EXCLUSIVE SUPPLY AND DISTRIBUTION AGREEMENT

[Company Name]

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**THIS AGREEMENT** is dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**BETWEEN:**

**(1) [PARTY A],** a company registered in [Country], with commercial licence number [●] and having its registered office at [●] (“**Supplier**”); and

**(2)** **[PARTY B]**, a company registered in [Country], with commercial licence number [●] and having its registered office at [●] (“**Distributor**”),

(collectively the “**Parties**”, and each a “**Party**” to this Agreement).

**RECITALS**

1. The Supplier is in the business of the production and sale of the Products.
2. The Distributor is in the business of distributing frozen food products in the Territory, including products such as the Products.
3. The Supplier wishes to appoint the Distributor and the Distributor wishes to be appointed, as the exclusive distributor of the Products in the Territory, subject to and in accordance with the terms of this Agreement.

**IT IS HEREBY AGREED** as follows:

1. DEFINITIONS AND INTERPRETATIONS
   1. DEFINITIONS
      1. The defined terms in this Agreement shall have the meaning ascribed to them in **Schedule 1 (Definitions)**.
   2. INTERPRETATION
      1. In this Agreement, the following rules of interpretation shall apply:
         1. references to schedules and annexures are (unless otherwise provided) references to the schedules and annexures of this Agreement;
         2. a reference to a numbered clause or paragraph is a reference to the clause or paragraph of this Agreement;
         3. a reference to a “day” means a Gregorian calendar day;
         4. a reference to a “year” means a Gregorian calendar year;
         5. a reference to “including” and its other grammatical forms shall be construed without limitation; and
         6. headings in this Agreement are for convenience only and do not affect the construction or interpretation of this Agreement.
2. TERM AND PRECEDENCE
   1. TERM
      1. This Agreement shall commence on the Agreement Date and, unless terminated in accordance with Clauses 39 or 40, shall:
         1. remain in full force and effect for the Term; and
         2. subject to Clause 3.2, immediately and automatically terminate without notice or need for a court order on the expiry of the Term.
      2. The Supplier may extend or renew the Term by providing written notice to the Distributor no later than [3] months before the end of the Term.
      3. The Distributor may request the renewal of the Term by written notice to the Supplier no later than [3] months before the end of the Term and the Supplier may accept or reject such request, in its sole discretion.
      4. The Parties acknowledge and agree that the Term shall not in any event be automatically extended or renewed notwithstanding a continued registration of any relevant document in accordance with Clause 14.
   2. PRECEDENCE
      1. If there is any conflict, ambiguity or inconsistency between any parts of this Agreement, then the following order of precedence shall apply:
         1. the clauses in this Agreement;
         2. the remaining Schedules; and
         3. the relevant Purchase Order.
3. EXCLUSIVITY OF DEALINGS
   1. EXCLUSIVITY OF DEALINGS
      1. The Supplier hereby appoints the Distributor as the exclusive distributor of the Products in the Territory, subject to and in accordance with this Agreement.
      2. The Distributor shall buy the Products exclusively from the Supplier and shall not during the Term distribute or manufacture any Competing Products.
      3. Subject to Clauses 5.6. 8.9 and 9.8 during the Term the Supplier shall sell the Products in the Territory exclusively to the Distributor.
      4. The Distributor shall not (and shall procure that its Affiliates shall not) during the Term or at any time after the Termination Date:
         1. sell, supply, promote the sale or otherwise act in relation to the sale or supply of the Products to any Person:
         2. outside the Territory;
         3. inside the Territory, where the Distributor has notice or reason to believe such Person intends, directly or indirectly, to export the Products outside the Territory;
         4. actively, or otherwise, seek Customers for the Products outside the Territory; or
         5. establish any branch or maintain any distribution depot for the sale of the Products outside the Territory.
      5. The Supplier shall refer to the Distributor all enquiries received from potential Customers in the Territory and the Distributor shall:
         1. respond to such enquiries in a prompt and professional manner; and
         2. keep the Supplier informed of its discussions with the potential Customer.
      6. The Distributor acknowledges and agrees that the Supplier shall be free to use an alternative distributor in the Territory to satisfy the requirements of a potential Customer and/or service the potential Customer directly itself where the Distributor:
         1. receives or is forwarded an enquiry from such Customer in the Territory; and
         2. does not respond to the enquiry in a prompt and professional manner or does not wish to or cannot satisfy the potential Customer’s requirements.
      7. The Distributor acknowledges and agrees that any breach of this Clause 5 shall be a Material Breach.
4. PURCHASE ORDERS AND SPECIFICATIONS
   1. PURCHASE ORDERS
      1. The Supplier may, in its absolute and sole discretion, accept or reject any Purchase Order issued by the Distributor under this Agreement.
      2. Each Purchase Order shall be deemed to be an offer by the Distributor to purchase goods subject to this Agreement and shall not be deemed accepted, until the Supplier expressly accepts such Purchase Order.
      3. A Purchase Order shall contain accurate information as to the following matters:
         1. the Products and quantities to be supplied;
         2. relevant delivery/performance time frames;
         3. the price of the Products as per the prevailing Price List;
         4. the time and manner of delivery, including the carrier to be used consistent with the Agreed Incoterms;
         5. this Agreement (including the contract number) is specified;
         6. the official Purchase Order number from the Distributor; and
         7. the name of the Authorised Representative submitting the Purchase Order (and their signature, which can be electronic).
