

SAMPLE

DISTRIBUTORSHIP AGREEMENT



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DISTRIBUTORSHIP AGREEMENT

THIS AGREEMENT IS MADE AS OF THE ____ DAY OF _____, 20____, by and between _____, (Supplier) a _____ organized and existing under the laws of _____, with its principal place of business at _____, and _____, (Distributor) _____ organized and existing under the laws of _____, with its principal place of business at _____;

ARTICLE I. DEFINITIONS

When used in this Agreement, the following terms shall have the meanings indicated. The meanings shall be applied whether the singular or the plural form of the term is used.

"Accessories" means the accessories described in the attached Exhibit A, and includes any special devices manufactured by supplier and used in connection with the operation of the "Goods". Accessories may be deleted from or added to Attachment A and Supplier may change the specifications and design at its sole discretion at any time by mailing written notice of such changes to Distributor. Each change shall become effective within ____ days following the date notice thereof is mailed to Distributor.

"Affiliate" means any company controlled by, controlling, or under common control with supplier.

"Agreement" means this agreement, and the Exhibits, together with all amendments thereto.

"Attachment" means any form or exhibit attached to this agreement.

"Customer" means any person who purchases or leases Products from Distributor.

"Delivery Point" means Distributor's facilities located at _____.

"Goods" means those items described in Attachment B. Goods may be deleted from or added to Attachment B and their specifications and design may be changed by Supplier at its sole discretion at any time by mailing written notice of such changes to Distributor. Each change shall become effective within ____ days following the date notice thereof is mailed to Distributor.

"Products" means Goods, Accessories, and Spare Parts.

"Spare Parts" means all parts and components of the Goods and/or any special devices used in connection with the maintenance or servicing of the Goods. Supplier declares that a complete list of Spare Parts is set forth in Attachment C. Spare parts may be deleted from or added to Attachment C and their specifications and design may be changed by Supplier at its sole discretion at any time by mailing written notice of such changes to Distributor. Each change shall become effective within ____ days following the date notice thereof is mailed to Distributor.

"Specifications" means those specifications set forth in Attachment D.

"Territory" means the following geographic area or areas:

"Trademark" means any trademark, logo, or service mark, whether or not registered, used to represent or describe the Products of Supplier, as set forth in Attachment E.

ARTICLE II. APPOINTMENT OF DISTRIBUTOR

Appointment. Supplier hereby appoints Distributor as Supplier's nonexclusive distributor of Products in the Territory, and Distributor accepts that position. It is understood that Supplier cannot lawfully prevent its distributors located elsewhere from supplying Products for sale or use within the Territory and that it has no obligation to do so.

Referrals. If Supplier or any Affiliate is contacted by any party inquiring about the purchase of Products in the Territory, Supplier shall, or shall cause that Affiliate to, refer such party to Distributor.

Relationship of Parties. Distributor is an independent contractor and is not the legal representative or agent of Supplier for any purpose and shall have no right or authority (except as expressly provided in this Agreement) to incur, assume or create in writing or otherwise, any warranty on the part of Supplier. Supplier shall not exercise any control over any of Distributor's employees, all of who are entirely under the control of Distributor. Distributor shall be responsible for the acts and omissions of Distributor's employees. Distributor shall, at its own expense, during the term of this Agreement and any extension thereof, maintain full insurance under any Workmen's Compensation Laws effective in the state or other applicable jurisdiction covering all persons employed by and working for it in connection with the performance of this Agreement, and upon request shall furnish Supplier with satisfactory evidence of the maintenance of such insurance. Distributor accepts exclusive liability for all contributions and payroll taxes required under Federal Income Tax Law, Federal Social Security Laws and State Unemployment Compensation Laws or other payments under any laws of similar character in any applicable jurisdiction as to all persons employed by and working for it. Nothing contained in this Agreement shall be deemed to create any partnership or joint venture relationship between the parties.

Sale of Products by Distributor. Distributor shall use its best efforts to distribute the Products and to fully develop the market for the Products within the Territory. The parties have consulted together and now agree that if Distributor's best efforts are used as provided in this Section, a minimum of _____ Products ("Annual Market Potential") will be purchased and distributed in the Territory during the first year of this Agreement. At the beginning of each subsequent year the parties will consult together in good faith and agree on the Annual Market Potential applicable to that year; provided, however, that if they cannot agree, the Annual Market Potential for the immediately Preceding year will apply to the current year.

Competing Products. Distributor agrees that it will not distribute or represent any Products in the Territory that compete with the Products during the term of this Agreement or any extensions thereof.

Advertising. Distributor shall be entitled, during the term of the distributorship created by this Agreement and any extension thereof, to advertise and hold itself out as an authorized Distributor of the Products. At all times during the term of the distributorship created by this Agreement and any extension thereof, Distributor shall use the Trademarks in all advertisements and other activities conducted by Distributor to promote the sale of the Products. Distributor shall submit samples of all proposed advertisements and other promotional materials for the Products to Supplier for approval and Distributor shall not use any such advertisements or promotional materials without having received the prior written consent of Supplier to do so. Distributor shall not, pursuant to this Agreement or otherwise, have or acquire any right, title or interest in or to Supplier's Trademarks.

New Products. If Supplier or any Affiliate now or hereafter manufactures or distributes, or proposes to manufacture or distribute, any product other than the Products, Supplier shall immediately notify, or cause such Affiliate to notify, Distributor of that fact and of all details concerning that product. Distributor may request from Supplier distribution rights for that product in the Territory, or any portion thereof, and if so requested, Supplier shall grant, or shall cause the subject Affiliate to grant, such distribution rights to Distributor on terms and conditions no less favorable than those provided in this Agreement with respect to Products. If Distributor does not obtain those distribution rights or obtains them only for a portion of the Territory, and Supplier or an Affiliate later desires to offer those distribution rights for the Territory or any portion thereof to another party, Supplier shall first, or shall cause such Affiliate to first, make that offer in writing to Distributor on terms and conditions which shall be specified fully in that offer. That offer shall contain a full description of the subject product and its operation. Distributor may request, and Supplier shall promptly provide, or shall cause such Affiliate promptly to provide, further information concerning the product or the offer. If Distributor fails to accept such offer, Supplier or the Affiliate may then offer the product to another party for distribution in the Territory, but may not offer it on terms and conditions more favorable than those offered to Distributor. If Supplier or the Affiliate desires to make a better offer to another party, Supplier shall first, or shall cause the affiliate first to, make such better offer to Distributor in accordance with the procedure set forth above.

Distributor Sales, Service and Storage Facilities. Distributor shall, at its expense, engage and maintain a sales, service and parts handling organization in the Territory, staffed with such experienced personnel as are necessary to enable distributor to perform its obligations under this Agreement. Distributor shall, at its expense, maintain facilities and personnel in the Territory that will enable it promptly and satisfactorily to perform, at a reasonable price, all inspection, maintenance and other necessary servicing of Products sold by Distributor. To assist Distributor in the discharge of this service and maintenance function, Supplier shall provide service and maintenance training, without charge, to any reasonable number of Distributor's personnel as Distributor shall designate. Distributor shall, at its expense, at all times store and maintain its inventory of Products in accordance with current, applicable instructions issued by Supplier from time to time. Distributor shall, at its expense, deliver one copy of Supplier's current, applicable operation and maintenance manual to each Customer at the time of sale and, at that time, Distributor shall, at its expense, fully explain and demonstrate to the customer the proper method of operating and maintaining the Products. Distributor shall mail to Supplier, during the term of the distributorship created by this Agreement and any extension thereof, prompt written notice of the address of each location at which products are stored, and the address of each facility established by Distributor to sell and service the Products. Supplier may, through its designated agent, inspect all such locations and facilities and the operations conducted therein at any time during normal business hours.

Spare Parts and Accessories. Distributor shall keep in stock an adequate supply of Spare Parts and Accessories for the servicing of Goods. No Spare Parts or Accessories not manufactured by Supplier shall be used in connection with the Goods unless they have been approved in writing by Supplier.

Confidential Information. Written Technical data, drawings, plans and engineering in technical instructions pertaining to the Products are recognized by Distributor to be secret and confidential and to be the property of Supplier. Those items shall at all times and for all purposes be held by Distributor in a confidential capacity and shall not, without the prior written consent of Supplier, (i) be disclosed by Distributor to any person, firm or corporation, excepting those salaried employees of Distributor who are required to utilize such items in connection with the sale, inspection, repair or servicing of Products during the term of the distributorship created by this Agreement or any

extension thereof, or (ii) be disclosed to any person, firm or corporation, or copied or used by Distributor, its employees or agents at any time following the expiration or termination of this Agreement or any extension thereof. Supplier may require as a condition to any disclosure by Distributor pursuant to this Section that any salaried employee to whom disclosure is to be made sign a confidentiality agreement, enforceable by Supplier, containing terms satisfactory to Supplier.

