

DRAFT FOR DISCUSSION PUPOSES ONLY

DISTRIBUTION AGREEMENT

Between

[_____]

and

[_____]

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DISTRIBUTORSHIP AGREEMENT

Between

The undersigned

1. _____ **B.V.**, a limited liability company ("*besloten vennootschap met beperkte aansprakelijkheid*") incorporated under Dutch law, having its seat ("*statutaire zetel*") and place of business at _____, at _____, the Netherlands, hereinafter referred to as: "**Company**", duly represented by its managing director _____;

and

2. **DISTRIBUTOR B.V.**, a limited liability company ("*besloten vennootschap met beperkte aansprakelijkheid*") incorporated under Dutch law, having its seat ("*statutaire zetel*") and its place of business at _____, at the _____, the Netherlands (hereinafter: "**Distributor**"), duly represented _____,

The parties under number (1) and (2) hereinafter individually also referred to as: the "Party" and collectively referred to as the "**Parties**";

Whereas:

- the COMPANY is engaged in the development, production and sale of certain Products and desires to promote the sale thereof.
- the DISTRIBUTOR has the necessary experience and capability for the sale of the Products within the Territory and desires to promote the sale of the Products for the COMPANY under the terms and conditions as set out herein below;
- the COMPANY is willing to expand his business in the Territory by appointing the DISTRIBUTOR as his sole and exclusive DISTRIBUTOR for the sale of the Products to third parties residing in the Territory;
- the DISTRIBUTOR is willing to act as DISTRIBUTOR for the Products in the Territory;

now, in consideration of the terms and conditions set forth hereunder, the parties agree as follows:

DRAFT FOR DISCUSSION PUPOSES ONLY

1. Definitions

- 1.1 As used in this Agreement, the following terms shall have the following meanings:

The "**Contract Duration**" is defined by Article 9;

"**Products**" means the _____product portfolio as described under **ANNEX 1** manufactured and offered by the COMPANY for sale under this Agreement;

"**Parties**" means DISTRIBUTOR and COMPANY together;

"**Territory**" means the territory in which no other distributor has been appointed, equal to the state(s);

"**Trademarks**" means those trademarks and trade names used by COMPANY in connection with the Products in the Territory;

2. Appointment of the Distributor

- 2.1 COMPANY hereby appoints DISTRIBUTOR, and DISTRIBUTOR hereby accepts appointment, as sole and exclusive DISTRIBUTOR for the sale of Products within the Territory, under and subject to the terms and conditions of this Agreement.
- 2.2 The DISTRIBUTOR shall buy the Products directly from the COMPANY in his own name and on his own account and sell the Products to third parties domiciling within the Territory in his own name and on his own account.
- 2.3 Nothing in this Agreement shall constitute the right of the DISTRIBUTOR to act as agent of the COMPANY or to represent the COMPANY in any way whatsoever. The DISTRIBUTOR shall have no authority whatsoever to negotiate and to enter into any agreement on behalf of the COMPANY.
- 2.4 The DISTRIBUTOR shall not be entitled to act within the Territory as agent, representative or distributor, dealer or alike for products being held competitive to the Products.

3. Distributor's obligations

- 3.1 DISTRIBUTOR shall use its best efforts to solicit, contact and call upon potential customers and users of Products in the Territory. In this regard, DISTRIBUTOR warrants

DRAFT FOR DISCUSSION PUPOSES ONLY

that it will at all times conduct its business in a manner as will reflect favorably on COMPANY and the Products, and will not engage in any deceptive, misleading, illegal, or unethical business practice.

- 3.2 DISTRIBUTOR shall engage in sales promotion activities in the Territory – at its own expense - such as distribution of printed materials supplied by COMPANY to current and potential customers, as well as advertising, direct mailings reasonably required for efficient development of the sales of the Products in the Territory.
- 3.3 DISTRIBUTOR will plan and maintain inventories of Products to adequately supply customers within the Territory. DISTRIBUTOR is entitled to designate third parties for the maintenance of inventories of Products to adequately supply customers.
- 3.4 The DISTRIBUTOR shall provide the COMPANY in regular intervals a report on his sales activities within the Territory.
- 3.5 The DISTRIBUTOR shall take adequate precautions to promote, resell and distribute the Products within the COMPANY's standards of quality control, safe handling and product shelf-life.
- 3.6 All major marketing and advertising activities of the DISTRIBUTOR relating to the sale of the Products shall not divulge the identity and image of the Products.
- 3.7 As far as the distribution of the Products in the Benelux is concerned, Parties have agreed that Distributor will act as distributor (responsible for delivery and invoicing).
- 3.8 COMPANY and DISTRIBUTOR have regarding the territory of Poland and Germany come to the following understanding. One designated person of DISTRIBUTOR or its subsidiary located in Poland or Germany will spent its time partly (not more than three days per month) on the distribution and sale of the Product which form part of the present ADD business and its respective projects at Effective Date. Aforesaid designated person will use the business-cards made available by COMPANY for these activities. COMPANY shall make these cards available in time. Invoicing of products sold hereunder is taken care of by DISTRIBUTOR on COMPANY's letter head. In as far as this arrangement does not deviate from the terms and conditions of this Agreement, they shall apply mutatis mutandis to this arrangement.