      4. Each Purchase Order placed by the Distributor with the Supplier shall:
         1. be deemed to have been submitted on terms consistent with the then prevailing Price List;
         2. allow for the minimum lead times required by the Supplier for the supply of the Products; and
         3. be subject to a Letter of Credit.
      5. The Distributor acknowledges and agrees that any Purchase Order accepted by the Supplier, may not be withdrawn, cancelled or amended by the Distributor, unless agreed by the Supplier.
      6. Where prevailing market prices for the Products change materially after a Purchase Order has been accepted by the Supplier, but before delivery of the Products, the Supplier shall, in its sole discretion, be entitled to:
         1. notify the Distributor of any amendment required to the Price List, and the Purchase Order shall be deemed amended to reflect such change in pricing for the Products; or
         2. rescind its acceptance of such Purchase Order.
      7. The Parties agree that the Supplier shall bear no liability whatsoever or howsoever to the Distributor in relation to its rescission of a Purchase Order, under Clause 6.6.2.
   2. SPECIFICATIONS
      1. The Specifications for the Products are set out in **Schedule 2 (Products)**.
      2. The Supplier may update the Specifications from time to time during the Term, in its sole and absolute discretion, and shall notify the Distributor of any such changes.
5. FORECASTING
   1. YEARLY FORECASTS
      1. During the Term, the Distributor shall submit a proposed Yearly Forecast to the Supplier no later than [•] Business Days before the start of each Year, which the Supplier may accept or reject in its sole and absolute discretion.
      2. Where the Supplier rejects a proposed Yearly Forecast, the Supplier shall notify the Distributor of such rejection and may:
         1. terminate this Agreement in accordance with Clause 40.2.8; or
         2. propose an amended Yearly Forecast to the Distributor.
      3. The Distributor shall ensure that each Yearly Forecast shall specify for the relevant Year:
         1. a forecast of the maximum volume of Products that may be purchased by the Distributor;
         2. the Minimum Marketing Spend;
         3. the Quarterly Targets; and
         4. the Minimum Amount.
      4. In the event the Distributor does not agree to an amended Yearly Forecast proposed by the Supplier under Clause 8.2.2, the Supplier may terminate this Agreement pursuant to Clause 40.2.8.
      5. The Yearly Forecast for the first Year of the Term has been agreed by the Parties and is attached as **Schedule 3 (First Yearly Forecast)**.
      6. The Distributor shall ensure that each Yearly Forecast is issued in substantially the same form and includes all of the details as set out in **Schedule 3 (First Yearly Forecast)**.
      7. The Distributor shall in each Year place Purchase Orders with the Supplier that meet or exceed the Minimum Amount.
      8. Where the Distributor fails to purchase the Minimum Amount in any Year due to any reason other than the Supplier’s failure to supply the Products or a Force Majeure Event, the Supplier shall be entitled, in its sole discretion, at any time to:
         1. require that the Distributor purchases the shortfall between the actual volume of Products purchased and the Minimum Amount of the relevant Year; or
         2. require that the Distributor compensate the Supplier in an amount equal to [•]% of the difference between:
         3. the aggregate of the price paid by the Distributor to the Supplier for the actual volume of Products purchased in the relevant Year; and
         4. the aggregate of the price that would have been paid by the Distributor to the Supplier for the Products, if the Distributor had met the Minimum Amount from the Supplier in the relevant Year.
      9. Where Clause 8.8 applies, the Supplier may, in its sole and absolute discretion:
         1. sell the surplus Products, which have not been ordered by the Distributor as a result of its failure to meet the Minimum Amount, directly to Customers in the Territory;
         2. sell such surplus Products to another distributor; and/or
         3. draw on the Letter of Credit where the Distributor fails to purchase the shortfall referenced in Clause 8.8.1 or fails to compensate the Supplier in accordance with Clause 8.8.2.
      10. Where Clause 8.8applies, the Supplier shall also have the right to terminate this Agreement in accordance with Clause 40.2.8, without prejudice to its rights under Clauses 8.8.1 and 8.8.2.
   2. ROLLING FORECASTS
      1. The Distributor shall prepare in good faith and submit to the Supplier its Rolling Forecast at the start of each Forecast Period.
      2. Subject to the Distributor’s compliance with Clause 28.3, the Supplier shall use its reasonable efforts to fulfil Purchase Orders which are issued and accepted in accordance with Clause 6 and are consistent with the Rolling Forecasts.
      3. The Rolling Forecast for the first Forecast Period of the Term has been agreed by the Parties and is attached as **Schedule 4 (First Rolling Forecast)**.
      4. If the Supplier foresees any difficulties in meeting a Rolling Forecast it shall notify the Distributor and discuss the issues in good faith.
      5. The Distributor shall ensure that each Rolling Forecast is issued in substantially the same form and includes all of the details as set out in **Schedule 4 (First Rolling Forecast)**.
      6. The Distributor shall, throughout each Forecast Period, submit to the Supplier a sufficient number of Purchase Orders to meet the Quarterly Targets.
