

DISTRIBUTOR AGREEMENT

THIS DISTRIBUTOR AGREEMENT (this "Agreement") is made on this day _____ between _____ Limited, a company incorporated in India having its registered office at _____ ("Company");

And

_____ having his business address/showroom at _____ ("Distributor"). WHEREAS the Company is currently engaged in, among other things, the business of _____ and may extend its business activities to such other applications and products as the Company may from time to time determine ("Products"). The Company sells Products to distributors and retailers for resale.

WHEREAS the Distributor desires to undertake the business of the sale and marketing of Products and providing service to the customers of the Company and has therefore submitted to the Company the requisite Application Form.

The Company and Distributor desire that the Distributor purchase Products from the Company for resale, upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises, covenants and undertakings contained herein and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Company and Distributor agree as follows:

1. **Appointment.** The Company appoints the Distributor and Distributor accepts such appointment, as a non-exclusive dealer/distributor of the Products in the Territory as defined in Clause 2 below subject to the terms and conditions described herein. This appointment is nontransferable.

The Distributor understands and acknowledges that he/she does not have any exclusive right to promote, market, sell or solicit sales of Products in the Territory.

2. **Territory.** Distributor is authorized by Company to stock, sell, advertise and promote the sale and use of the Products in _____ ("Territory"). Additions of any geographical areas to the Territory are subject to the prior written consent of the Company.

3. **Scope.** This Agreement consists of ____ pages including Schedule I which is incorporated into and made part of this Agreement. Company's Terms and Conditions of Sales also form part of this Agreement.

4. **Company's Responsibilities.** During this Agreement, the Company shall:

4.1. Sell Products to Distributor for resale.

4.2. Use reasonable efforts to supply Products ordered by Distributor in the quantities and at the times requested by the Distributor.

4.3 Provide advertising, promotional, education and training support to the extent (if any) to be provided to the Distributor.

5. Initial Investment. The Distributor has committed himself/herself to an initial investment of _____. The Distributor shall invest this sum within 30 days of the signing of this Agreement to purchase Products from the Company in the quantities and at the prices to be determined by Company at the time of purchase.

6. Distributor's Responsibilities. During this Agreement, the Distributor shall:

6.1. Use his/her best efforts to sell and promote the sale and use of Products in the Territory and to fulfill the annual sales target of Rs. _____ (Rupees _____) during the term of this Agreement.

6.2. Order and maintain an inventory of Products sufficient to anticipate and meet the normal needs of customers.

6.3. Stock Reporting – Provide an inventory list of Products held by Distributor, showing quantity per line item. List is to be submitted on a monthly basis by monthly submission dates to be determined by Company. Receive representatives of Company for inventory consultation and cooperation in connection with the promotion and sale of Products and for periodic audits to assess compliance with this Agreement.

6.4. At Company's request, provide point-of-sale (P. O. S.), inventory and sales information in the scope and format required by Company; cooperate with the Company in meeting the needs of users of the Products; and cooperate with the Company by notifying the Company of any product liability or product defect claims and by providing such documentation as Company may request.

6.5. Provide, at Distributor's own cost and expense, all necessary resources including without limitation, an adequate number of sales personnel and the necessary infrastructure to promote, market, sell and solicit sales of Products and exhibit Products throughout the Territory. To determine whether Distributor has fulfilled these requirements, the Company will give primary consideration to: (i) the infrastructure and facilities deployed by Distributor in marketing and selling Products in the Territory; (ii) Distributor's sales achievements in the Territory as compared to sales achieved by Company's other distributors, and (iii) Distributor's action regarding improvements in his operations necessary to promote the sale of Products.

For the avoidance of doubt, Distributor shall not be deemed to have fulfilled the resources requirements in the event Distributor fails to provide, as a minimum, the same level of manpower and infrastructure as set out in the Application Form.

6.6. Employ such employees at such compensation and on such other conditions as the Distributor sees fit. Any contract of employment between Distributor and his/her employees shall make it clear that such employees are exclusively the employees of the Distributor, are to be paid solely by the Distributor and that in employing the employees, the Distributor is acting individually and not on behalf of the Company.

6.7. Remain liable to deduct and deposit the tax at source under the Income Tax Act, 1961 and to comply with all other related statutory compliances in relation to his operations for performance of his obligations under this Agreement.

6.8. Maintain suitable places of business.

6.9. Comply with the rules and regulations furnished to the Distributor by the Company regarding the use of any Trade Names and properly identify its relationship with the Company.