4. Company's obligations

DRAFT FOR DISCUSSION PUPOSES ONLY

- 4.1 The COMPANY shall sell the Products to DISTRIBUTOR at prices to be mutally agreed upon and determined in Exhibit [___], and shall supply the Products according to COMPANY's specifications.
- 4.2 COMPANY shall maintain sufficient stock of the Products in order to ensure timely delivery of the Products to the DISTRIBUTOR. All deliveries to the DISTRIBUTOR shall contain products with a shelf life of minimum [___] months, starting with the date of delivery.
- 4.3 COMPANY shall provide to DISTRIBUTOR commercial information and documents including the customers' information available and necessary for the distribution of the Products in the Territory.
- 4.4 COMPANY shall provide in its discretion the DISTRIBUTOR free of charge with appropriate marketing support.
- 4.5 COMPANY shall provide the DISTRIBUTOR free of charge with samples of the Products, technical services and laboratory results in order to support the distribution of the Products.
- 4.6 COMPANY shall forward to DISTRIBUTOR all orders and inquiries received directly from customers in the Territory.
- 4.7 The COMPANY shall grant to the DISTRIBUTOR free of charge the non-exclusive license to use any and all Trademarks and other markings used by the COMPANY in order to promote the sale of the Products. COMPANY shall maintain and defend at its own costs and expenses the Trademarks and its intellectual property rights in the Territory.

5. Terms of sale

- 5.1 The DISTRIBUTOR shall be free to determine at its own risk the prices for the sale of the Products to third parties.
- 5.2 Payment terms shall be Net 30 days after date of delivery of the Products to DISTRIBUTOR.
- 5.3 Since the order handling (purchase by DISTRIBUTOR and sale by COMPANY) will be performed within the administration department of DISTRIBUTOR, Parties have agreed that the person responsible for the order handling will be instructed to arrange that each purchase order competently placed and accepted will be recorded properly.

DRAFT FOR DISCUSSION PUPOSES ONLY

- 5.4 Delivery / Shipment: Unless otherwise agreed by the Parties, delivery of Products shall be Ex Works (Incoterms 2010) _____ as mutually agreed from time to time. All shipments hereunder will be made in COMPANY's standard packaging units.
- 5.5 Change of Products: COMPANY shall have the right with advance notice of 90 days to DISTRIBUTOR to cease, to manufacture and sell, or to supersede, certain Product for business reasons sufficient to COMPANY without any liability on the part of COMPANY to DISTRIBUTOR.
- 5.6 Return of Products: At the end of the contract duration the COMPANY has to take back the entire stock of goods from the DISTRIBUTOR at the respective purchase price.

6. General Terms

Neither the COMPANY's nor the DISTRUBUTOR's General Terms of Sale shall apply.

OR

The COMPANY's General Terms of Sale shall apply unless have agreed otherwise in this Agreement.

7. Intellectual Property Rights

The Distributor shall only sell the Products under the name, trade mark and trade name used by the Company in connection with the Product, unless a third party is entitled to a trade name or trade mark within the Territory. The Distributor shall refrain from any other use of the name, trade mark or trade name of the Company. The Distributor shall further refrain from using any other name, trade mark or trade name on the Products and the packages thereof. The Distributor shall not register or use trade names or trade marks or any other intellectual property rights for the Product without the written approval of the Company.

8. Confidentiality

During the term of this Agreement and for five years thereafter, no party shall either disclose to any third party or use for any purpose other than to fulfill its obligations hereunder, any *confidential or proprietary information* furnished by or obtained from the other party. For the purposes of this Section, *confidential or proprietary information* shall include, but by no means be limited to, information regarding either party's business affairs, Product research and development, Product composition, it's uses, manufacturing processes, sales strategies, and any other information which is disclosed

DRAFT FOR DISCUSSION PUPOSES ONLY

to it by the other party in confidence and which is not otherwise publicly available. However, either party is entitled to disclose to its affiliate (i.e. a person or entity that controls the party, is controlled by the party or is under common control with the party) such confidential or proprietary information furnished by or obtained from the other party.