      7. Where the Distributor fails to submit the Purchase Orders in accordance with Clause 9.6, the Supplier may, in its sole and absolute discretion:
         1. treat the Rolling Forecast as the Purchase Orders duly submitted by the Distributor pursuant to Clause 6 and require the Distributor, to purchase Products in accordance with the Rolling Forecast; or
         2. require the Distributor to compensate the Supplier in an amount equal to [•]% of the difference between:
         3. the aggregate of the price paid by the Distributor to the Supplier under one or more Purchase Orders, if any, during the relevant Forecast Period; and
         4. the aggregate of the price which would have been paid by the Distributor to the Supplier, if the Distributor had met the Quarterly Target for the relevant Forecast Period(s).
      8. Where Clause 9.7 applies, the Supplier may, in its sole and absolute discretion:
         1. sell any surplus Products, which have not been ordered by the Distributor pursuant to the Rolling Forecast, directly to Customers in the Territory;
         2. sell any such surplus Products to another distributor; and/or
         3. draw on the Letter of Credit where the Distributor fails to purchase the Products in accordance with Clause 9.7.1or fails to compensate the Supplier in accordance with Clause 9.7.2.
6. PERFORMANCE REVIEWS AND DISTRIBUTOR REBATES
   1. PERFORMANCE REVIEWS
      1. The Distributor’s performance of its obligations under this Agreement, shall be subject to review by the Supplier at the end of each Quarter and at the end of each Year.
      2. No later than the end of each Quarter, the Distributor shall prepare and submit to the Supplier, in respect of the concluded Quarter, a detailed report of:
         1. the total number of Purchase Orders submitted to and accepted by the Supplier;
         2. the total volume of Products purchased by the Distributor during that Quarter;
         3. the total volume of Products delivered to the Distributor during that Quarter;
         4. the total volume of Products sold by the Distributor to Customers;
         5. any Products that have been returned and/or rejected by any Customer, the reasons for such returns and/or rejections and what actions were taken by the Distributor in response;
         6. any shortfall in achieving [one or more] [the] Rolling Forecast(s) for that Quarter;
         7. any outstanding Purchase Orders for which the Products have yet to be delivered;
         8. any Customer complaints in respect of the Products and what (if any) actions have been taken by the Distributor to resolve the same;
         9. its Product inventory levels;
         10. any failure to comply with its obligations under Clause 17 and the actions taken to remedy such failure; and
         11. [●]
      3. No later than the end of each Year, the Distributor shall prepare and submit to the Supplier, in respect of the concluded Year, a detailed report of:
         1. the total volume of Products purchased by the Distributor during that Year;
         2. the total volume of Products delivered to the Distributor during that Year;
         3. the total volume of Products sold by the Distributor to Customers;
         4. the total amount of marketing expenditures spent by the Distributor to promote and sell the Products in the Territory;
         5. any shortfall in achieving one or more Quarterly Targets for that Year;
         6. any outstanding or unresolved issues reported in any one or more Quarterly report submitted by the Distributor in accordance with Clause 10.2;
         7. any Product recalls in which the Distributor has participated in accordance with Clause 19 and the outcome of such recalls;
         8. its Product inventory levels;
         9. any failure to comply with its obligations under Clause 17 and the actions taken to remedy such failure; and
         10. [●].
      4. If any discrepancy between one or more Quarterly reports submitted in accordance with Clause 10.2 and a Yearly report submitted in accordance with Clause 10.3 is identified, the Distributor shall immediately upon becoming aware of such discrepancy:
         1. notify the Supplier of such discrepancy;
         2. identify the cause of this discrepancy and any related errors and/or omissions in one or more reports; and
         3. resolve the discrepancy and submit to the Supplier new reports reflecting any corrections that have been incorporated.
      5. The Distributor shall maintain appropriate, up-to-date and accurate records to comply with its obligations under this Clause 10.
      6. Where the Distributor has failed to meet the Quarterly Target for the relevant Quarter, or, has failed to meet the Minimum Amount [and/or Minimum Marketing Spend] in any Year, the Supplier may:
         1. terminate this Agreement in accordance with Clause 40.2;
         2. draw on the Letter of Credit;
         3. revoke any existing or to be granted Rebates; or
         4. [●].
   2. DISTRIBUTOR REBATES
      1. The Distributor shall be entitled to Rebates, in accordance with **Schedule 5 (Distributor Rebate Incentives)**.
      2. The Distributor’s entitlement to Rebates shall be assessed on a rolling basis.
      3. Where the Distributor fails to meet a Quarterly Target in any Quarter, such shortfall shall be:
         1. rolled over to the succeeding Quarter; and
         2. the Distributor shall only be entitled to a Rebate, where it has satisfied any preceding Quarterly Target(s) as well as the Quarterly Target for the current Quarter, in aggregate.
