

DATED

AGENCY AGREEMENT

between

[PARTY 1]

and

[PARTY 2]

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THIS AGREEMENT is dated [DATE]

PARTIES

- (1) [FULL COMPANY NAME], a company incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Principal**).
- (2) [FULL COMPANY NAME], a company incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Agent**).

BACKGROUND

The Principal [manufactures and] sells [DESCRIPTION OF PRODUCTS] and now wishes to appoint the Agent as its [exclusive **OR** sole **OR** non-exclusive] agent for the promotion and sale of those products within the Territory, as defined below.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Commencement Date: [DATE].

Confidential Information: information of a confidential nature (including trade secrets and information of commercial value) known to the Principal and concerning the Principal and the Products and communicated to the Agent by the Principal.

Control: the ability to direct the affairs of another, whether by virtue of the ownership of shares, contract or otherwise.

Intellectual Property: any patent, copyright, registered design, unregistered design right, trade mark or other industrial or intellectual property owned or used by the Principal subsisting in the Territory [in respect of the Products] together with any current applications for any registrable items of the foregoing.

Local Regulations: laws and regulations applicable to the Products in the Territory.

Minimum Sales Target: in relation to each [Quarter **OR** Year], the amount of sales of the Products specified in Schedule 3 or such other amount(s) as may be agreed in writing between the parties in relation to any [Quarter **OR** Year].

Net Price: in relation to any Products, the price actually charged to the customer less any value added or other sales tax thereon included in the price [, any transport, haulage or insurance charges included in the price and any discounts, rebates or returns].

Products: the products of the type and specification [manufactured **AND/OR** sold] by the Principal and described in Schedule 1 [together with any other products [developed **OR** from time to time distributed] by the Principal and which the

Principal may permit the Agent, by express notice in writing, to promote and sell in the Territory] [but excluding any products which the Principal ceases to [manufacture or] distribute].

Quarter: each period of three calendar months ending on [DATE], [DATE], [DATE] and [DATE].

Territory: the [countries **OR** areas] specified in Schedule 2.

Year: the period of 12 months from the Commencement Date and each consecutive period of 12 months thereafter during the period of this agreement.

1.2 References to clauses and schedules are to the clauses of and schedules to this agreement.

1.3 Headings are for convenience only and shall be ignored in interpreting this agreement.

2. APPOINTMENT

2.1 The Principal hereby appoints the Agent as its [non-exclusive **OR** exclusive **OR** sole] agent to promote and sell the Products in the Territory on the terms of this agreement and the Agent hereby accepts the appointment on those terms.

2.2 [[Subject to clause 2.7,] the Principal shall not, during the continuance of this agreement, appoint any other person, firm or company as its agent, distributor or franchisee for the sale of the Products in the Territory.]

2.3 [The Principal shall not, without the Agent's consent and, subject to the following, make offers or quotations to or negotiate with or sell Products to any person in the Territory, and shall refer all such possible transactions to the Agent. The Principal reserves the right to supply the Products directly to customers in the Territory rather than having to refer these to the Agent:

- (a) insofar as those customers are listed in Schedule 5; or
- (b) in the circumstances referred to in clause 2.6.]

2.4 The Agent shall not, outside the Territory, actively market the Products nor solicit any orders for the Products.

2.5 [The Agent shall, but only in relation to specific transactions agreed by the Principal and the Agent to be covered by this clause 2.5, personally guarantee to the Principal the payment by the buyer of the price and due performance by the buyer of its other obligations under contracts for the sale of Products concluded by the Agent on the Principal's behalf, whether or not the buyer ultimately pays and performs under those contracts of sale. [The Agent shall not, however, be liable under this clause 2.5 where

the failure by the buyer to pay or to perform under the relevant sale contract is caused by some default by the Principal.]]

- 2.6 [If the Agent does not achieve the Minimum Sales Target during any [Quarter **OR** [two] successive Quarters **OR** Year], the Principal shall be entitled to supply direct to customers in the Territory pursuant to clause 2.3, but shall give the Agent not less than [NUMBER] months' notice in writing before doing so.]
- 2.7 The Agent agrees that the Principal may, during the period of three months ending on the date of termination of this agreement, appoint a successor to the Agent and may introduce that successor to customers and potential customers and allow that successor to make itself known as the Principal's agent so as to be able to commence business from the day after expiry of this agreement.
- 2.8 The Agent shall not, except with the Principal's prior written consent, during the term of this agreement [and for a period of [two] years following the termination or expiry of this agreement], be involved directly or indirectly in the development, manufacture or sale of any goods in the Territory which compete with the Products, and shall not buy the Products on its own account for resale.