6.10. Notify the Company immediately after becoming aware of any pirating, infringement or misrepresentation of Products.

6.11. Become informed on how the Products are used in the Territory and promptly report to Company all accidents involving Products which result in personal injury or property damage.

6.12. Perform those additional requirements and obligations imposed on him/her in accordance with the Distributor's Classification Program.

7. Certain Terms and Conditions of Sale to Distributor; Credit Terms.

7.1. Sales of Products to Distributor shall be made at prices as the Company may establish for Distributor from time to time in accordance with the Distributor Price List or any Contract Price Program.

7.2. Sales of Products under this Agreement will be subject to the Company's Terms and Conditions of Sale which form part of this Agreement. The Company will not be responsible for any claim asserted against Company because Distributor gave different terms and conditions of sale from Company's (including limitations on Company's liability contained in this Agreement). Distributor shall indemnify and defend the Company against such claims.

7.3. Distributor shall not resell any Product to customers at a price above the maximum retail price of the Product which is to be determined by Company from time to time. Nevertheless,

Distributor may resell Products at prices below the respective maximum retail prices up to such limits as Company may from time to time determine.

7.4 In its discretion, the Company may establish a credit line for Distributor which Distributor may only draw on by purchasing Products from Company from time to time on credit. The aggregate outstanding principal balance of such purchases will at no time exceed the amount of such credit line, which amount is subject to change or withdrawal in Company's discretion. Notwithstanding any credit line, it is understood and agreed that all Product purchases by Distributor are subject to and payable according to the payment terms as the Company may establish for Distributor from time to time in its discretion. Distributor's Classification will determine his/her eligibility, if any, for any prompt payment discounts in accordance with the Classification Program. Late payments shall bear interest at the rate of ____% per month (_____ per annum), both before and after judgment until payment in full; provided, however, that in no event shall Company charge interest higher than the maximum rate allowed by law.

Distributor shall pay Company all expenses (including lawyer's fees) incurred by the Company in collecting any amounts that are past due by Distributor to Company. Company may withhold delivery of Products to Distributor until Distributor pays all past due amounts.

7.5. Distributor will indemnify and defend the Company against any claim asserted against the Company arising out of Distributor's operations.

7.6. The Company, without liability to Distributor and without any obligation to notify Distributor, may discontinue or limit its production of any Product, terminate or limit deliveries of any Product, alter the design, materials or construction of any Product or add new products to its line.

7.7 Schedule 1 sets forth the circumstances in which Product returns are allowed and the requirements for such returns. Distributor's Classification will determine its eligibility, if any, for any additional inventory management privileges in accordance with the Classification Program.

8. Warranty.

8.1. As per Company's Terms and Conditions of Sale which forms part of this Agreement..

9. Terms and Termination.

This Agreement will begin on the date Company signs this Agreement and will continue for a maximum of _____ months unless either party terminates (or automatic termination) as provided below:

9.1. By the mutual written consent of the parties;

9.2. By Company, upon one (1) day's notice in writing, by facsimile, certified mail, or personal delivery, if

- (i) Distributor attempts to assign this Agreement without Company's prior written consent, or
- (ii) There is a change in the control or management of the Distributor's operation which is unacceptable to Company; or
- (iii) In the opinion of Company, Distributor becomes incapable of performing his duties or obligations under this Agreement, or
- (iv) Distributor stops conducting business in the normal course, or
- (v) Distributor breaches this Agreement or acts in any manner deemed by Company to be detrimental to the best interest of Company, or
- (vi) Any information provided by Distributor in the Application Form is found to be wrong or incorrect;

9.3 Automatically and without notice, if Distributor consents to the appointment of a receiver, trustee or liquidator of himself/herself, or over a substantial part of his/her property, or shall make a general assignment for the benefit of creditors or otherwise show evidence of insolvency, or a bankruptcy filing is made by or against Distributor; or

9.4. Notwithstanding the foregoing provisions and except as provided by applicable law, either party may terminate this Agreement with or without cause and solely for the convenience of the terminating party by giving thirty (30) days' notice of termination in writing to the other party.

10. Obligations upon Termination.

10.1 Within thirty (30) days after termination by Company, Company may at its discretion repurchase from Distributor at 80% of the net price paid by Distributor or at Company's then current net price to distributors generally, whichever is lower, those Products (and only those Products) in Distributor's inventory which Company deems saleable. Saleable Products are standard Products that are in their original package or original put-up, with acceptable ratings, and when properly reprocessed can be resold, and are not obsolete, damaged, soiled, cut-tolength, special or custom built. Credit for the repurchased Products shall be subject to a 10% restocking charge. Repurchased Products shall be returned at Distributor's sole cost to such location(s) as Company may designate. Company shall have no obligation to repurchase Products from Distributor if the termination is initiated by Distributor.