7. DISTRIBUTOR OBLIGATIONS
   1. DISTRIBUTOR OBLIGATIONS
      1. The Distributor acknowledges and agrees that it shall at all times during the Term:
         1. inform the Supplier immediately of any changes in ownership or Control of the Distributor or any of its Affiliates;
         2. not (and shall procure that its Affiliates shall not) interfere in any way with any sales of the Products made by the Supplier to any Customers in the Territory;
         3. upon the termination of this Agreement, immediately provide to the Supplier a list of names and addresses of all past and present Customers for the Products in the Territory known to the Distributor;
         4. not appoint or purport to appoint any distributors, agents or representatives in the Territory to promote the sale of the Products without obtaining the Supplier’s prior written approval of such appointments;
         5. notify the Supplier of any changes in Applicable Laws in the Territory relating to the sale, labelling or packaging of the Products immediately upon knowledge of the same;
         6. respond promptly and professionally to all Customer enquiries regarding the Products in the Territory;
         7. obtain and maintain, at its own cost and expense, any Approvals required; and
         8. in connection with the importation and sale of the Products in the Territory:
         9. pay the Supplier and/or its Affiliate(s) for the Products in [insert currency];
         10. ensure, before each Product delivery by the Supplier and/or its Affiliate(s) to the Distributor, that all Applicable Laws in the Territory affecting the import and sale of the Products in the Territory have been complied with; and
         11. ensure that permission for payment of the Products to be made by the Distributor to the Supplier or its Affiliate(s) in [insert currency] is still valid.
      2. Any breach of this Clause 12 shall be a Material Breach.
   2. ADVERTISING AND PROMOTION
      1. The Distributor acknowledges and agrees that at all times during the Term it shall:
         1. be responsible for the advertising and promotion of the Products, provided that all advertising and promotional material and activities shall be subject to the Supplier’s prior written approval;
         2. meet the Minimum Marketing Spend;
         3. comply with all Instructions given to it by the Supplier relating to the advertising and promotion of the Products;
         4. only distribute the Products in a manner that reflects favourably on the Supplier and the good name, goodwill and reputation of the Supplier; and
         5. [•].
      2. The Distributor shall be entitled to offer to Customers Product Rebates, in the Territory.
      3. Where so requested by the Supplier, the Distributor shall, within [●] Business Days of receiving the Supplier’s request, submit to the Supplier a report setting out all Product Rebates in place at the time of such request.
      4. The Distributor shall amend, suspend or terminate any Product Rebates in accordance with the Supplier’s Instructions.
      5. The Supplier shall make reasonable efforts to support the Distributor’s marketing activities under Clause 13.1.
      6. The Distributor acknowledges and agrees that it shall not at any time during the Term:
         1. make any statement as to the quality of the Products beyond any parameters approved by the Supplier;
         2. enter into any contract or engage in any practice which may reasonably be considered detrimental to the interests of the Supplier;
         3. engage in any form of deceptive, misleading or unethical practices that could reasonably be considered detrimental to the Supplier or the public; or
         4. publish or employ, or co-operate in the publication or employment of, any false, misleading or deceptive advertising material or other representations with regard to the Supplier or the Products.
      7. Any breach of Clause 13.6 shall be a Material Breach.
      8. The Distributor acknowledges and agrees that it shall bear all costs and expenses relating to the advertising and promotion of the Products including any Product Rebates and shall not seek any reimbursement from the Supplier for the same.
      9. Notwithstanding Clause 13.8, where the Parties engage in joint advertising and promotional activities, the Parties shall share such related costs and expenses on terms to be mutually agreed.
   3. REGISTRATIONS
      1. Subject to this Clause 14, the Distributor shall be responsible for obtaining and maintaining all registrations and filings with all local or other government authorities in the Territory required to perform its obligations under this Agreement.
      2. Notwithstanding Clause 14.1, the Distributor shall not register or file as an agent for or representative of or on behalf of the Supplier or register this Agreement and/or any associated document with any Person unless:
         1. such registration or filing is a mandatory requirement for the performance of this Agreement under the Applicable Law in the Territory;
         2. the Distributor provides satisfactory proof of such requirement to the Supplier where so requested by the Supplier within five (5) Business Days of receiving such a request;
         3. the Distributor obtains the Supplier’s prior written consent to register the Agreement.
      3. For the purposes of Clause 14.2, the Distributor shall:
         1. promptly advise the Supplier in advance of its intention to effect any registration or filing;
         2. consult in advance with the Supplier concerning the text of any documents that the Distributor proposes to submit for registration or filing and the Applicable Laws governing such proposed registrations or filings;
         3. comply with all appropriate import laws and formalities;
         4. issue a power of attorney where so requested by the Supplier which authorises the Supplier to de-register any documents relevant to this Agreement with all local or other government authorities in the Territory; and
         5. make available and convey a certified copy of such official registrations, approvals and consents at the request of the Supplier.
      4. The Supplier may give or withhold its consent under Clause 14.2, absolutely and in its sole discretion.
      5. The Distributor acknowledges and agrees that its breach of Clauses 14.1 or 14.2 shall constitute a Material Breach.
      6. Where the Distributor has committed a Material Breach of Clauses 14.1 or 14.2, then in addition to (and not in lieu of) the Supplier's rights and remedies under this Agreement, the Distributor acknowledges and agrees that it shall:
         1. immediately deregister, withdraw and/or cancel as appropriate any document that has been registered or filed with the relevant Person(s); and
         2. not make any claims or be entitled to any compensation as a result of such de-registration, withdrawal or cancellation or of the Supplier’s actions in response under this Agreement.