3. AGENT'S OBLIGATIONS

The Agent undertakes and agrees with the Principal at all times during the term of this agreement:

- 3.1 To act towards the Principal conscientiously and in good faith and not to allow its interests to conflict with the duties that it owes to the Principal under this agreement and the general law.
- 3.2 Except as authorised by the Principal, not to act in a way which will incur any liabilities on behalf of the Principal nor to pledge the credit of the Principal.
- 3.3 To comply with all reasonable and lawful instructions of the Principal from time to time concerning the marketing and sale of the Products in the Territory, and generally to carry out its agency in such manner as it thinks best to promote the interest of the Principal.
- 3.4 To use [its best **OR** all reasonable] endeavours to promote and sell the Products in the Territory with all due care and diligence, to seek to improve the Principal's goodwill in the Territory, and (but only on the Principal's standard terms and conditions of sale unless specifically authorised otherwise by the Principal under clause 4) without prior reference to the Principal to negotiate, conclude and enter into contracts for the sale of the Products in the name of and on behalf of the Principal.

- 3.5 To act in accordance with sound commercial principles in its relations with customers and potential customers in the Territory (including as to assessing, and where appropriate obtaining independent assessments of, their creditworthiness) and to do nothing which the Principal considers could be prejudicial to its goodwill or commercial interests.
- 3.6 To describe itself in all dealings with the Products and in all associated advertising and promotional material and (if any description is provided there) at its premises as "sales agent" or "selling agent" of the Principal.
- 3.7 To maintain at its own expense appropriate offices, stores and display and administration facilities and systems as may be necessary for the effective performance of its duties under this agreement.
- 3.8 To employ a sufficient number of suitably qualified dedicated personnel to ensure the proper fulfilment of the Agent's obligations under this agreement, including without limitation attending (on reasonable notice) meetings with the Principal to discuss the marketing and selling of the Products in the Territory, attending trade exhibitions and other sales outlets as [the Principal considers] appropriate, and making regular and sufficiently frequent calls on customers or potential customers to promote the Products.
- 3.9 To keep the Principal fully informed of its activities concerning the promotion and sale of the Products and to provide the Principal with reports on request.
- 3.10 To keep the Principal fully and promptly informed of conditions and developments in the market for and use of the Products in the Territory (whether advantageous or disadvantageous to the Principal), of competing products and the activities of the Principal's competitors in the Territory and to perform market research accordingly.
- 3.11 To keep the Principal fully and promptly informed of its anticipated volumes of sales of the Products, so that the Principal may supply to the Agent sufficient volumes of stock of the Products to meet customers' requirements in a timely manner.
- 3.12 Promptly to inform the Principal of any order or enquiry concerning orders for the Products received [for supply] outside the Territory.
- 3.13 To inform the Principal promptly of any complaint or after-sales enquiry concerning the Products received by the Agent.
- 3.14 To maintain a list of customers and potential customers for the Products in the Territory from time to time, and on request to supply the Principal with an up-to-date copy of that list.

- 3.15 To use any samples of the Products provided under clause 5.3(a) only for disposal free of charge to customers or potential customers for the Products in the Territory, for the purpose of promoting sales of the Products there.
- 3.16 To keep all stocks of the Products which it holds or which are under its control in conditions notified to and approved by the Principal or (in the absence of such notification) which are appropriate for their storage and security all at its own cost, stored separately from other goods and clearly indicated as belonging to the Principal.
- 3.17 At its own expense to insure and keep insured all of the Principal's property which may at any time be in the Agent's possession, custody or control with [a reputable insurer **OR** an insurer nominated by the Principal] to its full replacement value against all the risks for which a prudent trader would insure his own property of the same type, to show to the Principal on demand the policy document and the most recent receipt for premium, to perform any obligation required of it under the terms of such insurance, to do nothing which could invalidate any such insurance, and to pay to the Principal promptly on receipt the proceeds of any insurance claim made in respect thereof, holding the same pending such payment in the trust bank account referred to in clause 6.12.
- 3.18 To issue invoices to customers (in a form suitable for value added tax or other sales tax purposes) in respect of the sale of Products under this agreement, and to receive payment for the same.
- 3.19 To take such action as the Principal may from time to time request to seek to collect the debts owing to the Principal by customers in the Territory or to assist the Principal in taking such action, but not to take any such action without the Principal's prior instructions.
- 3.20 Not without prior reference to the Principal (and then only acting strictly on the Principal's express instructions) on behalf of the Principal to take part in any dispute or commence or defend any court or other dispute proceedings or settle or attempt to settle or make any admission concerning any such proceedings.
- 3.21 To indemnify the Principal against any liabilities incurred by the Principal as a result of the Agent breaching any law from time to time in force in the Territory or the incurring of which is otherwise not authorised by the Principal hereunder.
- 3.22 To allow the Principal's authorised representatives at any reasonable time to have access to the Agent's premises (or to arrange for the Principal's authorised representatives to have access to other relevant premises) for the purpose of inspecting the Agent's books and records and for inspecting or taking stock of or possession of any of the Principal's property which is in the Agent's possession, custody or control.