10.2 Upon termination, Distributor shall stop using the Trade Names, shall remove any Trade Names from buildings or other property under Distributor's control, and shall insure the cessation of use and removal by all persons claiming to have received the right to such use from Distributor.

10.3 The acceptance of any order or the sale of any Products to Distributor after the termination of this Agreement shall not be construed as a renewal or extension of this Agreement or as a waiver of termination. Such transactions will be on an order-to-order basis and will be governed by the terms of this Agreement.

10.4 Upon termination for any (or no) reason, Company shall not be liable to Distributor for the

loss of prospective profits on anticipated sales or on account of expenditures, investments, leases

or commitments in connection with the business or goodwill of Distributor or otherwise. Distributor waives any claim for such compensation under applicable laws because of or in connection with the termination of this Agreement.

10.5 Termination shall not release either party from the payment of any sum owing to the other or terminate any other Distributor obligation or Distributor liability or any security interest or lien held by Company. Company may apply any amounts which are due or to become due by Company to Distributor against any amounts which are due or to become due by Distributor to Company.

11. Company Trade Names and Trademarks.

"Trade Names" shall mean the names or trademarks _____ or any variation or abbreviation thereof, and all applications and registrations of such names or trademarks and any trademark, trade name, or service mark of which Company provides notice to Distributor. Distributor shall not use the Trade Names as part of its trade name, trademark, company or firm name, nor shall he/she permit such use by any party. Distributor shall not cause to be published any advertising or initiate any practice which might mislead or deceive the public or might be detrimental to the Trade Names or goodwill of Company. Distributor agrees, upon request, to discontinue any advertising or practice deemed by Company to have such effect or any use of the Trade Names inconsistent with this Agreement. Distributor shall make no use of the Trade Names in any other business of Distributor and shall not use the Trade Names except as set out in this Agreement. Failure to comply with Company's policy on Trade Names can result in immediate termination of this Agreement.

12. Other Terms and Conditions of Sale to Distributor

13. Sales Commissions and Sales Rebates.

13.1 On a case-by-case basis to the extent agreed by Company and Distributor in advance, as full compensation to Distributor for any associated services rendered by Distributor, Company shall pay or credit to Distributor either commissions or sales rebates on Products which are directly sold and shipped by Company, on orders procured by Distributor, to customers (other than Distributor) in the Territory during the term of this Agreement. A commission would be at a mutually agreed percentage rate of net sales of such Products, or a sales rebate would be of a specific monetary amount, in any event as agreed in advance by Company and Distributor. Any commissions would be computed on the net sales price and excluding any and all discounts, allowances, rebates, packaging, forwarding, bonds, insurance, and freight or transportation allowances, sales, value added or other taxes, charges, interest, adjustments, returns,

corrections, and the value of technical, construction, installation or like services, and other charges which may be included in Company's invoice to the customer.

13.2 Any commissions or sales rebates would be paid by Company on the last day of the month following the date Company receives full payment of the relevant invoice from the customer. Company shall have the right to charge back to Distributor's account and/or collect from

Distributor, and Distributor shall have the obligation to pay to Company, the following: any commissions or sales rebates already credited or paid in connection with any and all accounts which, in the opinion of Company, are uncollectible; errors in commission or sales rebate statements or calculations; adjustments for returned goods and the like; any and all losses or damages, including but not limited to loss of bonds or guarantees, which Company may suffer as a result of the involvement of Distributor in any particular sale or transaction; and, any amounts already credited or paid if it is determined, in the sole judgment of Company, that Distributor was not entitled to such payment under the terms of this Agreement.

13.3 Company reserves the right to determine in its sole discretion the acceptability of any order, any provisions thereof, or any condition proposed by any customer and shall in no way be obligated to sell, bid, quote to, or negotiate with any customer. No order shall be binding on Company unless accepted by it in writing. Distributor is not authorized to bind Company on any order. Company reserves the right for itself and its subsidiaries, divisions, affiliates and other distributors or sales representatives to deal directly with any customer or prospective customer in the Territory without liability to Distributor for the payment of commissions or sales rebates or damages for breach of this Agreement.

13.4 Any commissions or sales rebates paid by Company to Distributor constitute a reasonable reimbursement for the services performed by Distributor for Company in connection with the associated sales.