8. DELIVERY, ACCEPTANCE AND PRODUCT HANDLING
   1. DELIVERY
      1. The sale and purchase of the Products under this Agreement shall be governed by the Agreed Incoterms.
      2. Unless otherwise agreed, all Products shall be delivered at the Delivery Point, in accordance with the Agreed Incoterms.
      3. Subject to the Distributor’s compliance with Clause 28.3, the Supplier shall make all reasonable efforts to deliver the Products in accordance with the delivery timetable in the relevant Purchase Order.
      4. Where the Distributor fails to comply with Clause 28.3, the Distributor acknowledges and agrees that the Supplier:
         1. shall not be obliged to deliver the Products in accordance with the delivery timetable in the relevant Purchase Order;
         2. shall be entitled to suspend the delivery of the Products until the Distributor pays all amounts due to the Supplier as a result of its breach of Clause 28.3;
         3. may in its sole discretion rescind the relevant Purchase Order and cancel the delivery of the Products;
         4. may in its sole discretion deliver the Products ordered pursuant to the Purchase Order directly to a Customer or to another distributor in the Territory; and
         5. shall not be liable for any failure by the Distributor to meet a Minimum Amount, Quarterly Target and/or Yearly Forecast, that results from one or more actions taken by the Supplier under this Clause 15.4.
      5. Delivery of the Products shall be deemed completed when the Products arrive at the Delivery Point, or such other location as agreed by the Supplier pursuant to a request from the Distributor.
      6. Delays in the delivery of Products shall not entitle the Distributor to, on account of such delay:
         1. refuse to take delivery of the Products;
         2. claim any Losses from the Supplier; or
         3. [●].
      7. All packaging materials used for the Products by the Supplier, shall remain the Supplier’s property and the Distributor shall make them available for collection at such times and at such places as the Supplier may reasonably request.
   2. ACCEPTANCE
      1. The Distributor shall, upon each delivery of the Products, promptly inspect the Products.
      2. If the Distributor believes that there is any Defect in the Products delivered in accordance with Clause 15, it shall notify the Supplier of the same no later than [5] days from the date of such delivery.
      3. Where the Supplier disputes any notice provided to it by the Distributor under Clause 16.2, the matter shall be submitted by the Parties for resolution in accordance with Clause 47.
      4. A Dispute under Clause 16.3, shall not in any way relieve the Distributor from its obligation to pay the relevant Invoice Amount to the Supplier, in accordance with this Agreement.
      5. If the Products are determined to contain a Defect which is solely due to the Supplier’s actions or where the Supplier does not dispute the Distributor’s notice of a Defect, the Supplier’s liability to the Distributor in such an event shall be limited to:
         1. the refund of the Distributor's landed purchase price for such Products; or
         2. replacement of such Products with an equal quantity of conforming Products without further charge to the Distributor.
      6. If the Distributor does not submit a notice pursuant to Clause 16.2, then:
         1. the Distributor shall be deemed to have irrevocably and unconditionally accepted the delivery of the Products in question; and
         2. the Supplier shall have no liability to the Distributor with respect to such Products, except where Clause 36.1 applies.
   3. PACKING, DISPATCH AND TRANSPORT OF PRODUCTS
      1. The Distributor shall at all times maintain, store, transport, handle and dispose of the Products at its own expense and in accordance with:
         1. this Agreement;
         2. Applicable Law;
         3. Good Industry Practice;
         4. the Storage Requirements;
         5. the Supplier Policies; and
         6. any Instructions.
      2. The Distributor shall at all times store the Products separately from all other goods in the Distributor’s warehousing facilities.
      3. The Distributor shall not remove any Products from the original packaging provided by the Supplier, but may re-label such packaging, provided that such labelling complies with Applicable Law and this Agreement.
      4. The Distributor shall, within 5 Business Days of the Supplier’s request, provide the Supplier with a detailed report of its Product inventory levels.
      5. The Supplier shall have the right to perform a physical stock count of the Products stored at the Distributor’s premises, upon 5 Business Days’ prior notice.
      6. The Supplier shall not be liable for any expiry or damage to the Products due to the failure of the Distributor to maintain, store, transport, handle and dispose of the Products in accordance with the Storage Requirements and this Agreement.
      7. The Distributor shall keep accurate records of all sales and deliveries to permit each Product sold to be traced to its Customer, should the Supplier or a Relevant Authority require information or field corrective action.
      8. The Distributor shall at its own cost, destroy all expired Products in strict compliance with Applicable Law.
      9. Any breach by the Distributor of this Clause 17 shall be a Material Breach.
9. PRODUCT LIABILITY AND RECALL
   1. PRODUCT LIABILITY
      1. If the Distributor learns from a Customer, or other Person, of any Defect to the Products (whether caused by the Supplier, Distributor or otherwise), it shall promptly, upon becoming aware of the Defect:
         1. give the Supplier written notice of all relevant details in respect of the Defect; and
         2. give the Supplier access to and allow copies to be taken of any relevant materials, records or documents as the Supplier may require.
      2. Any Dispute between the Parties arising from the Defect referred to in Clause 18.1 shall also be submitted by the Parties for resolution in accordance with Clause 47.