4. SALE OF PRODUCTS

- 4.1 All sales of the Products by the Agent on behalf of the Principal shall be at the Principal's list prices as specified in the price lists provided from time to time by the Principal to the Agent for this purpose, subject to any discounts or deductions as the Principal may allow.
- 4.2 All sales of the Products by the Agent on behalf of the Principal shall be on the Principal's standard terms and conditions for the sale of the Products in the Territory as varied from time to time (a copy of the current version of which is attached as Schedule 4) or on such other terms and conditions as the Principal may at any time specify in writing to the Agent.
- 4.3 The Agent shall, in the course of dealing with customers and prospective customers for the Products, bring to their notice the Principal's terms and conditions referred to in clause 4.2.
- 4.4 The Agent shall not, without the Principal's prior written consent, make or give any representations, warranties or other promises concerning the Products beyond those contained in the Principal's standard terms and conditions referred to in clause 4.2.
- 4.5 The Agent shall not become the owner of any Products nor of any other goods delivered from the Principal to the Agent.
- 4.6 The Principal and Agent shall, [NUMBER] days before the beginning of each Quarter, agree stock levels and target volumes for the next Quarter in relation to each of the Products.
- 4.7 Provided the Principal supplies the same under clause 5.3(b), the Agent shall hold as stock adequate volumes of the Products so that it can meet orders from customers in a prompt manner and in accordance with the delivery timetables it has agreed and anticipates agreeing with them.
- 4.8 The Principal shall give the Agent [14 **OR** 28] days' notice of any changes in the prices of the Products or in its standard terms and conditions of sale.
- 4.9 The Principal shall give the Agent at least [NUMBER] months' written notice of its intention to extend the range of Products or discontinue supplies to the Agent of any of them.

5. PRINCIPAL'S UNDERTAKINGS

The Principal undertakes and agrees with the Agent during the term of this agreement:

- 5.1 To act at all times in its relations with the Agent dutifully and in good faith.
- 5.2 Subject to the following, and provided the Agent performs its obligations under this agreement, to indemnify the Agent against any liabilities which the Agent may incur as a result of acting with reasonable care and skill within the scope of its authority under this agreement as agent for the Principal. Everyday expenses, costs and charges incurred by the Agent in performing this agreement will be reimbursed by the Principal up to a maximum of £[AMOUNT] per Quarter against production by the Agent of appropriate invoices and receipts in support. Before incurring any expense, cost or charge which would result in that threshold being exceeded the Agent shall seek the Principal's express approval.
- 5.3 To supply to the Agent:
 - (a) at the Principal's own expense such samples, sales literature and other documentation and information and such technical, market and other support as the Agent may from time to time reasonably require for the purposes of promoting and selling the Products and to enable it properly and efficiently to discharge its duties under this agreement; and
 - (b) stocks of the Products delivered to the Agent's premises at the Principal's expense in such volumes as the Principal may decide and (subject to causes not within the Principal's control) to replenish that stock as necessary.
- 5.4 Within a reasonable period of becoming aware of the same, and subject to its rights thereunder, to perform any contracts for the sale of the Products made on its behalf by the Agent under this agreement.
- 5.5 Promptly and efficiently to deal with any complaint, dispute or after-sales enquiry relating to the Products raised by a customer in the Territory.
- 5.6 On the Agent's request, to communicate to the Agent the name and address of any customer in the Territory to which the Principal has sold any Products pursuant to clause 2.3.
- 5.7 Where appropriate, to inform the Agent within a reasonable time if any contract concluded on its behalf by the Agent will not be performed by it, and of the reason for such non-performance.

