

EXCLUSIVE AGENCY AGREEMENT

This Exclusive Agency Agreement is made and entered into this [insert date] by and between [insert name] with its principal place of business located at [insert address] (the “Agent”) and [insert name] with its principal place of business located at [insert address] (the “Company”) (hereinafter referred to individually as a “Party” and collectively as “the Parties”).

WHEREAS, Company is in the business of developing, manufacturing and selling throughout the world [insert description of products];

WHEREAS, Agent is in the business of [insert description of business] and wishes to market and promote certain Company products in [insert list of countries];

WHEREAS, Company wishes to appoint Agent as its agent to market and promote such products in such countries on an exclusive basis;

NOW, THEREFORE, the Parties hereby agree as follows:

1. **Definitions.** In this Agreement, the following terms shall have the following respective meanings:

(a) “Agreement” means this Exclusive Agency Agreement and Exhibit A and Exhibit B hereto.

(b) “Confidential Information” means any and all information that is disclosed by one Party to the other Party and that relates to a Party’s business or the Parties’ business relationship hereunder, including, but not limited to, information concerning finances, products, services, customers and suppliers.

Any Confidential Information disclosed in tangible form shall be marked as “CONFIDENTIAL” or “PROPRIETARY” or by a similar legend by the disclosing Party prior to disclosure. Any Confidential Information disclosed orally or visually shall be identified as such prior to, concurrent with or following disclosure and summarized in writing by the disclosing Party to the receiving Party within thirty (30) calendar days of the disclosure.

Confidential Information shall not include information which (i) is in or comes into the public domain without breach of this Agreement by the receiving Party; (ii) was in the possession of the receiving Party prior to receipt from the disclosing Party and was not acquired by the receiving Party from the disclosing Party under an obligation of

confidentiality or non-use; (iii) is acquired by the receiving Party from a third party not under an obligation of confidentiality or non-use to the disclosing Party; or (iv) is independently developed by the receiving Party without use of any Confidential Information of the disclosing Party.

(c) “Effective Date” means the date first written above.

(d) “General Terms and Conditions of Sale” means the Company’s then-current general terms and conditions of sale, a current copy of which is attached under Exhibit A hereto.

(e) “Net Product Sales” means payments actually received by the Company on purchase orders for Products procured by the Agent from customers in the Territory during the Term and subsequently accepted by the Company, after deduction, where applicable, for: (i) discounts, including cash discounts or other rebates, (ii) freight, postage, transportation, insurance and duties on shipment of Products, (iii) special packing charges, and (iv) any tax, government charge or duty (including any tax such as value added or similar tax) levied on the sale, transportation or delivery of Products.

(f) “Products” means the Company products listed in Exhibit B attached hereto from time to time.

(g) “Term” means the period commencing on the Effective Date and terminating as set forth in Article 11 hereof.

(h) “Territory” means [insert list of countries covered by the agency].

(i) “Trademarks” means all trademarks, service marks, logos, brand names, trade names, domain names and/or slogans used by Company in connection with the Products from time to time (whether registered or unregistered).

2. Grant of Right

(a) Appointment. Subject to the terms and conditions of this Agreement, Company hereby appoints the Agent as its exclusive Agent to market and promote the Products, and to solicit purchase orders for the Products, in the Territory. Agent hereby accepts such appointment and agrees not to use a third party to perform its obligations pursuant to this Agreement without the prior written consent of Company. It is expressly agreed that the Agent has no authority to enter into agreements or make any commitments on the Company’s behalf.

(b) Restrictions on Agent’s Activities. Agent shall not: i) engage in any promotional activities relating to the Products directed primarily to customers outside the Territory, ii) solicit orders for Products from any prospective customer located outside the Territory, or iii) solicit orders for Products from any prospective customer located in the Territory with a view to their exportation.

(c) Restrictions on Company's Activities. Subject to Article 2 (d) hereof, Company shall not, and shall procure an undertaking from its agents or other intermediaries for territories other than the Territory that they will not: i) engage in any promotional activities relating to the Products directed primarily to customers in the Territory, (ii) solicit orders for Products from any prospective customer located in the Territory, or (iii) solicit orders for Products from any prospective customer located outside the Territory with a view to their exportation to the Territory.

(d) Reservation of Rights by Company. Company reserves the right to take the following actions at any time upon [insert number in words] ([insert number]) calendar days prior written notice to Agent without liability: (i) to add Products to or delete Products from Exhibit B hereto, (ii) to modify the design of or upgrade the Products or any part of the Products, and (iii) to sell the Products exclusively, on a direct or indirect basis, to certain types of customers or specific accounts in the Territory.