      3. Subject to this Clause 18, if the Products are determined to contain a Defect which is solely due to the Supplier’s actions the Distributor shall:
         1. allow the Supplier the exclusive conduct of any proceedings in respect of any Third Party Claim arising from the Defect;
         2. take any action that the Supplier directs to defend or resist such Claim; and
         3. not admit liability to any Person or settle any matter without the Supplier's prior written consent.
      4. The Parties acknowledge and agree that Clauses 18.1 and 18.3 shall:
         1. apply in respect of the Indemnity granted under Clause 36 for Latent Defects; and
         2. not apply where the Distributor has failed to fulfil its obligations under Clause 17, this Clause 18 and/or Clause 19.
      5. The Distributor shall Indemnify the Supplier for any Claim arising from a Defect, where:
         1. such Defect arises from the Distributor’s breach of Clause 17; or
         2. the Distributor has failed to comply with its obligations in accordance with Clauses 18.1 or 18.3.
      6. Any breach by the Distributor of this Clause 18 shall be a Material Breach.
   2. PRODUCT RECALL
      1. The Distributor shall participate in any Product recall if required by the Relevant Authorities and/or by the Supplier and shall follow all Instructions for such Product recall communicated to it by the Supplier and/or the Relevant Authorities.
      2. The Distributor shall maintain appropriate, up-to-date and accurate records to enable the immediate recall of any Products from the Territory including but not limited to records of:
         1. all communications sent and received in respect of the offer to sell and the sale of the Products; and
         2. all orders and deliveries to Customers (including batch numbers, delivery date, name and addresses, telephone number, fax number and e-mail address).
      3. The Distributor shall give any assistance that the Supplier shall reasonably require to recall, as a matter of urgency, Products from the Territory.
      4. The costs of a Product recall shall be borne by the Party responsible for such Product recall.
      5. The Distributor shall Indemnify the Supplier for any and all Claims arising directly or indirectly as a consequence of its failure to comply with this Clause 19.
      6. Any breach by the Distributor of this Clause 19 shall be a Material Breach.
10. DUTY TO INFORM
    1. DUTY TO INFORM
       1. If for any reason the Distributor believes that it may be unable to perform any obligations under this Agreement it shall promptly and without any undue delay provide notice to the Supplier:
          1. identifying what obligations may be impacted;
          2. explaining the reasons why it may be unable to perform such obligations;
          3. confirming what steps it has taken, and will continue to take, so as to be able to perform its obligations; and
          4. indicating by what date it expects that performance in accordance with this Agreement can be achieved.
11. PERSONNEL
    1. PERSONNEL
       1. The Distributor shall supply all Personnel as is necessary, and in such numbers as are required, for the proper performance of its obligations under or in connection with this Agreement.
       2. For the purposes of Clause 21.1, the Distributor shall ensure that its Personnel:
          1. are suitably skilled, qualified, trained and experienced to distribute the Products in accordance with this Agreement;
          2. are employed under valid employment arrangements which comply with Applicable Law;
          3. earn minimum wage and benefits as required by Applicable Law without discrimination between employees; and
          4. comply with, and in no way cause, the Supplier to be in breach of this Agreement.
       3. The Supplier may provide notice to the Distributor requiring the removal and/or replacement of any Personnel who, in its reasonable opinion, lacks appropriate skills or qualifications, or is otherwise deficient, whereupon the Distributor shall immediately:
          1. remove such Personnel; and
          2. replace the removed Personnel (at its sole cost and expense) with suitably qualified and competent Personnel approved by the Supplier.
12. WARRANTIES
    1. MUTUAL WARRANTIES
       1. Each Party warrants and represents to the other Party that:
          1. it is duly incorporated and has the legal capacity to enter into this Agreement; and
          2. it has not engaged any agent, intermediary or go between for the purposes of concluding this Agreement.
    2. SUPPLIER WARRANTIES
       1. The Supplier warrants and represents to the Distributor that:
          1. the Products shall be of a satisfactory and merchantable quality, free from Defects and fit for the purpose for which they are intended; and
          2. it has the right to sell the Products, and the Distributor will receive the Products, free of any Lien or impediment to Title.
       2. The warranties and representations given by the Supplier under Clause 23.1[and Clause 23.3], shall be subject at all times to the Distributor:
          1. strictly complying with Clauses 16.2 and 17; and
          2. promptly informing the Supplier of any changes to Applicable Law in the Territory, which would have an impact upon the transactions contemplated under this Agreement and particularly, the distribution of the Products;
       3. [The Supplier further warrants and represents to the Distributor that it shall use its reasonable efforts to supply the Products in accordance with:
          1. this Agreement;
          2. the relevant Purchase Order;