5.8 [To give the Agent [reasonable] notice if at any time it expects that the volume of sales of the Products will be significantly lower than the volume that the Agent would expect under normal circumstances.]

6. COMMISSION AND PAYMENTS

6.1 The Principal shall (subject to the Agent performing its obligations under this agreement) pay to the Agent a commission equal to the following percentages of the Net Price of all Products for which the Agent concludes a sale contract on behalf of the Principal pursuant to and during the term of this agreement:

- (a) if the Net Price in a Year is less than £[AMOUNT], [PERCENTAGE]%;
- (b) on the amount of the Net Price between £[AMOUNT] and £[AMOUNT], [PERCENTAGE]%;
- (c) on the amount of the Net Price between £[AMOUNT] and £[AMOUNT], [PERCENTAGE]%;
- (d) on any excess in the amount of the Net Price over £[AMOUNT], [PERCENTAGE]%.

6.2 [The Principal shall pay the Agent a commission equal to [PERCENTAGE] % of the Net Price of all Products for which the Principal enters into a sale contract with a customer during the term of this agreement pursuant to clause 2.3.]

6.3 [Where the Agent is appointed as a successor to an agent for the Principal for the marketing or sale of the Products in the Territory, and that previous agent is entitled to commission on any sales of the Products made to customers in the Territory after the appointment of the Agent under this agreement, the Agent accepts that it is not entitled to any commission in respect of such sales, notwithstanding that they were made after its appointment under this agreement, and undertakes not to seek any commission in respect of such transactions.]

6.4 Commission shall become due to the Agent as soon as and to the extent that the Principal receives for immediate value from or on behalf of the customer the price in respect of the sale of the relevant Products. Where the relevant sale contract provides for payment of the price by instalments, a proportionate part of the commission shall become due to the Agent as soon as such instalments are received for immediate value by the Principal, that proportion being equivalent to the proportion which such instalments bear to the total contract price.

6.5 [If at any time Products sold by the Principal under a contract made by the Agent are not, because of the Principal's fault, delivered to a customer, the Agent's right to commission shall apply in relation to the sale of those Products as if they had been duly delivered and paid for on the due date for payment of the price under the relevant sale contract.]

- 6.6 The Principal shall pay the Agent the commission due under this agreement by no later than the end of the calendar month following the Quarter in which it became due.
- 6.7 All sums payable under this agreement are exclusive of any value added tax or other applicable sales tax, which shall be added to the sum in question. A VAT invoice shall be provided against any payment.
- 6.8 In the absence of contrary agreement, commission shall be paid to the Agent in the same currency in which payment of the price under the relevant sale contract was made.
- 6.9 If any dispute arises as to the amount of commission payable by the Principal to the Agent, the same shall be referred to the Principal's auditors for settlement and their certificate shall be final and binding on both parties.
- 6.10 For the purposes of establishing the amount of commission due to the Agent:
- (a) the Agent shall, within 14 days after the end of each Quarter, send to the Principal a statement:
 - (i) showing the aggregate Net Price of each description of Products sold by the Agent on behalf of the Principal during that Quarter; and
 - (ii) its expenses incurred in the Quarter as referred to in clause 5.2,and shall attach to the statement the invoices, receipt and other supporting documentation referred to in clause 5.2; and
 - (b) the Principal shall, within 14 days of receipt of such statement, send to the Agent:
 - (i) a statement confirming the aggregate Net Price of each description of Products sold by the Principal during that Quarter under a contract concluded by the Agent, [and stating the aggregate Net Price of each description of any Products sold by it during that Quarter pursuant to clause 2.3];
 - (ii) a statement of the commission due to the Agent in that Quarter; and
 - (iii) its confirmation of whether or not it approves the expenses claim by the Agent for that Quarter.
- 6.11 For the purpose of payment between the Principal and Agent:
- (a) the Agent shall, with the statement sent pursuant to clause 6.10(a), remit to the Principal in the currency of the relevant sale contract a sum equal to the aggregate Net Price [less any deductions required by law but without any other deductions] as specified in the statement, and issue an invoice to the

Principal (in a form suitable for VAT purposes) for the commission due to the Agent in respect of that Quarter; and

- (b) the Principal shall, with the statement sent pursuant to clause 6.10(b), remit to the Agent [in [the relevant currency]] the commission due to the Agent in respect of that Quarter and the reimbursement in respect of the approved amount of the Agent's expenses referred to in clause 5.2.

