



## APPOINTMENT OF SOLE SELLING AGENT FOR A DISTRICT OR TOWN

Entered into between:

(name of manufacturing company)

.....

a company incorporated in and under the laws of the Republic of South Africa,<sup>1</sup> having its registered office at (address) (hereinafter called “the Company”, which expression will, where the context allows, include any assigns of the company)

and

(name of agent)

.....

having its principal office at (address)(hereinafter called “the Agent”, which expression shall, where the context allows, include any permitted assigns of the agent).

IT IS HEREBY AGREED as follows:

### 1 Appointment and duration

The Agent is hereby appointed as the sole agent of the Company for (name of district) (hereinafter called “the Agency District”) for selling goods manufactured by the Company of the kind set out in the First Schedule hereto (hereinafter called “the Goods”) for the period of (specify number of years) from the date hereof, (and thereafter from year to year unless terminated by notice in terms of clause 6.2 hereof) on the terms and subject to the conditions hereinafter set out.

### 2 Agent’s undertakings

The Agent hereby undertakes that it will at all times during the continuance in force of this agreement observe and perform the terms and conditions set out in this agreement, and in particular:

#### 2.1 To promote sales

The Agent will use its best endeavours to promote and extend the sale of the Goods throughout the Agency District to all potential purchasers thereof and work diligently to obtain orders therefor.

#### 2.2 To act loyally

The Agent will in all matters act loyally and faithfully to the Company and obey the Company’s orders and instructions and, in the absence of any such order or instruction in relation to any particular matter, will act in such a manner as the Agent reasonably considers to be most beneficial to the Company’s interests.

#### 2.3 Not to deal in competing goods

The Agent will not engage or be interested either directly or indirectly as principal, agent or employee in selling goods of any description or kind similar to the Goods of the Company, or designed to perform the same function as the Goods of the Company or any similar function, whether alone or in conjunction with any other goods, without obtaining the prior consent in writing of the Company.



#### **2.4 Not to sell for resale outside district**

The Agent will not sell to any person (or to anybody corporate or unincorporated entity) Goods which the Agent knows or has reason to believe are intended for resale outside the Agency District.

#### **2.5 To sell the goods at recommended prices**

The Agent undertakes to sell the Goods at the prices mentioned in the attached Second Schedule, which serves as a guide for the convenience of the Agent, who may reduce such prices at its discretion.

The Company undertakes not to enforce the recommended prices directly or indirectly by means of withholding supplies, or denial of distribution rights, or by means of any discriminatory sales conditions or a penalty or by any other method likely to have such effect, provided that where a recommended resale price appears on or in relation to a commodity the words "recommended prices" must appear with the price

#### **2.6 Restriction on sale where goods sold at reduced price to attract custom or for advertising**

The Agent may not sell the Goods to any person (or body corporate or unincorporated entity) whom the Agent knows or has reasonable cause to believe has sold the Goods of the Company, or any goods of the same or a similar description, at a reduced price for the purpose of attracting customers likely to purchase other goods or otherwise for the purpose of advertising the business of such person, until the expiration of a period of 12 (TWELVE) months from the occasion on which goods were so sold, without the Agent first obtaining the consent in writing of the Company, and without the Agent giving notice to the purchaser that the Goods of the Company may not be resold at a reduced price for the purpose of so attracting customers or otherwise for the purpose of such advertising

#### **2.7 To sell on cash terms**

The Agent will not sell the Goods on terms other than for cash against delivery unless the consent of the Company in writing to give credit to a particular purchaser has been in each case first obtained, the Company reserving the right in the case of any such credit sales to stipulate for such increase in the price of the Goods as the Company thinks fit.

#### **2.8 Not to give unauthorised warranties**

The Agent, in selling the Goods, will not make any representations or give any warranties other than those contained in the Company's conditions of sale.

#### **2.9 To inform company of disputes with purchasers**

In the event of any dispute arising between the Agent and a purchaser in relation to the sale of the Goods, the Agent will forthwith inform the Company of the dispute and will not, without the Company's consent in writing, take any proceedings in respect thereof, or compromise the dispute or grant a release to any debtor of the Company.

#### **2.10 To refer to company enquiries outside agency district**

The Agent must refer to the Company all enquiries for the Company's Goods from addresses outside the Agency District and from addresses within the Agency District for resale outside the Agency District. The Agent will not be entitled to any remuneration in respect of any sales resulting from such enquiries.



