

## **BUSINESS TO BUSINESS – AGENCY AGREEMENT**

THIS AGREEMENT is made on *(date)*

AND IS MADE BETWEEN:

*(name of Company)* Limited whose registered office is at *(registered office details)* ("the Company"); and

*(name)* of *(address)* ("the Agent")

NOW IT IS HEREBY AGREED as follows:

### **1. Definitions**

In this Agreement the following terms and phrases shall have the following meaning unless the context otherwise requires:

**Commencement Date** *(date)*.

**Commission Day** the *(day)* after the end of each month.

**Customers** all customers for the Products.

**Products** the *(description)* products specified in Schedule 1 as from time to time produced by the Company.

**Intellectual Property** All patents, copyright, trade marks, service marks, business marks, domain names, database rights and all other intellectual property owned by the Company.

**Territory**                      *(describe the geographical territory.)*

## **2. Appointment of Agent**

Subject to the terms and conditions of this Agreement, with effect from the Commencement Date the Company appoints the Agent as its [exclusive/sole] Agent of the Products in the Territory [and accordingly the Company will not appoint any other Agent to sell the Products in the Territory provided always that the Company will itself be entitled to sell or otherwise supply the Products in the Territory].

## **3. Duties of Agent**

For the duration of this Agreement the Agent shall:

- 3.1 use all reasonable efforts to promote, market and extend the sale of the Products in the Territory to the Customers and work diligently to obtain orders from them [and in particular to achieve any sales targets which the Company may specify from time to time].
- 3.2 not advertise the Products except by means of brochures and other publicity materials supplied or approved by the Company.
- 3.3 visit or telephone Customers at such intervals as the Company requires and within *(number)* days of each contact by telephone or visit to a Customer furnish a report of it to the Company in such form as the Company requires.
- 3.4 at all times act in good faith and carry out the marketing and sales policy requirements of the Company concerning the marketing and sale of the Products and relationships with Customers and potential Customers.
- 3.5 not make directly or indirectly any profit or benefit from the sale of the Products except the commission set out in Clause 6 of this Agreement.
- 3.6 promptly, and in any event no later than [7] days after receipt of the inquiry or order, submit to the Company all inquiries or orders from Customers obtained by the Agent for the Products in the Territory in sufficient full and

accurate detail to enable the Company with the least possible delay to respond to them effectively.

- 3.7 refrain from soliciting or seeking to obtain orders for Products directly or indirectly from Customers outside the Territory or from Customers where he knows or has reason to believe the Products are intended for re-sale outside the Territory.
- 3.8 refer to the Company all inquiries for Products from Customers outside the Territory without being entitled to commission on them.
- 3.9 not appoint any sub-Agent to promote or extend the sale of the Products in the Territory without the Company's prior written consent.
- 3.10 [immediately bring to the Company's attention any improper or wrongful use of the Intellectual Property.]
- 3.11 keep adequate and up-to-date records of all customer inquiries and orders received for Products.
- 3.12 allow the Company and its agents and employees at all reasonable times on reasonable notice to have access to and to inspect his accounts and records of customer inquiries and orders received for Products and to take copies or extracts from them and on demand to supply copies to the Company.
- 3.13 supply such reports and other information as the Company from time to time requests, including sales forecasts and information with regard to products competing with or likely to compete with the Products in the Territory.

#### **4. Terms of Business**

- 4.1 The Agent shall not offer the Products for sale at any price except that for the time being fixed by the Company.
- 4.2 The Agent shall not make any representations or give any warranties or guarantees about the Products except such as are in the Company's standard terms and conditions of sale from time to time ("the Terms").
- 4.3 The Agent shall not take orders for the sale of the Products or make contracts on behalf of the Company except subject to confirmation and acceptance by the Company and on the Company's Terms.

## 5. Control of Products and Territory

- 5.1 The Company may vary the prices for the Products and their conditions of sale without any prior notice to the Agent.
- 5.2 The Company may make changes in the design, production or finish of the Products without any prior notice to the Agent.
- 5.3 The Company may vary the Territory so as to exclude such part of that area as it reasonably thinks fit but that course of action shall not be taken without prior consultation with the Agent.