6.12 The Agent shall collect and hold as trustee in a separate bank account [in the name of the Agent but designated as a trust account for the Principal's benefit] all monies due to the Principal in respect of such sales or otherwise (except for any remitted directly by the customer to the Principal), shall transfer the same to the Principal [without deduction] pursuant to clause 6.11(a), and shall account on demand to the Principal for any interest earned on credit balances from time to time in that account.

6.13 Each party shall keep separate accounts and records giving correct and adequate details of all enquiries received and transactions conducted by the Agent on the Principal's behalf and separate files of vouchers, invoices and receipts relevant to this agreement, and shall permit the duly appointed representatives of the other party at all reasonable times to inspect all such accounts and records and to take copies thereof. For the avoidance of doubt, all rights in such records (including without limitation database right and copyright) shall belong to the Principal.

7. ADVERTISING AND PROMOTION

7.1 The Agent shall:

- (a) be responsible for the advertising and promotion of the Products in the Territory, provided that the production and use by the Agent of any advertising materials and promotional literature in relation to the Products not provided by the Principal shall be subject to the prior written consent of the Principal;
- (b) [submit an annual advertising and promotion programme to the Principal for its approval and arrange at its own expense and spend a minimum sum of £[AMOUNT] on the implementation of the programme;]
- (c) display advertising materials and other signs provided by the Principal; and
- (d) [observe all directions and instructions given to it by the Principal in relation to promotion and advertisement of the Products, and shall not make any written statement as to the quality or manufacture of the Products without the prior written approval of the Principal.]

7.2 The Principal shall provide the Agent with information on the advertising and promotion carried out by the Principal and with the materials, information and support referred to in clause 5.3(a).

7.3 The Principal shall, where mutually agreed, participate with the Agent in fairs and exhibitions in the Territory.

7.4 The Principal reserves the right to advertise and promote the Products in the Territory.

8. COMPLIANCE WITH LAWS AND REGULATIONS

8.1 The Principal warrants to the Agent that:

(a) the Products to be delivered to customers in the Territory will, on arrival in the Territory, comply with the Local Regulations concerning design, manufacture, construction, composition, packaging and labelling, being those in force at the date of this agreement; and

(b) provided that the Agent complies with its obligations under this agreement and, subject to clause 8.2, the Products may at the date of this agreement be lawfully sold in the Territory.

8.2 The Agent shall be responsible for obtaining any licences, registrations, permits or approvals necessary or advisable for the importation, promotion and sale of the Products in the Territory. The Principal shall provide the Agent with reasonable assistance and support (including in particular technical advice and information) to that end.

8.3 The Agent shall comply with all Local Regulations concerning marketing and sale, and with all and any conditions binding on it in any licences, registrations, permits and approvals referred to in clause 8.2.

8.4 The Agent shall give the Principal as much advance notice as possible of any prospective or actual changes in the Local Regulations or any prospective or actual change in any condition in any licence, registration, permit or approval as referred to in clause 8.2.

8.5 On receipt of notification from the Agent of any change in the Local Regulations, the Principal shall [endeavour to] ensure that the Products comply with that change, by the date of implementation of that change or as soon as [is reasonably] possible thereafter.

9. INTELLECTUAL PROPERTY

9.1 The Agent acknowledges that the Principal's rights to the Intellectual Property used on or in relation to the Products and the Principal's business and the goodwill connected with that are the Principal's property.

9.2 The Agent accepts that:

- (a) it is only permitted to use the Intellectual Property for the purposes of and during the term of this agreement and only as authorised by the Principal hereunder;
- (b) other than to that extent, it has and shall have no right to use or to allow others to use the Intellectual Property or any part of it. It shall not seek to register any Intellectual Property on behalf of the Principal without the Principal's express consent;
- (c) it shall not use any trade marks, trade names or get-up which resemble the Principal's trade marks, trade names or get-up and which would therefore be likely to confuse or mislead the public or any section of the public;
- (d) it shall not remove, alter or otherwise tamper with any trade marks, trade names, logos, numbers or other means of identification on the Products or the packaging therefor which come into the Agent's possession, custody or control, and shall not place any trade mark or trade name of its own on the Products or any packaging or other materials used in connection therewith.
- (e) it shall not do or omit to do, or authorise any third party to do or to omit to do, anything which could invalidate or be inconsistent with the Intellectual Property; and
- (f) it shall make a statement in any advertising material and promotional literature produced by or for it in connection with the Products as to the ownership of any relevant Intellectual Property used or referred to therein.