          3. the Specifications; and
          4. Applicable Law.]
    3. DISTRIBUTOR WARRANTIES
       1. The Distributor warrants and represents to the Supplier that:
          1. this Agreement shall constitute valid and binding obligations on the Distributor;
          2. all information supplied by the Distributor is true and accurate and the Supplier may rely on the same without need for further verification;
          3. no conflict of interest exists or is anticipated;
          4. it shall maintain at its own expense appropriate offices, stores, display and administration facilities and systems as necessary for the effective performance of its duties;
          5. it shall at any time not market, purchase, distribute, offer to sell or sell Competing Products during the Term;
          6. it shall not appoint any Third Party to perform any work assigned to it without the prior written consent of the Supplier
          7. it shall not do, nor fail to do, anything that would interfere with any rights that the Supplier may have in respect to its business;
          8. it shall at all times ensure that the Products are stored and distributed in accordance with Clause 17;
          9. the Products shall at all times during the Term be distributed by appropriately experienced, qualified and trained Personnel acting with all due skill, care and diligence;
          10. promptly notify the Supplier of any Defects, notices of Defects or similar communications or complaints about the Products of which it becomes aware;
          11. promptly notify the Supplier of any after-sale enquiries about the Products or any complaints it receives relating to the Products;
          12. comply at all times with all record keeping and reporting obligations under this Agreement; and
          13. no Insolvency Event in respect of the Distributor exists or is anticipated.
13. NON-COMPETE AND NON-SOLICIT
    1. NON-COMPETE AND NON-CIRCUMVENTION
       1. During the Term and in the [●] [year] period following any termination of this Agreement, the Distributor agrees that it shall not, directly or indirectly:
          1. engage in any business involving the marketing, promotion, distribution and/or sale of Competing Products;
          2. seek to by-pass, compete with, or circumvent Supplier from participating in any business opportunity related to the subject matter of this Agreement; or
          3. seek to by-pass, compete, avoid or circumvent in any way the undertakings detailed in this Clause 25.
       2. Any breach of this Clause 25 shall be a Material Breach.
    2. NON-SOLICIT
       1. During the Term and in the [●] [year] period following any termination of this Agreement, the Distributor agrees that it shall not, directly or indirectly, on its own behalf or on behalf of others, in any capacity hire or induce or attempt to hire or induce any Personnel of the Supplier or its Affiliates.
       2. The restricted actions under this Clause 26 include but are not limited to:
          1. identifying to a Third Party or its agents or such other entity the Personnel who have special knowledge concerning the business or operations of the Supplier; and
          2. commenting to the Third Party or its agents or such other entity about the quantity of work, quality of work, special knowledge, or personal characteristics of any Personnel who is still employed with the Supplier or its Affiliates.
       3. Any breach of this Clause 26 shall be a Material Breach.
14. PAYMENT TERMS AND TAXES
    1. PRICE LIST
       1. The Price List as at the Agreement Date is attached as **Schedule 6 (Price List)**.
       2. The Price List shall be subject to adjustment by the Supplier from time to time, in its sole discretion.
       3. Where the Price List is adjusted, the Supplier shall promptly notify the Distributor of such adjustment.
       4. Notwithstanding any changes to the prices in the Price List, the Supplier will honour prices applicable to the Distributor’s Purchase Orders that have been accepted by the Supplier in accordance with Clause 6.4.1, subject always to Clause 6.6.
    2. INVOICING
       1. The Supplier shall be entitled to issue an invoice to the Distributor after the Supplier’s acceptance of a Purchase Order.
       2. All payments made by the Distributor under this Agreement, shall be made in immediately available funds by bank transfer to the bank account as designated by the Supplier in its invoice.
       3. Within [●] Business Days of the issuance of an invoice under Clause 28.1, the Distributor shall pay thirty (30%) percent of the Invoice Amount in [insert applicable currency] to the Supplier.
       4. The remaining portion of the Invoice Amount, shall be secured by an irrevocable Letter of Credit. All related banking charges shall be borne by the Distributor.
       5. The Distributor shall pay the full amount of the Invoice Amount in [insert applicable currency] within [●] Business Days of the delivery of the Products.
       6. Interest may, at the Supplier’s sole discretion, be chargeable on any amounts overdue from the Distributor, at a rate equal to [●] for every 30 days the payments are overdue.
       7. The interest referred to under Clause 28.6 shall:
          1. run from the due date for payment until receipt by the Supplier of the full amount owed [whether payable or not after judgment of any court or the decision of an arbitral tribunal]; and
          2. be without prejudice to any other right or remedy available to the Supplier.
       8. If any amounts owing are not paid by the Distributor when due:
          1. such non-payment shall be a Material Breach;
          2. all invoices and any other payments owing from the Distributor to the Supplier, shall become immediately due and payable;
          3. the Supplier shall be entitled to draw on the Letter of Credit without further notice to the Distributor;
          4. the Supplier may, in its sole discretion, cancel all unexecuted transactions (including any accepted Purchase Orders); and/or
          5. the Supplier may suspend any and all shipments until full payment of all amounts owing has been received from the Distributor.
       9. All expenses, costs and charges incurred by the Distributor in the performance of its obligations under this Agreement shall be solely paid by the Distributor, unless otherwise expressly agreed by the Supplier.
    3. LETTER OF CREDIT
       1. The Distributor shall maintain, at its sole cost and expense, in effect at all times during the Term the Letter of Credit drawable by the Supplier.
       2. [The Distributor shall at the start of each Year ensure that such Letter of Credit is sufficient to cover the total of the amounts specified in the relevant Yearly Forecast.]
       3. The amount of the Letter of Credit shall be, at any given date, sufficient to cover the total amount of all accepted and outstanding Purchase Orders for which invoices have been issued and any other outstanding reimbursable expenses.
