

Appendix I

Sample Distributorship Agreement

This Distributorship Agreement is entered into this day of between ABC Company, hereinafter referred to as “Company,” having its principal place of business at Naples, Florida, and XYZ Company of Mexico City, Mexico, hereinafter referred to as “Distributor.”

DEFINITIONS

- A. *Product(s)*: Product or products refers to products manufactured or marketed by the company, that including spare parts which are listed in Exhibit A. Exhibit A is subject to change by mutual agreement of the parties.
- B. *Territory*: Territory shall mean the geographical area designated under Exhibit B. Exhibit B may be revised from time to time by mutual agreement of the parties.
- C. *Contract year*: Contract year shall mean the period commencing January 1 and ending on December 31. The first contract year shall commence as of the date of this contract, and subsequent years shall commence on January 1 thereafter.
- D. *Trade terms*: Trade terms such as FOB, CIF, etc., shall be interpreted according to the latest version of International Chamber of Commerce (ICC) Rules.
- E. *Purchaser*: Purchaser shall mean a purchaser of goods for consumption and not for resale as a distributor.

APPOINTMENT AND ACCEPTANCE

- A. Company hereby appoints Distributor as the sole importer-distributor of products in the territory and Distributor accepts such appointment.

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- B. Company shall not appoint any third person to import, sell, or otherwise deal with products in the territory during the time when the agreement is in effect.

TERM OF THE AGREEMENT

The term of this agreement shall be from _____ to _____ unless sooner terminated or further extended as hereinafter provided.

MINIMUM ANNUAL PURCHASES

Distributor shall purchase from Company during the contract year such minimum dollar or unit amount of products as specified in Exhibit C attached thereto. Minimum sales for subsequent periods shall be specified in an addendum to this agreement. Should no agreement be reached between the parties, the minimum annual sales for the new contract year shall be deemed to be percent of the minimum annual sales for the preceding contract year.

PRICES FOR THE PRODUCTS

- A. Company reserves the right to establish or revise at its sole discretion, from time to time, upon thirty days, prices and terms of its sales of products to distributor, including the right at any time to issue new price lists and to change the prices, terms, and provisions therein contained. The price to be paid by the Distributor, excluding spare parts, shall be the price quoted on the Company's current international price list, less a discount of 12 percent.
- B. Company shall provide an additional discount of 3 percent when Distributor takes responsibility at the company's request to service products during the guarantee period. Company shall provide replacement parts free of charge to Distributor during the guarantee period.
- C. Distributor shall bear the cost of freight, insurance, and duties for such parts. Distributor shall make no charge for the replacement parts to customer.
- D. After the end of the guarantee period, spare parts shall be sold to Distributor at the company's current international price, less a discount of 20 percent.

PAYMENTS TO DISTRIBUTOR FOR DIRECT SALES

- A. Where the Company sells products direct to a customer, the Company shall pay Distributor such commission as is agreed between the parties. In the event that no specific commission is agreed, company shall pay Distributor 8 percent of the net selling price for the products.
- B. Any sums earned by Distributor shall be paid by Company thirty days after receipt by the Company of payment for any such order, provided that no such sums shall be payable by the Company to Distributor in respect of any orders received by the Company after termination of this agreement, except where orders are accepted from potential customers within six months after termination of this agreement and at the time of termination the Distributor has provided the Company with a written list of such potential customers, including evidence to show potential customer's communication and intent to buy the products.

GOVERNMENT LICENSES AND PERMITS

The Company shall secure the necessary licenses and permits for the sale and export of the products. It is also incumbent on the Distributor to obtain the necessary licenses and permits required for purchase and importation of the products.

INTELLECTUAL PROPERTY RIGHTS

- A. The Distributor shall not remove or obliterate any marks or symbols affixed on the goods without the written permission of the Company. A small label bearing the words "supplied by" together with the name and address of the Distributor, shall be applied to the goods.
- B. The Distributor shall advertise the goods solely under the trademarks of the Company. However, it shall not act in any manner, whether by advertising or other means, that might adversely affect the validity of any intellectual property rights belonging to the Company.
- C. The Distributor shall, at all times, do all in its power to protect the Company's intellectual property rights and shall ensure that the same remain connected only with the products as defined in this agreement and as the Company may indicate from time to time.
- D. The Distributor shall notify the Company in writing as soon as it becomes aware of any infringements of the latter's intellectual property rights in the territory. The Distributor shall bring an action to prevent

infringement of such rights at the Company's expense. However, the Company shall not be liable for any infringement caused by the actions of the Distributor.

WARRANTY AND LIABILITY

- A. The Company guarantees that products sold to Distributor are free from defects in material and workmanship and agrees to reimburse all costs of repairs, including reasonably necessary related labor charges, or, at Company's option, to replace any or all defective products within the period of such warranty.
- B. The period of the warranty shall extend for one year after the date of sale to the customer for products and ninety days from the date of sale to customer for parts. The Company shall not be liable for the acts or defaults of the Distributor, its employees, or its representatives.