9.3 The Agent shall notify the Principal of:

- (a) any actual, threatened or suspected infringement in the Territory of any Intellectual Property of which the Agent becomes aware; and
- (b) any claim by any third party of which it becomes aware that the importation or sale of the Products into or in the Territory infringes any rights of any other person.

9.4 The Agent shall, at the request and expense of the Principal and on a full indemnity basis (but not otherwise), take all such steps during the term of this agreement as the Principal may reasonably require to assist the Principal in maintaining the Intellectual Property as valid and effective, or to take or defend any court or other dispute proceedings concerning intellectual property matters.

10. PRODUCT LIABILITY AND INSURANCE

10.1 Subject to fulfilment by the Agent of its obligations under this agreement, the Principal shall indemnify the Agent against any liability incurred by the Agent in respect of damage to property, death or personal injury arising from any fault or defect in the materials or workmanship of the Products and any reasonable costs,

claims, demands and expenses arising out of or in connection with that liability (**Relevant Claim**), except to the extent that the liability arises as a result of the action or omission of the Agent.

- 10.2 The Principal shall maintain product liability insurance for the duration of this agreement of not less than £[AMOUNT] per annum with a reputable insurer and shall provide a copy of the insurance policy [and proof of payment of the current premium] to the Agent on request by the latter.
- 10.3 The Agent shall, immediately it becomes aware of a matter which may result in a Relevant Claim (whether against the Agent or only against the Principal):
- (a) give notice to the Principal of the details of the matter;
 - (b) afford access to the Principal and permit copies to be taken of any materials, records or documents as the Principal may require to take action under clause 10.3(c);
 - (c) allow the Principal the exclusive conduct of any proceedings and take whatever action as the Principal shall direct to defend or resist the matter, including the use of professional advisers nominated by the Principal; and
 - (d) not admit liability or settle the matter without the prior written consent of the Principal.
- 10.4 The Agent undertakes to maintain appropriate, up-to-date and accurate records to enable the immediate recall of any [batches] of the Products [or any of them] from the retail or wholesale markets. These records shall include records of deliveries to customers (including details of batch numbers, delivery date, name and address of customer, and telephone number and fax number (and e-mail address if available)).
- 10.5 The Agent shall, at the Principal's cost, give such assistance as the Principal [shall **OR** may reasonably] require for the purpose of recalling as a matter of urgency any quantities of the Products or any of them from the retail or wholesale market.

11. DURATION AND TERMINATION

- 11.1 This agreement shall come into effect on the Commencement Date and, subject to clause 11.2, shall continue in force for an initial term of [NUMBER] Years and indefinitely thereafter until terminated by either party giving prior written notice in accordance with clause 11.4 to expire on or after the expiry date of the initial term.
- 11.2 The Principal may give notice in writing to the Agent terminating this agreement with immediate effect if:
- (a) the Agent commits any serious breach of any of the terms of this agreement and that breach (if capable of remedy) is not remedied within fifteen (15)

working days of notice being given by the Principal requiring it to be remedied; or

- (b) the Agent fails in any [Quarter **OR** [two] successive Quarters **OR** Year] to meet the Minimum Sales Target for [that Quarter **OR** those Quarters **OR** that Year]; or
- (c) an order is made or a resolution is passed for the winding up of the Agent, or an order is made for the appointment of an administrator to manage the affairs, business and property of the Agent, or such an administrator is appointed or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by the Agent or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a receiver or manager or administrative receiver is appointed in respect of all or any of the Agent's assets or undertaking or circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or administrative receiver or which entitle the Court to make a winding-up or bankruptcy order, or the Agent takes or suffers any similar or analogous action in consequence of debt, or an arrangement or composition is made by the Agent with its creditors or an application to a court for protection from its creditors is made by the Agent; or
- (d) there is a change of Control of the Agent; or
- (e) the Agent ceases, or threatens to cease, to carry on business; or
- (f) the Agent purports to assign its rights or obligations under this agreement; or
- (g) the Principal ceases to produce or distribute generally the Products; or
- (h) if the Agent, being an individual, reaches the normal retiring age for agents in this sector in the Territory, or in any event the age of [65] or dies.