3. Trademarks

(a) Ownership. The Agent acknowledges Company's exclusive ownership of the Trademarks and acquires no right, title or interest in or to the Trademarks hereunder. Any and all goodwill associated with the Trademarks will inure exclusively to the benefit of Company. During the Term, the Agent shall not attempt to register any of the Trademarks or any trademarks, service marks, logos, brand names, trade names, domain names and/or slogans confusingly similar to the Trademarks. The Agent shall execute such documents and do all such acts and things as may be necessary in Company's reasonable opinion to establish Company's ownership of any rights in and to the Trademarks, at Company's expense.

(b) Grant of Rights. Company hereby grants to the Agent for the Term, and subject to the terms and conditions herein, a non-exclusive, non-transferable, revocable right to use the Trademarks in connection with the marketing and promotion of the Products in the Territory in accordance with the terms and conditions of this Agreement and any guidelines issued by Company from time to time. During the Term, Agent shall have the right to indicate to the public that it is an authorized Agent of the Products.

4. Agent's Obligations

In addition to such other duties and obligations as are set forth in this Agreement, the Agent shall:

(a) Diligently market and promote the Products, and solicit purchase orders for the Products, within the Territory;

(b) Maintain in the Territory an office and an adequately trained sales force knowledgeable of the Products;

- (c) Develop promotional materials for the Products appropriate for use in the Territory, including modification of the Company's promotional materials, subject to the Company's advance approval of such materials;
- (d) Participate in trade shows and exhibitions in the Territory where such participation will promote the Products;
- (e) Assist the Company in providing support services to customers of the Products in the Territory;
- (f) Fully and promptly answer all communications from the Company and its customers in the Territory;
- (g) Render such assistance as the Company may reasonably request with respect to credit and collection matters;
- (h) Prepare and maintain, and submit to the Company on a timely basis, all documentation and reports reasonably required from time to time to be prepared, maintained or submitted, including but not limited to, the following: (i) a database of information on current and prospective customers, which database shall at all times be the property of the Company, (ii) a quarterly report concerning current and prospective customers, actual or pending purchase orders, competitive products, trade conditions within the Territory and related matters, (iii) a quarterly marketing plan, and (iv) a written forecast of the number of Products expected to be ordered in the following [insert number in words] ([insert number]) month period, which forecast shall be submitted to the Company prior to the beginning of each calendar quarter. All documentation and reports shall comply with any guidelines issued by the Company from time to time.

5. Company's Obligations.

In addition to such other duties and obligations as are set forth in this Agreement, the Company shall:

- (a) Assist the Agent by providing an adequate supply of Product data sheets, price lists, catalogues and other promotional literature at no charge to the Agent;
- (b) Provide to the Agent one demonstration unit of each Product, which demonstration units shall at all times be the property of the Company;
- (c) Provide Product training and field sales support to the Agent's sales force at no charge to the Agent, with the frequency and content of the training to be determined by Company;
- (d) Place advertisements in applicable publications and participate in trade shows and exhibitions where such participation will promote the Products; and

- (e) Bear responsibility for collection of all customer payments.

6. Quotes and Purchase Orders

(a) The Agent may provide quotes for the Products at prices no less than the Company's then-current prices and on the basis of the Company's then-current terms of payment and General Terms and Conditions of Sale.

Any proposal at other prices or terms and conditions must be approved in advance by the Company.

The Company shall have the right, from time to time in its sole discretion and without notice, to amend prices, terms of payment and the General Terms and Conditions of Sale.

The Agent shall promptly forward to the Company copies of all proposals made by the Agent to current or prospective customers.

(b) All purchase orders for and offers to purchase Products received by the Agent shall promptly be forwarded to the Company and are subject to acceptance by the Company.

The Company reserves the right in its sole discretion to accept or reject any such order or offer, and to cancel or delay any order, in whole or in part, at any time after acceptance, without incurring any liability to the Agent for commissions, damages or otherwise.

The Company shall send the Agent a copy of all acceptances or rejections sent by it to customers with respect to purchase orders or offers procured by the Agent from customers.

(c) The Company shall invoice all customers directly, and all payments due from customers shall be made directly to the Company. In the event payment for Products is made by any customer to the Agent, the Agent shall immediately forward such payment to the Company.

7. Commissions and Expenses

(a) The Company shall pay to the Agent, as compensation for its services during the Term, a commission of [insert number in words] ([insert number]) % of the Net Product Sales.

Payment of commission shall be made by the Company to the Agent on or before the [insert number] day of the month following the calendar quarter of receipt by Company of payment for Products from its customer. At the time of payment of commission, the Company shall furnish the Agent with an itemized statement setting forth the computation of commissions.