9. Indemnity

- 9.1 The Company warrants the Distributor that the Product is produced and sold to Distributor according to all applicable laws, including safety laws, in the Territory, included but not limited to regulations and laws on packaging, and is admittable for the purpose of use mentioned in this Agreement.
- 9.2 If the Product does not meet the specifications mentioned in aforementioned paragraph, Distributor has to report this to the Company as soon as possible, but in any case within 3 (three) weeks it has become aware of the shortage. The Company will at choice of the Distributor replacement or repair the defective Product or any part thereof, at no charge to the Distributor.

10. Duration – Termination

- 10.1 This Agreement shall become effective upon signing by the two parties and shall remain in force for a definite periode of 18 months (contract duration).
- 10.2 The right of either party to terminate this Agreement in case of a fundamental breach of contract shall not be restricted by the foregoing.
- 10.3 Any notice of termination must be given to the other party in writing.

11. Termination Agreement with Immediate Effect

- 11.1 Either party shall have the right to terminate this Agreement with immediate effect if:
- (i) the other Party is declared bankrupt or has been granted suspension of payment or if a petition requesting bankruptcy or suspension of payment is filed by or on behalf of the other Party;
 - (ii) a liquidator, receiver, trustee or administrator is appointed for the other Party or its business;

DRAFT FOR DISCUSSION PUPOSES ONLY

(iii) the other Party becomes insolvent or admits its inability to pay its debts as they fall due or commences negotiations with one or more of its creditors with the view to a general readjustment or rescheduling of all or part of its indebtedness;

(iv) a substantial change in the ownership of a Party or a merger or acquisition relating to a Party's business activity occurs;

(v) the other Party is in breach of any other provision of this Agreement and fails to remedy such breach within fourteen (14) days after notice of such breach and the request for the remedy thereof has been received by the other Party.

12. General Consequences of Termination

12.1 If notice of termination is given, each Party shall have, during the applicable notice period, the same rights, obligations and privileges under this Agreement in the same manner and to the same extent as in case such notice had not been given.

12.2 DISTRIBUTOR shall return to COMPANY all samples, documents and other items which have been supplied to it in connection with the performance of the Agreement on the effective date of termination of the Agreement. The COMPANY hereby accepts the return of all remaining inventory of Distributor against its original purchase price and shall procure to take all measures in relation thereto.

12.3 DISTRIBUTOR shall cease to promote, market or advertise the Products. All orders for the Products placed by the customers in the Territory before the date of termination shall be fulfilled by DISTRIBUTOR upon the terms and conditions of this Agreement.

12.4 After the termination of the Agreement DISTRIBUTOR shall refrain from any use of the name, trade marks and trade name of COMPANY and similar names, trade marks and trade names and any other intellectual property rights pertaining to COMPANY. Distributor shall remove and in as far as is possible return all logo's and other signs in relation to the trade name referred to above.

12.5 Upon the expiration of this Agreement or its termination, both Parties will not be entitled under local law or otherwise to receive any payment from the other Party, whether for actual, consequential, indirect, special or incidental damages, costs or expenses, whether foreseeable or unforeseeable any right to which hereby the other Party waives and disclaims, except for the amounts due hereunder.

13 Miscellaneous

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- 13.1 This Agreement shall not be altered or modified unless in written form.
- 13.2 It is agreed that failure of either Party at any time to enforce any provision of this Agreement shall in no way affect the right to require performance of such provision thereafter. The waiver of breach of any provision of this Agreement shall not mean a waiver of any succeeding breach of such provision or waiver of the provision itself.
- 13.3 Should any term or condition of this Agreement be or become invalid or unenforceable, the balance of the Agreement shall remain unaffected thereby. In this event the parties shall substitute the invalid or unenforceable provision by a valid one which as closely as possible achieves the economic purpose of the invalid or unenforceable provision.
- 13.4 The Agreement and all agreements resulting there from shall be governed exclusively by the laws of the Netherlands, to the exclusion, however, of the United Nations Convention on Contracts for the International Sale of Goods of 1980 (CISG)
- 13.5 Any and all disputes arising from or in connection with the Agreement or further Agreements resulting there from, shall be brought exclusively before the competent court of [_____], the Netherlands.

Agreed and signed at _____ on _____,

Company

By: Mr.

DISTRIBUTOR

By: Mr.