11.3 [For the avoidance of doubt, a breach of any of [clause 6 and clause 13] is a serious breach for the purposes of clause 11.2(a).]

11.4 For the purposes of clause 11.1, the notice period shall be not less than:

- (a) one month for the first Year;
- (b) two months for the second Year;
- (c) three months for the third Year; and
- (d) three months if the agreement lasts longer than three years,

and for the purpose of this clause 11, the length of this agreement is the aggregate of the initial term of the agreement and any subsequent period of this agreement. The end of the period of written notice need not coincide with the end of a calendar month.

12. EFFECTS OF TERMINATION

12.1 Termination of this agreement, however caused, shall be without prejudice to any rights or liabilities accrued at the date of termination.

12.2 On termination of this agreement for any reason:

- (a) if and to the extent that the Commercial Agents (Council Directive) Regulations 1993 (as from time to time amended) apply, and provided that the Agent gives notice of its intention as required thereunder, the Agent shall, unless any of the circumstances mentioned in Regulation 18 of those Regulations applies, have the right to be indemnified as provided in Regulation 17 of those Regulations. For the avoidance of doubt, the Agent shall have no right to any compensation under those Regulations on termination of this agreement;
- (b) the Agent shall cease to promote, market, advertise or sell the Products;
- (c) the Agent shall immediately cease to describe itself as an agent of the Principal and cease to use all trade marks, trade names and brand names of the Principal (including without limitation on stationery and vehicles); and
- (d) the Agent shall at its own expense within 30 days return to the Principal all stocks of the Products (other than any for which it has accepted orders from customers before the date of termination), samples and any advertising, promotional or sales material relating to the Products then in the possession of the Agent, or otherwise dispose of the same as the Principal may instruct.

12.3 For the avoidance of doubt, the provisions of clause 6 shall, notwithstanding termination, continue in force in relation to all sales of the Products where the sale has been concluded before the date of termination.

12.4 Termination shall not affect the operation of clause 2.8, clause 5.2, [clause 9.1 and clause 9.2,] clause 10.1 and clause 13, which shall remain in full force and effect.

12.5 Subject as herein provided and to any rights or obligations accrued prior to termination, neither party shall have any further obligation to the other under this agreement.

13. CONFIDENTIALITY

13.1 The Agent agrees that it shall at all times (both during the term of this agreement and after its termination) keep confidential, and shall not use (other than strictly for the purposes of this agreement) and shall not, without the prior written consent of the Principal, disclose to any third party any Confidential Information, unless the information:

- (a) was public knowledge or already known to the Agent at the time of disclosure; or
- (b) subsequently becomes public knowledge other than by breach of this agreement; or
- (c) subsequently comes lawfully into the possession of the Agent from a third party.

13.2 To the extent necessary to implement the provisions of this agreement (but not further or otherwise), the Agent may disclose the Confidential Information to any customers or prospective customers, to any relevant governmental or other authority or regulatory body, and (where the Agent is a body corporate) to any [member of the same group of companies], and to any employees of the Agent [or of any of the above], provided that before any such disclosure the Agent shall make those persons aware of its obligations of confidentiality under this agreement and shall [use its best endeavours to] obtain a binding undertaking as to confidentiality from all such persons.

13.3 All documents and other records (in whatever form) containing Confidential Information supplied to or acquired by the Agent from the Principal shall be returned promptly to the Principal on termination of this agreement, and no copies shall be kept.

14. FORCE MAJEURE

14.1 The obligations of each party under this agreement shall be suspended during the period and to the extent that that party is prevented or hindered from complying with them by any cause beyond its reasonable control, including (insofar as beyond such control but without prejudice to the generality of the foregoing expression) strikes, lock-outs, labour disputes, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, difficulty or increased expense in obtaining workmen, materials, goods or raw materials in connection with the performance of this agreement.

14.2 In the event of either party being so hindered or prevented, the party concerned shall give notice of suspension to the other party as soon as reasonably possible, stating the date and extent of the suspension and its cause, and the omission to give such notice shall forfeit the rights of that party to claim suspension. Any party whose obligations have been suspended as aforesaid shall resume the performance of those obligations as soon as reasonably possible after the removal of the cause and shall so notify the other party. In the event that the cause continues for more than six months, either party may terminate this agreement by giving the other party 30 days' notice.

15. ENTIRE AGREEMENT

This agreement constitutes the entire understanding between the parties with respect to the subject matter of this agreement and supersedes all prior agreements, negotiations and discussions between the parties relating to it.