## 6. Commission

- 6.1 The Company agrees to pay Commission to the Agent on Products sold, delivered and invoiced in the Territory by the Company.
- 6.2 For the purposes of establishing the amount of Commission due to the Agent:
  - 6.2.1 the Agent shall within [14] days after the end of each month send to the Company a statement showing the price of Products sold by the Agent in the Territory during that month;
  - 6.2.2 the Company shall within [14] days of receipt of the statement referred to in clause 6.2.1 send to the Agent a statement showing the amount of Commission due to the Agent in respect of that month.
- 6.3 The Commission will be calculated on the total invoice price of the Products sold in each month (excluding VAT, packaging, insurance or transport costs or import or export duties payable) less the total in each month of credit notes relating to the Products issued by the Company to Customers in the Territory at the following rates:
  - 6.3.1 *(rate)%* on so much of the total in each month of invoice prices as does not exceed £*(amount)*;
  - 6.3.2 *(rate)%* on so much of the total in each month of invoice prices as exceeds £*(amount)*.

- 6.4 If, in respect of any transaction on which commission has been paid or credited to the Agent, it is established that the contract between the Company and the Customer will not be executed for a reason for which the Company is not to blame, the amount of commission attributable to that invoice shall be refunded by the Agent to the Company on the next Commission Day and the refund shall be by way of deduction from any commission then payable.
- 6.5 The Company will pay the commission due to the Agent on each Commission Day and the Company shall when paying the commission furnish an account of the sales in respect of which commission is being paid, setting out how commission has been calculated.
- 6.6 Upon the expiration or termination of this Agreement, the Agent shall be entitled to commission only on orders transmitted to the Company before such expiration or termination which are included in a list of outstanding orders submitted by the Agent and agreed by the Company.
- 6.7 If during any period in which commission due from the Company to the Agent is liable to VAT and the Agent is a taxable person, the amount of the VAT shall be added to the amount of the commission.

## **7. Term**

Subject to the terms and conditions of the Agreement the appointment of the Agent hereunder shall continue for a period of (*term*) from the Commencement Date and continue thereafter unless and until terminated by either party giving [one month's] written notice to the other or such longer period of notice as may be required by law to expire on or at any time after the expiry of the said initial fixed term.

*[Note: The Commercial Agents Regulations 1993 provide that notice is to be a minimum of one month in the first year of the contract, two months in the second year of the agency and three months in the third and subsequent years.]*

## **8. Events of Default and Termination**

The Company shall be entitled to terminate the appointment of the Agent with immediate effect by giving written notice to the Agent if:

- 8.1 the Agent is in breach of any of its obligations hereunder [and such breach has continued unremedied for a period of seven days after the Company has given written notice to the Agent of the breach]; or
- 8.2 the Agent compounds or attempts to compound with or calls a meeting of his creditors; or
- 8.3 the Agent commits any act of bankruptcy.

## 9. **Effect of Termination of Agreement**

- 9.1 Upon the expiration or termination of this Agreement for whatever reason all rights granted to the Agent by this Agreement shall immediately terminate and shall forthwith revert to the Company.
- 9.2 The Agent agrees that upon expiration or termination of this Agreement for whatever reason he shall not hold himself out or represent himself as having had any connection with the Company, the Products [or the Intellectual Property].
- 9.3 Except as required by law or by this Agreement, the Agent shall not be entitled to receive any compensation for termination of the appointment.