ARTICLE III. TERMS OF PURCHASE AND SALE OF PRODUCTS

Purchase of Product. Distributor shall purchase its requirements for the Products from Supplier. Such requirements shall include purchasing and maintaining an inventory of Products that is sufficient to enable Distributor to perform its obligations hereunder, and at least one (1) demonstration model of the Goods and Accessories. Supplier shall supply to Distributor sufficient Products to enable Distributor to meet the full demand for Products in the Territory. All orders for Products transmitted by Distributor to Supplier shall be deemed to be accepted by Supplier at the time such orders are received by Supplier to the extent that they are in compliance with the terms of this Agreement and Supplier shall perform in accordance with all accepted orders. Supplier shall confirm its receipt and acceptance of each order within ____ days of receipt of the order.

Purchases for Resale. All Products purchased by Distributor shall be purchased solely for commercial resale or lease, excepting those Products reasonably required by Distributor for advertising and demonstration purposes.

Order Procedure. Each order for Products issued by Distributor to Supplier under this Agreement shall identify that it is an order and shall further set forth the delivery date or dates and the description and quantity of Products which are to be delivered on each of such dates. An order for Products shall not provide a delivery date less than ____ days after the date that order is delivered to Supplier. The individual contracts for the sale of Products formed by Distributor's submission of orders to Supplier pursuant to the terms and conditions hereof shall automatically incorporate, to the extent applicable, the terms and conditions hereof, shall be subject only to those terms and conditions (together with all terms in orders which are contemplated by this Agreement) and shall not be subject to any conflicting or additional terms included in any documents exchanged in connection therewith. Notwithstanding anything in this Section, Supplier and Distributor may, by written agreement, modify the terms and conditions of this Agreement.

Cancellation of Orders. All cancellation of orders by Distributor shall be in writing, or if not initially in writing, shall be confirmed in writing. If Distributor cancels an order, which has been accepted by Supplier, Distributor shall reimburse Supplier for any cost incident to such order incurred by Supplier prior to the time it was informed of the cancellation.

Purchase Price. The prices for Goods, and any discounts applicable thereto, are set forth in Attachment B. The prices for Accessories, together with any discounts applicable thereto, are set forth in Attachment A. The prices for Spare Parts, together with any discounts applicable thereto, are set forth in Attachment C. All prices are F.O.B. the Delivery Point. If the price for any Product is not set forth on Attachment A, B or C and Distributor nevertheless orders such a Product from Supplier, the parties hereby evidence their intention thereby to conclude a contract for the sale of that Product at a reasonable price to be determined by the Parties mutually negotiating in good faith.

Price Changes. Supplier reserves the right, in its sole discretion, to change prices or discounts applicable to the Products. Supplier shall give written notice to Distributor of any price change at least ____ days prior to the effective date thereof. The price in effect as of the date of Distributor's receipt of notice of such price change shall remain applicable to all orders received by Supplier prior to that effective date.

Packing. Supplier shall, at its expense, pack all Products in accordance with Supplier's standard packing procedure, which shall be suitable to permit shipment of the Products to the Territory; provided, however, that if Distributor requests a modification of those procedures, Supplier shall make the requested modification and Distributor shall bear any reasonable expenses incurred by Supplier in complying with such modified procedures which are in excess of the expenses which Supplier would have incurred in following its standard procedures.

Delivery: Title and Risk of Loss. All deliveries of Products sold by Supplier to Distributor pursuant to this Agreement shall be made F.O.B. the Delivery Point, and title to and risk of loss of Products shall pass from Supplier to Distributor at the Delivery Point. Supplier shall be responsible for arranging all transportation of Products, but if requested by Supplier, Distributor shall, at Supplier's expense, assist Distributor in making such arrangements. Supplier shall also procure insurance for the transportation of the Products, and such insurance shall be of a kind and on terms current at the port of shipment. In the event that Inspection and Acceptance. Promptly upon the receipt of a shipment of Products, Distributor shall examine the shipment to determine whether any item or items included in the shipment are in short supply, defective or damaged. Within _____ days of receipt of the shipment, Distributor shall notify Supplier in writing of any shortages, defects or damage, which Distributor claims existed at the time of delivery. Within _____ days after the receipt of such notice, Supplier will investigate the claim of shortages, defects or damage, inform Distributor of its findings, and deliver to Distributor Products to replace any which Supplier determines, were in short supply, defective or damaged at the time of delivery. Unless notice is given as provided in this Section, Distributor shall be deemed to have accepted such Products and to have waived all claims for shortages, defect or damage.

Payment. Upon delivery and acceptance of Products, Supplier may submit to Distributor Supplier's invoice for those Products. Distributor shall pay each such proper invoice within _____ days after Distributor's receipt of that invoice. Payment shall be made in United States dollars to a bank account to be notified in writing by Supplier to Distributor.

U.S. Export Control. Supplier's obligations to sell and deliver Products shall be subject to such United States laws and regulations as shall, from time to time, govern the sale and delivery of goods for export from the United States.

Supplier's Signature (Title) Distributor's Signature (Title)