16. AMENDMENTS

Save as expressly provided in this agreement, no amendment or variation of this agreement shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it.

17. ASSIGNMENT

The Agent shall not without the prior written consent of the Principal assign, transfer, charge or deal in any other manner with this agreement or its rights under it or part of it, or purport to do any of the same, nor sub-contract nor appoint sub-agents or delegates of any or all of its obligations under this agreement.

18. FREEDOM TO CONTRACT

The parties declare that they each have the right, power and authority and have taken all action necessary to execute and deliver, and to exercise their rights and perform their obligations under this agreement.

19. WAIVER

The failure of a party to exercise or enforce any right under this agreement shall not be deemed to be a waiver of that right, nor operate to bar the exercise or enforcement of it at any time or times thereafter.

20. SEVERABILITY

If any part of this agreement becomes invalid, illegal or unenforceable, the parties shall in such an event negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the invalid, illegal or unenforceable provision which as nearly as possible gives effect to their intentions as expressed in this agreement. Failure to agree on such a provision within six months of commencement of those negotiations shall result in automatic termination of this agreement. The obligations of the parties under any invalid, illegal or unenforceable provision of the agreement shall be suspended during such a negotiation.

21. RIGHTS OF THIRD PARTIES

21.1 [SPECIMEN CLAUSE A (EXCLUSION OF RIGHTS UNDER THE ACT)]

[Save as expressly provided in [clause [NUMBER] of] this agreement], no term of this agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party[, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act].

OR

[SPECIMEN CLAUSE B (EXCLUSION OF RIGHTS UNDER THE ACT AND OTHERWISE)]

[Save as expressly provided in [clause [NUMBER] of] this agreement], no term of this agreement shall be enforceable by a third party (being any person other than the parties [and their permitted successors and assignees]).

OR

[SPECIMEN CLAUSE C (EXCLUSION OF RIGHTS UNDER THE ACT AND OTHERWISE - ALTERNATIVE FORM)]

This agreement does not create any right enforceable by any person who is not a party, except that:

- (a) [the terms of this agreement **OR** rights under clause[s] [NUMBER(S)]] may be enforced by [PERSON(S)] [respectively] subject to and in accordance with the terms of [this agreement **OR** clause[s] [NUMBER(S)]] and the Contracts (Rights of Third Parties) Act 1999; and
- (b) a person who is the permitted successor to or assignee of the rights of a party is deemed to be a party to this agreement and the rights of such successor or assignee shall, subject to and on any succession or assignment permitted by this agreement, be regulated by the terms of this agreement.

21.2 Notwithstanding that any term of this agreement may be or become enforceable by a person who is not a party to it, the terms of this agreement or any of them may be varied, amended or modified or this agreement may be suspended, cancelled or terminated by agreement in writing between the parties, or this agreement may be rescinded (in each case) without the consent of any such third party.

22. NOTICES

Any notice required to be given pursuant to this agreement shall be in writing and shall be given by delivering the notice by hand at, or by sending the same by prepaid first class post (airmail if to an address outside the country of posting) to the address of the relevant party set out in this agreement, or such other address as either party notifies to the other from time to time. Any notice given according to the above

procedure shall be deemed to have been given at the time of delivery (if delivered by hand) and when received (if sent by post).

23. GOVERNING LAW AND JURISDICTION

This agreement shall be governed by and construed in accordance with English law and each party hereby irrevocably submits to the jurisdiction of the English Courts.

This agreement has been entered into on the date stated at the beginning of it.

Schedule 1 The products

[LIST PRODUCTS, SPECIFYING WHETHER OR NOT SPARES ARE INCLUDED]

Schedule 2 Territory

[LIST COUNTRIES OR AREAS COMPRISING THE TERRITORY]

Schedule 3 Minimum sales targets

[Quarter **OR** Year] 1:

[Quarter **OR** Year] 2:

[Quarter **OR** Year] 3:

[Quarter **OR** Year] 4:

[Quarter **OR** Year] 5:

[Quarter **OR** Year] 6:

Schedule 4 Principal's standard terms and conditions of sale

Schedule 5 House accounts

Signed by [NAME OF DIRECTOR]
for and on behalf of [NAME OF
PRINCIPAL]

.....
Director

Signed by [NAME OF DIRECTOR]
for and on behalf of [NAME OF AGENT]

.....
Director