UNDERTAKINGS BY THE DISTRIBUTOR

- A. Distributor agrees to be responsible for supplying or making arrangements for supplying all necessary service to products in the territory, and this includes using its best efforts to provide the best possible service for all owners of products. The Distributor shall hire an adequate number of technicians in order to provide such services promptly.
- B. Distributor shall purchase and maintain such volume and assortment of parts as may be necessary to satisfy the service needs of customers.
- C. Distributor shall use its best efforts to promote the sales of the goods in its territory as well as maintain adequate staff of salespeople to carry out such responsibility.
- D. If at any time during the continuance of this agreement, the Distributor shall become entitled to any development, improvement, or invention relating to any of the products, the Distributor shall give notice in writing to Company and grant to the Company a first option to acquire rights with respect to such invention.
- E. The Distributor shall spend a reasonable sum each year on promoting the product in the territory. The Company may make a contribution toward such costs.
- F. The Distributor shall assist the Company to produce sales literature in the language of the territory and also provide the Company any sales literature prepared by it relating to the products.

- G. The Distributor shall provide Company detailed reports of sales every ninety days, general market information in the territory, and suggestions for any improvements in December of each year.
- H. The Distributor shall refrain from purporting to act as an agent of the Company unless otherwise specified in the agreement. In addition, Distributor shall not make any contracts binding the company, warehouse, or advertise the goods outside its territory as well as get involved in the manufacture, production, sale, or advertising of competing goods in the territory.
- I. The Distributor shall not transfer or assign the benefit of this agreement to any third party without the prior written consent of the Company.

UNDERTAKINGS BY THE COMPANY

The Company agrees to undertake the following responsibilities:

- A. Assist the Distributor in advertising the goods by providing the necessary advice and literature as it considers reasonably sufficient to promote the goods in the territory.
- B. Support the Distributor in its sales and technical efforts by paying regular visits to the territory of experienced personnel. In the event that a technician is sent to assist the Distributor, the Distributor shall be responsible for traveling expenses to and from the territory, all local traveling expenses, accommodation, and reasonable subsistence costs in the territory.
- C. Provide the Distributor with maintenance and servicing instructions and other documentation as well as information on technical changes that are necessary and relevant in connection with the products. The Company may provide appropriate training to suitable qualified technicians of the Distributor that is necessary to install, maintain, or service the products. The parties will determine in due course where the training will take place as well as matters pertaining to expenses.

TERMINATION

This agreement may be terminated by a written instrument duly executed by the parties if any of the following situations arise:

- A. Either party commits any breach of contract and in the case of a breach capable of being remedied, the party does not remedy the same within sixty days after receipt of notice in writing of such breach.

- B. Either party becomes insolvent or goes into liquidation or has a receiver appointed in respect of all or a substantial part of its business.
- C. Payment of any sum remains unpaid to either party for a period of thirty days after the due date.

The innocent party may forthwith, by notice in writing, terminate this agreement. Any such termination shall be without prejudice to the rights of the parties accrued up to the date of termination. Neither party will be responsible, by reason of termination of this agreement, to the other for compensation or damages on account of any loss of prospective profits on anticipated sales or on account of expenditures, investments, leases, or other commitments relating to the business or goodwill of either party.

Within thirty days after the termination or expiration of this agreement, company may, at its option, repurchase from distributor, at the latter's net warehouse cost, any or all products and/or parts that are commercially usable or salable as well as any usable advertising or promotional materials. Distributor shall return any packaging or promotional materials that were provided by Company free of charge. Distributor shall cease all use of the name and trademark of Company.

FORCE MAJEURE

The occurrence of certain events that make the continuance of this agreement impossible, such as riots, government restrictions, or other events outside the reasonable control of the party, shall not constitute a breach of this agreement.

AGREEMENT AND INTERPRETATION

- A. This agreement and its annexes constitute the whole of the agreement between the Company and Distributor with respect to the products. No variation, alteration, or abandonment of any of its terms shall have effect unless made in writing by the Distributor or its duly authorized representative and by the Company or its duly authorized representative.
- B. This agreement shall be construed in accordance with U.S. law.
- C. The illegality or invalidity of any part of this agreement shall not affect the legality or validity of the remainder thereof.
- D. The headings are for reference purposes only and shall not affect the interpretation of this agreement.

LIST OF EXHIBITS

- A. Products
- B. Territory
- C. Minimum annual purchases
- D. Price list
- E. Initial order
- F. Intellectual property rights

Signed for ABC Company by

Signed for XYZ distributor by

In the presence of

In the presence of