(b) In the event of termination of this Agreement for any reason, the Company shall be obligated to pay commissions only with respect to purchase orders for Products procured by the Agent from customers in the Territory prior to termination of this Agreement and subsequently accepted by the Company.

Any adjustments which may be required pursuant to Article 7 (d) hereof shall be made notwithstanding any termination of this Agreement.

(c) Notwithstanding anything to the contrary set forth above, there shall be deducted from any commissions due the Agent an amount equal to: (i) commissions previously paid or credited to the Agent for sales of Products which are thereafter returned by the customer; and (ii) the applicable portion of commissions previously paid or credited to the Agent for sales of Products as to which any allowance or adjustment is credited to the customer for any reason.

(d) The Agent and the Company will agree on an acceptable quarterly expense level for the Agent. The Company will pay the agreed upon amount to the Agent in advance at the beginning of each calendar quarter following receipt of a proper invoice. Any additional expenditures or extraordinary expenses must be approved in advance by the Company in order to be reimbursed.

8. Non-Competition.

During the Term and for a period of one (1) year after voluntary termination of the Agreement by the Agent or termination by the Company pursuant to Article 11 (c) hereof, the Agent shall not, directly or indirectly, market, sell or promote the sale of, or otherwise commercially deal in or with, any products or services within the Territory that will then be in competition with the Products.

9. Confidentiality

(a) Obligations of Non-Disclosure and Non-Use. Unless otherwise agreed to in advance, in writing, by the disclosing Party or except as expressly permitted by this Agreement, the receiving Party will not, except as required by law or court order, use Confidential Information of the disclosing Party or disclose it to any third party for the Term and for a period of [insert number in words] ([insert number]) years thereafter.

The receiving Party may disclose Confidential Information of the disclosing Party only to those of its employees or contractors who need to know such information. In addition, prior to any disclosure of such Confidential Information to any such employee or contractor, such employee or contractor shall be made aware of the confidential nature of the Confidential Information and shall execute, or shall already be bound by, a non-disclosure agreement containing terms and conditions consistent with the terms and conditions of this Agreement.

In any event, the receiving Party shall be responsible for any breach of the terms and conditions of this Agreement by any of its employees or contractors.

The receiving Party shall use the same degree of care to avoid disclosure of the disclosing Party's Confidential Information as the receiving Party employs with respect to its own Confidential Information of like importance, but not less than a reasonable degree of care.

(b) Return of Confidential Information. Upon the termination or expiration of this Agreement for any reason, or upon the disclosing Party's earlier request, the receiving Party will deliver to the disclosing Party all of the disclosing Party's property or Confidential Information in tangible form that the receiving Party may have in its possession or control. The receiving Party may retain one copy of the Confidential Information in its legal files.

10. Infringement of Intellectual Property Rights.

The Agent agrees that if it is notified or otherwise obtains knowledge of any actual or alleged infringement of the Trademarks or any other intellectual property rights of Company by a third party in the Territory, the Agent will promptly notify the Company. No legal proceedings shall be instituted by the Agent against any third party in respect of any such actual or alleged infringement without the prior written consent of Company. Agent shall cooperate fully with Company in any legal proceedings instituted by Company, at Company's expense.

11. Term and Termination

(a) Term. This Agreement shall commence on the Effective Date and shall, unless earlier terminated pursuant to Article 11 (b) or 11 (c) hereof, continue for a term of [insert number in words] ([insert number]) years following the Effective Date (the "Initial Term").

Upon expiration of the Initial Term and each Renewal Term thereafter, this Agreement will be automatically renewed for an additional one (1) year term (the "Renewal Term") unless terminated by either Party upon [insert number in words] ([insert number]) calendar days written notice to the other Party prior to the expiration of the Initial Term or any Renewal Term.

(b) Termination Without Cause. After the [insert number in words] year of this Agreement, this Agreement may be terminated by Company at any time for any reason by giving [insert number in words] ([insert number]) calendar days written notice of such termination to the Agent. Agent may terminate this Agreement at any time for any reason by giving [insert number in words] ([insert number]) calendar days written notice of such termination to the Company.

(c) Termination for Material Breach. This Agreement may be terminated by either Party by giving [insert number in words] ([insert number]) calendar days written notice of such termination to the other Party in the event of a material breach by the other Party. "Material breach" shall include: (i) any violation of the terms of Articles 2 (b), 2 (c), 3, 8, 9 or 15, (ii) any other breach that a Party has failed to cure within

[insert number in words] ([insert number]) calendar days after receipt of written notice by the other Party, (iii) Agent's failure to meet the agreed Net Products Sales target for a twelve month period, (iv) any activity or assistance by Agent of challenging the validity or ownership of the Trademarks or any other intellectual property rights of Company, (v) an act of gross negligence or willful misconduct of a Party, or (vi) the insolvency, liquidation or bankruptcy of a Party.