### **2.11 To give company information as to marketing matters**

The Agent must promptly bring to the notice of the Company any information received by the Agent which is likely to be of use or benefit to the Company in marketing the Goods and must, in particular, notify the Company forthwith of any use of the Goods, or of goods of a similar description to those of the Company, for resale at reduced prices in order to attract custom or for advertising, and of any sale of the Goods by any purchaser contrary to the Company's conditions of sale brought to such purchaser's notice under clause 2.6 hereof.

### **2.12 To keep accounts and records**

The Agent must keep full and proper books of account and records showing clearly all enquiries, transactions and proceedings relating to the agency and, in particular, all transactions undertaken by or through the Agent in relation to the Goods. Such books and records must be kept separate from those relating to matters not connected with the agency and must remain at all times the property of the Company.

### **2.13 To maintain separate accounts**

The Agent must maintain a separate banking account (in the name of the Company) in respect of money received by the Agent in respect of sales of the Company's Goods and must remit to the Company on the first business day of each (specify, for example, month) all sums received by the Agent in respect of sales of those Goods during the preceding (month), less such amount as the Agent is permitted to deduct in accordance with clause 5 hereof.

### **2.14 To allow inspection of books**

The Agent must allow any person authorised by the Company to have access at all reasonable times to the Agent's premises for the purpose of inspecting the Agent's books and records and for the purpose of taking stock of the Company's Goods on those premises.

### **2.15 To provide reports and returns**

The Agent must from time to time, upon the written request of the Company, supply to the Company reports, returns and other information relating to the agency.

### **2.16 Not to assign agency**

The Agent may not assign, transfer, charge or in any manner make over, or purport to assign, transfer, charge or make over, this agreement or the rights thereunder, or any part thereof, without obtaining the prior consent in writing of the Company.

### **2.17 Not to tamper with company's marks**

The Agent may not alter, remove or tamper with the marks or numbers on the Goods deposited with the Agent by the Company.

### **2.18 Not to incur liabilities binding on the company**

The Agent may not incur any liability on behalf of the Company or in any way pledge or purport to pledge the Company's credit.

### **2.19 To indicate the nature of agency in dealings**

The Agent must in all correspondence, commercial documents and on the name plate or other signs at the place of business describe itself as a selling Agent for the Company and may not describe itself as the Company's agent except in conjunction with the word "selling".



## **2.20 To provide premises and insure goods**

The Agent must, at its own expense, hire and occupy for the purposes of the agency suitable premises and must keep insured to their full value, against all risks, all Goods entrusted to the Agent by the Company under this agreement. On request, the Agent must produce to the Company the latest receipts for rent, rates and taxes of the premises and for the premiums on insurance policies showing that the respective payments have been made on or about the respective due dates preceding the request.

## **2.21 To defray expenses**

The Agent must defray all expenses of and incidental to the agency.

## **3 Duties of company**

The Company hereby agrees with the Agent that it will perform the following duties during the continuance of the agreement:

### **3.1 To supply samples**

The Company will, at its own expense, supply the Agent with such amount of samples, patterns, instruction books, technical pamphlets, catalogues and advertising material as it considers reasonably sufficient with a view to promoting sales of the Goods within the Agency District.

### **3.2 To provide stock**

The Company will provide the agent with a stock of the Goods, free of all expense of delivery to the Agent's premises, to the value of R..... (..... RAND) according to the Company's price list, and replenish every (specify, for example, three) months such stock so as to keep it at that value: provided always that the Agent will have no right of action against the Company for delay in replenishing stock occasioned by shortage of stock, delays in transit, accidents, strikes or other unavoidable occurrences.

### **3.3 To refer enquiries to agent or allow commission**

The Company will, where practicable, refer all enquiries for the Goods received from addresses within the Agency District to the Agent: provided that if it is impractical in the opinion of the Company so to refer such enquiries, the Company will have the right to supply the Goods direct to addresses within the Agency District and will pay to the Agent in respect thereof such remuneration as is specified in clause 5.2 hereof.

## **4 Reserved rights of company**

The Company reserves to itself the following rights, notwithstanding anything to the contrary contained in this agreement:

### **4.1 To continue sales to particular customers**

The Company reserves the right to continue to sell and supply the Goods to the customers in the Agency District listed in the Third Schedule hereto (in pursuance of contracts currently in force between the Company and those customers), and no right to commission will accrue to the Agent in respect of any such sale.<sup>7</sup>

### **4.2 To withdraw goods ceasing to be manufactured or to add new classes of goods**

The Company reserves the right to vary the First Schedule to this agreement defining the Goods, either by the withdrawal therefrom of a class or classes of Goods named therein in the event of the Company ceasing to



#### **4.3 To vary extent of agency**

If, in the opinion of the Company, the Agent is not at any time producing adequate sales coverage throughout the whole of the Agency District, and without prejudice to any of its other rights under this agreement, the Company may either vary the extent of the Agency District so as to exclude from this agreement such part or parts of the Agency District as the Company thinks fit, or vary the First Schedule so as to exclude from this agreement such of the classes of goods therein set out as the company thinks fit, or take both these courses of action; save that neither course of action will be taken without prior consultation with the Agent.

#### **4.4 To assign rights and obligations**

In the event of the Company's business or any part thereof (being a part concerned in the manufacture of the Goods to which this agreement relates, or any class of those Goods) being transferred to any other company, the Company reserves the right to assign its rights and obligations under this agreement to that other company after giving one month's notice of such assignment in writing to the Agent.

### **5 Remuneration of agent**

**5.1** In consideration for the Agent's services to the Company in pursuance of this agreement, the Agent shall be allowed to deduct and retain .... % (.... PER CENT) of the price set forth in the Second Schedule (as contemplated in clause 2.5 hereof) in respect of the Goods sold by the Agent on behalf of the Company.

**5.2** Where the Company supplies the Goods directly to addresses within the Agency District pursuant to clause 3.3 hereof, the Company will pay the Agent an amount equal to that which the Agent would have been allowed to deduct and retain under clause 5.1 of this agreement if the Agent had carried out the transaction, less ...% (... PER CENT). A certificate signed by the Company's auditor of the amount of commission payable to the Agent will be prima facie evidence of the amount.

**5.3** The said remuneration shall be inclusive (or exclusive) of Value-Added Tax (if applicable).

### **6 Termination of agreement**

#### **6.1 Termination by company**

Without prejudice to any other remedies that the Company may have against the Agent, the Company will have the right at any time, by giving notice in writing to the Agent, to terminate the agreement forthwith in any of the following events:

##### **6.1.1 On breach**

*If the Agent commits a breach of any of the terms or conditions of this agreement.*

##### **6.1.2 On liquidation or insolvency**

*If the agent is a company:*

If the Agent is placed in liquidation, whether compulsorily or voluntarily (otherwise than for the purposes of amalgamation or reconstruction), or compounds with its creditors, or takes or suffers any similar action in consequence of debt.

*If the agent is a natural person or a partnership:*

If the estate of the Agent is sequestered, or if the Agent enters into any arrangement with his creditors or takes or suffers any similar action in consequence of debt (or if the estates of any members of the firm are sequestered).



### **6.1.3 On prevention of performance of duties**

If, from any cause, the Agent is prevented from performing its duties hereunder for a period of (specify) or for a total period of (specify) in any one period of 12 (TWELVE) calendar months.

### **6.1.4 On prejudicial conduct**

If the Agent is guilty of any conduct which, in the opinion of the Company, is prejudicial to the Company's interests.

### **6.1.5 On purported assignment**

If the Agent purports to assign the burden or benefits, or purports to charge the benefits of this agreement without the consent in writing of the Company.

### **6.2 Termination by notice of either party**

Either party may terminate this agreement at any time after the expiration of (specify) years from the date of this agreement)10 by giving to the other party one month's notice in writing sent by registered post or recorded delivery service to the registered office of the Company or of the Agent as the case may be (or, if the Agent is an individual or a partnership: to the principal place of business of the Agent).

### **6.3 Termination on principal ceasing to carry on business**

If at any time before (date of expiry of initial period of agreement) the Company ceases to carry on business (or ceases to manufacture or deal in the Goods), this agreement will forthwith terminate unless the rights and obligations of the Company under this agreement are assigned in accordance with clause 4.4.