*[Note: The Commercial Agents Regulations 1993 provide that in many circumstances, the principal is obliged to pay either compensation or an indemnity to the agent on termination of the agency. If the agreement does not stipulate indemnity (by way of an **express clause**) then the agent is entitled to compensation based on loss of the notional price that could have been obtained for the agency at the date of termination. Refer to the fact sheet on Commercial Agents for more detailed guidance on this issue. It is suggested you take legal advice on this issue, as this could have a major effect on the amount, if any, the principal may have to pay to the agent on termination.*

*If you are stipulating indemnity, you may wish to use a clause such as this:*

9.4 *Where the Commercial Agents (Council Directive) Regulations 1993 apply to this Agreement and the Agent is so entitled, the Agent may claim to be indemnified under such Regulations on termination of this Agreement where such termination brings with it an entitlement to such an indemnity.]*

## **10. Warranties**

The Agent warrants to the Company that:

- 10.1 he is free to enter into and perform the terms of this Agreement;
- 10.2 none of the terms of this Agreement or performance by the Agent will in any way conflict with any other agreement between the Agent and any other party, nor will any future agreement made by the Agent with any third party affect his performance under this Agreement;
- 10.3 during the continuance of this Agreement, he will not without the Company's prior written consent be concerned or interested directly or indirectly in any place whether in or outside the Territory in the manufacturing, distribution or sale of goods similar to or competing with the Products or carry on any business which has or might have an adverse effect on the sale of the Products.

## **11. Confidentiality and Copyright**

- 11.1 The Agent acknowledges that he shall not acquire any interest or rights in the Products or any other products or property of the Company, including Intellectual Property, and the Agent shall not either during the course of or following termination of this Agreement use or disclose any details of such rights or of such information as are in his possession to any third party without the consent of the Company save as is necessary in the proper performance of his duties hereunder.
- 11.2 The Agent agrees that he shall not acquire or have any proprietary rights in any lists of customers or potential customers for the Products in the Territory whether collated by the Company or by the Agent.
- 11.3 The Agent agrees to disclose promptly to the Company particulars of all agencies in which the Agent is engaged or interested either directly or indirectly as principal, agent, partner, director or employee.

## **12. Force Majeure**

- 12.1 If either party to this Agreement is prevented or delayed in the performance of any of its respective obligations under this Agreement by "force majeure", then such party shall be excused the performance for so long as such cause of prevention or delay shall continue;
- 12.2 For the purpose of this Agreement 'force majeure' shall be deemed to be any cause affecting the performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of such party and inter alia including, but not limited to the following:
- 12.2.1 strikes, lockouts or other industrial action;
  - 12.2.2 terrorism, civil commotion, riot, invasion, war threat or preparation for war;
  - 12.2.3 fire, explosion, storm, flood, earthquake, subsidence, epidemic, bad weather or other natural physical disaster;
  - 12.2.4 impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport; and
  - 12.2.5 political interference with the normal operations.

## **13. Waiver**

- 13.1 Failure of either party to insist upon strict performance of any provision of this Agreement or the failure of either party to exercise any right or remedy to which it is entitled hereunder shall not constitute a waiver thereof and shall not cause a diminution of the obligations under this Agreement.
- 13.2 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be such and signed by both parties.



**14. Severability**

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Agreement shall continue in full force and effect as if this Agreement had been executed with the illegal or unenforceable provision eliminated.

**15. Communications**

Any communications to be given hereunder shall be in writing and shall be delivered by hand or sent by post to the address of the addressee as set out in this Agreement or to such other address (being in Great Britain) as the addressee may from time to time have notified for the purpose of this Clause; or sent by facsimile transmission to the addressee's facsimile number as from time to time notified.

**16. Survival of Causes of Action**

The termination of this Agreement howsoever occurring shall not affect the rights and liabilities of the parties already accrued at such time nor affect the continuance in force of such of its provisions as are expressed as or capable of having effect after such termination.

**17. Entire Agreement**

This Agreement contains the entire agreement and understanding of the parties relating to the subject matter of this Agreement and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between the parties, whether written or oral.

**18. Assignment**

This Agreement is personal to the Agent and cannot be assigned or disposed of without the Company's prior written consent.

**19. Law and Jurisdiction**

This Agreement is governed by the laws of England and Wales and the parties submit to the jurisdiction of the Courts of England and Wales.

SIGNED:

.....

[Director

For and on behalf of the Company]

SIGNED:

.....

*(name of Agent)*