(d) Effect of Termination. Upon termination of this Agreement, the Agent shall cease all marketing and promotion of, and the solicitation of purchase orders for, the Products and promptly return to the Company all demonstration units, promotional literature and other similar materials or effects which the Company may have furnished to the Agent in connection with its activities hereunder. Upon any termination of this Agreement, the Company shall not be liable to the Agent for loss of future commissions, goodwill, investments, advertising or promotional costs or like expenses.

12. Force Majeure.

Either Party shall be excused from any delay or failure in performance required hereunder if caused by reason of any occurrence or contingency beyond its reasonable control, including, but not limited to, acts of God, acts of war, fire, insurrection, strikes, lock-outs or other serious labor disputes, riots, earthquakes, floods, explosions or other acts of nature.

The obligations and rights of the Party so excused shall be extended on a day-to-day basis for the time period equal to the period of such excusable interruption. When such events have abated, the Parties' respective obligations hereunder shall resume.

In the event the interruption of the excused Party's obligations continues for a period in excess of [insert number in words] ([insert number]) calendar days, either Party shall have the right to terminate this Agreement upon [insert number in words] ([insert number]) calendar days' prior written notice to the other Party.

13. Limitation of Liability.

Except for violations of Article 3, 8 or 9, neither Party shall be liable to the other Party for any special, incidental, consequential, indirect or punitive damages (including loss of (anticipated) profits) arising in any way out of this Agreement, however caused and on any theory of liability.

14. Independent Contractors.

It is understood that both Parties hereto are independent contractors and engage in the operation of their own respective businesses.

Neither Party hereto is to be considered the agent of the other Party for any purpose whatsoever and neither Party has any authority to enter into any contract or assume

any obligation for the other Party or to make any warranty or representation on behalf of the other Party.

Each Party shall be fully responsible for its own employees, servants and agents, and the employees, servants and agents of one Party shall not be deemed to be employees, servants and agents of the other Party for any purpose whatsoever.

15. Non-Publicity.

Each of Company and Agent agree not to disclose the existence or contents of this Agreement to any third party without the prior written consent of the other Party except: (i) to its advisors, attorneys or auditors who have a need to know such information, (ii) as required by law or court order, (iii) as required in connection with the reorganization of a Party, or its merger into any other corporation, or the sale by a Party of all or substantially all of its properties or assets, or (iv) as may be required in connection with the enforcement of this Agreement.

16. Assignment.

Neither Party may without written approval of the other assign this Agreement or transfer its interest or any part thereof under this Agreement to any third party except that a Party may assign its rights or obligations to a third party in connection with the merger, reorganization or acquisition of stock or assets affecting all or substantially all of the properties or assets of the assigning Party.

17. Injunctive Relief.

Each of Company and Agent acknowledge that a violation of Article 3, 8 or 9 would cause immediate and irreparable harm for which money damages would be inadequate. Therefore, the harmed Party will be entitled to injunctive relief for the other Party's breach of any of its obligations under the said Articles without proof of actual damages and without the posting of bond or other security. Such remedy shall not be deemed to be the exclusive remedy for such violation, but shall be in addition to all other remedies available at law or in equity.

18. Governing Law and Dispute Resolution.

This Agreement shall be governed by and construed in accordance with the laws of [insert name of country], without giving effect to any choice of law or conflict of law provisions. The Parties consent to the [insert "exclusive" or "non-exclusive"] jurisdiction and venue in the courts of [insert name of courts] in the city of [insert name of city].

19. General.

This Agreement constitutes the entire agreement of the Parties on the subject hereof and supersedes all prior understandings and instruments on such subject. In the event of any discrepancy between the provisions of the Exclusive Agency Agreement and

the provisions of Exhibit A or Exhibit B, the terms and conditions of the Exclusive Agency Agreement shall prevail. This Agreement may not be modified other than by a written instrument executed by duly authorized representatives of the Parties.

20. Survival of Provisions.

The following provision of this Agreement shall survive the termination of this Agreement: Articles 7 (b), 8, 9, 11 (d), 15 and 20 and all other provisions of this Agreement that by their nature extend beyond the termination of this Agreement.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have duly executed this Agreement by their authorized representatives as of the date first written above.

Signed for and on behalf of
[insert name of Company]

Signed for and on behalf of
[insert name of Agent]

By:

By:

Name:

Name:

Title:

Title: