineffective in the case of insolvency of the Distributor, or it may not be possible to enter the Distributor's premises or obtain repossession of the Goods without a court order. A retention of title provision will not be appropriate if the contract requires payment to be made on or before delivery.]

Schedule 1: Supplier's trademarks

DATE AND SIGNATURE OF THE PARTIES

| Supplier | Distributor |
|-----------|-------------|
| Date..... | |
| Name..... | |
| Signature | Signature |