## **7 Compensation to agent for premature termination**

In the event of the termination of this agreement under clause 6.3, the Agent will be entitled to be paid compensation by the Company in an amount equal to ..... % (..... PER CENT) of the value of the sales of the Goods by the Agent which would have been made during the period from the date of termination up to (date of expiry of initial period of agreement) if the agency had not terminated, such compensation being calculated on the basis that the annual value of sales which would have been made during the period of the original term of the agreement remaining uncompleted would be the same as the average annual value of sales in fact made during the period of the agency preceding that termination

## **8 Non-disclosure of company affairs: restriction on trading**

The Agent hereby undertakes that it will not:

**8.1** at any time, whether during the continuation in force of this agreement or at any time after the termination thereof, divulge any information in relation to the Company's affairs or business or method of carrying on business;

**8.2** during the period of (specify) years after the termination of this agreement for any reason whatsoever be associated, whether as principal, agent or employee in the manufacture, sale or distribution in the Agency District of any products of the same or similar kind, or designed to perform functions the same as or similar to, those of the Goods of the Company of which the Agent is at any time a selling agent under this agreement without the prior consent in writing of the Company



## **9 Return of company property**

**9.1** Upon the termination of this agreement for any cause, or at any time prior to such termination at the request of the Company, the Agent must promptly return to the Company, or otherwise dispose as the Company may instruct, of all samples, patterns, instruction books, technical pamphlets, catalogues, advertising material, specifications and any other materials, documents and papers whatsoever sent to the Agent and relating to the business of the Company (other than correspondence between the Company and the Agent) which the Agent may have in its possession or under its control, and also return to the Company upon the termination of this agreement all separate books of account and records relating to the agency kept in accordance with clause 2.12 of this agreement.

**9.2** Upon such termination, the Agent must forthwith return to the Company, or otherwise dispose as the Company directs, of the Goods, or of any part thereof, which are in the Agent's possession or under the Agent's control, and must account to the Company for the value at the prices mentioned in the Second Schedule, less the deduction referred to in clause 5.1 hereof, of any deficiency in the stock of such Goods.

**9.3** The cost of carriage, insurance and charges incurred in any such return or other disposal shall be borne equally between the parties.

## **10 Arbitration**

Any dispute, difference or question which may arise at any time hereafter between the Company and the Agent concerning the true construction of this agreement or the rights and liabilities of the parties must, unless otherwise expressly provided, be referred to the decision of a single arbitrator to be agreed upon between the parties, or, in default of agreement for 14 (FOURTEEN) days, to be appointed at the request of either party in accordance with, and subject to, the provisions of the Arbitration Act 42 of 1965 or any statutory modification or re-enactment thereof for the time being in force.

## **11 Service of notices**

Save as otherwise provided in this agreement, any notice required to be given in terms of this agreement will be sufficiently given to the Agent if forwarded by registered post, recorded delivery service, telefax or electronic mail to the last known postal, physical, telefax or electronic mail address (as the case may be) of the Agent in the Agency District, and will be sufficiently given to the Company if similarly forwarded to the Company's registered office. Every notice will be deemed to have been received and given at the time when in the ordinary course of transmission it should have been received at the address to which it was sent.

## **12 Waiver**

The waiver by the Company of any right accruing to it as a result of a breach of any term of this agreement will not prevent the subsequent enforcement of that term and will not be deemed to be a waiver of any right accruing to the Company as a result of a subsequent breach.

## **13 Agreement contains whole contract between parties**

This agreement contains the entire undertaking of the parties and there are no promises, terms, conditions or obligations, whether oral or written, express or implied, other than those contained in this agreement.

## **14 Cancellation of previous agreements**

All previous agreements and arrangements, if any, made between the Company and the Agent are hereby cancelled, but without prejudice to any rights which have already accrued thereunder to either party.



**15 Domicilium citandi et executandi**

The parties choose as domicilium citandi et executandi for all notices and for the services of all processes the following addresses:

The Principal: (state).

The Agent: (state).

Any notice of any change of address must be given in writing by the party concerned and delivered by hand or sent by registered mail to the other party. Addresses in terms of this clause must be physical addresses and not post-box numbers.

SIGNED at ..... on ..... 20 .....

(Signature of or on behalf of company) .....

**Names of Witnesses:**

**Signature Witnesses:**

1.....

2.....

(Signature of or on behalf of agent) .....

**Names of Witnesses:**

**Signature Witnesses:**

1.....

2.....

**FIRST SCHEDULE**

(Specify particular goods or classes of goods)

**SECOND SCHEDULE**

(List of recommended prices)

**THIRD SCHEDULE**

(List of customers excluded in accordance with clause 4.1 of agreement, and duration of existing contracts)

(Signature or initials of parties and witnesses)

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