14. General Provisions.

14.1. **Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns. Distributor's rights or obligations cannot be assigned or delegated without Company's prior written consent.

14.2. **Relationship of Parties.** The relationship of Distributor and Company established under this Agreement is that of independent contractors and that of vendor and vendee. Nothing contained in this Agreement shall be construed to create a partnership, joint venture, or agency between Distributor and Company or to give Distributor the authority to act as the agent, legal representative, franchisee or employee of Company for any purpose whatsoever or to assume, create or incur any expense, liability or obligation for Company. Distributor shall be solely responsible for all costs and expenses incurred by Distributor in connection with performance of his/her obligations under this Agreement.

14.3 Limitations. In no event shall the company be liable for special, indirect, incidental, Consequential or punitive damages by whomever incurred (regardless of the Form of action, whether in contract or in tort, including negligence), including Damages for lost profits, data, time, revenues or the like, nor, except for Company's patent indemnity obligations shall company's Total liability for any claims or damages (regardless of the form of action, Whether in contract or in tort, including negligence) arising out of or Connected with this agreement with respect to any particular company Products, or the manufacture, sale, delivery or use of any particular company Products, exceed the purchase price of such products. This clause shall survive both failure of an exclusive remedy and termination or expiration of this Agreement.

14.4. Controlling Laws. This Agreement shall be governed by and construed in accordance with the laws of India.

14.5 Dispute Resolution. If a dispute arising from or relating to this Agreement or the breach thereof (a "Dispute") is not settled by the parties within thirty (30) days after notice of the Dispute is first given by either party to the other, the parties agree to refer the Dispute to arbitration to a sole arbitrator appointed by Company in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or other statutory modification or re-enactment thereof for the time being in force. The arbitration shall be conducted in _____. The arbitrator shall actively manage the arbitration to make it fair, expeditious, economical and less burdensome and adversarial than litigation, and the award rendered shall not include punitive damages. Any party may request a court to provide interim relief without waiving the agreement to arbitrate.

14.6. Failure to Enforce. The failure of either party to enforce any term, right or condition of this Agreement shall not be construed as a waiver of such term, right or condition.

14.7. Classification Program; Execution and Modification.

14.7.1. Company may from time to time make available a distributor program ("Classification Program") under which Company assigns Distributor a classification or category ("Classification"). Company will establish the terms and conditions of such Classification Program, including its specific requirements and benefits, and Company may modify or terminate such Classification Program (including its terms and conditions) to become effective thirty (30) days after it provides notice to Distributor. Distributor's participation in such Classification Program may be evidenced by its signing one or more separate agreements, such as a Memorandum of Understanding or MOU (such separate agreement(s), whether one or more, being the "MOU").

14.7.2. This Agreement and (if any) the MOU constitute the entire agreement between the parties with respect to the subject matter, and supersede any previous or contemporaneous agreement with respect to the subject matter (including any previous distributor agreement). In the event of

any conflict between this Agreement, on the one hand, and the MOU or the associated terms and conditions of the Classification Program, on the other hand, this Agreement shall control. All terms in any order or writing furnished by Distributor shall be null and void, other than identification of the ordered Product, quantity and delivery location which shall constitute an order for such quantity of Products identified subject to acceptance and subject to the other terms

of this Agreement. Any amendment or modification of this Agreement must be in writing clearly

identifying itself as an amendment to this Agreement and signed by Company's authorized representative. All sales of Products to Distributor by Company shall be subject to this Agreement. This Agreement shall not become effective until signed by Company's authorized representative.

14.8. Notices. Any notices may be given by personal delivery, by recognized overnight delivery service, by certified mail or by facsimile to the addresses for Company and Distributor shown below their signature lines of this Agreement. These addresses for notice may be changed in the same manner. Notices sent by certified mail will be effective upon the earlier of actual receipt or five (5) days after mailing. Notices provided by personal delivery or recognized overnight delivery service will be effective upon delivery. Notices provided by facsimile will be effective upon sender's receipt of written confirmation of transmittal.

14.9. Direct Sales. Company reserves the right for itself and its affiliates to deal directly with any party in the Territory, and to appoint other distributors who may sell within the Territory.

14.10. Severability. The provisions of this Agreement are severable. Should any court hold any provision of this Agreement to be unlawful, such holding shall not invalidate the entire Agreement. Rather, the unlawful clause shall be severed from this Agreement and the remaining provisions of this Agreement shall be enforced.

Schedule I

(Return Policy)

For _____ Limited
For Distributor