       4. The Distributor shall provide written evidence to the Supplier, at the start of each Quarter, of the existence and amount of the Letter of Credit. The Distributor’s failure to provide such evidence shall be considered a Material Breach.
       5. The Distributor acknowledges and agrees that the Supplier shall be entitled to draw on the Letter of Credit in the event:
          1. of a Material Breach by the Distributor of the terms of this Agreement; or
          2. that any amounts owing to the Supplier are not paid by the Distributor when due.
    4. RIGHT OF SET-OFF
       1. The Supplier may set off any sums the Distributor owes to the Supplier against any sums it owes to the Distributor.
       2. The Distributor shall not be entitled to set off against or withhold payment of any amount whatsoever due to the Supplier for any reason.
    5. TAXES
       1. All amounts specified in this Agreement shall be [inclusive/exclusive] of all Taxes.
       2. Each Party shall give all notices and pay all Taxes (including VAT and Withholding Tax), duties and fees that are required of it by Applicable Laws in connection with this Agreement.
       3. Each Party shall Indemnify the other Party in connection with any Claim it receives in connection with such Party’s failure to pay its Taxes, VAT and/or Withholding Tax in accordance with Clause 31.2.
15. TITLE AND RISK
    1. TITLE
       1. Title to Products ordered under this Agreement shall only pass from the Supplier to the Distributor, upon payment of the full Invoice Amount relevant to such Products.
    2. RISK
       1. Risk in relation to Products ordered under this Agreement shall pass in accordance with the Agreed Incoterms.
16. INDEMNITIES
    1. DISTRIBUTOR INDEMNITIES
       1. Subject to Clause 37.2, the Distributor shall fully Indemnify the Supplier from and against any and all Claims and/or Losses of whatever nature suffered, sustained or incurred, arising out of or in connection with:
          1. any negligent act, or omission, or wilful misconduct by the Distributor or its Personnel in connection with this Agreement;
          2. any labelling of the Products distributed by the Distributor, which violates Applicable Law or the requirements of any Relevant Authority in the Territory;
          3. any Material Breach by the Distributor;
          4. any claim made against the Supplier by any Third Party as a result of the Distributor’s breach of this Agreement;
          5. any claim made against the Supplier by any Personnel of the Distributor in respect of any Workplace Matters;
          6. any and all physical loss or damage caused by the Distributor’s Personnel;
          7. any act or omission of the Distributor’s Subcontractor; or
          8. any death or personal injury, loss or damage sustained by the Personnel of the Distributor or its Subcontractor.
       2. Each Indemnity provided by the Distributor in this Agreement is a continuing obligation separate and independent from the Distributor’s other obligations and survives termination of this Agreement.
       3. The events identified in Clause 34.1 shall each be considered as “Indemnified Events”. For the purposes of Clause 34.1 the Supplier shall be deemed to include its Affiliates, Personnel, directors, shareholders and officers.
       4. The Distributor shall not be liable under this Clause 34 if the Indemnified Event occurred wholly and directly as a result of the Supplier’s gross negligence, misconduct or fraudulent conduct.
       5. This Clause 34 shall survive the expiry or earlier termination of this Agreement.
    2. SUPPLIER INDEMNITY
       1. Subject to Clauses 37.1 and 37.2, the Supplier shall Indemnify the Distributor from and against all proven and uncontested Claims and/or Losses, arising out of or in connection with any Latent Defects in the Products, provided always that:
          1. such Latent Defect has not occurred wholly or in part as a result of the Distributor’s negligence, misconduct or fraudulent conduct; and
          2. the Latent Defect can be clearly proven to have existed prior to delivery of the Products to the Distributor.
       2. Where Clause 35.1 applies, the Distributor acknowledges and agrees that the Supplier’s Indemnity shall be subject to the Distributor’s fulfilment of its obligations under Clauses 17, 18 and 19.
17. PART Q | LIABILITY
    1. UNLIMITED LIABILITY
       1. Nothing in this Agreement shall exclude or limit either Party’s liability to the other in connection with:
          1. death or personal injury caused by negligence or wilful or reckless misconduct of that Party;
          2. any fraud or fraudulent misrepresentation of that Party;
          3. any gross negligence or wilful misconduct of that Party;
          4. any liability which cannot be lawfully excluded by that Party; and/or
          5. any liability arising as a result of the Indemnified Events.
       2. The Distributor shall be solely responsible for the loss of and/or damage to any equipment used by it in the performance of its obligations under this Agreement, however caused.
    2. LIMITED LIABILITY
       1. Subject to Clause 37, the Supplier’s total liability for Loss under this Agreement shall be limited to $[●] for all Claims under this Agreement in aggregate.
       2. Subject to Clause 37, neither Party shall be liable for Indirect Loss under this Agreement.
18. INSURANCE PROVISIONS
    1. INSURANCE
       1. The Distributor shall maintain such types and levels of insurance as normally maintained by distributors of similar products, against all insurable risks which would normally be insured by a prudent business person in the Territory.
       2. The Distributor shall procure that the Supplier, is listed as a first or second named insured on all such insurance policies.
       3. The insurance policy or policies maintained by the Distributor shall cover:
          1. any liability on the part of the Distributor to the Supplier, arising under Clauses 8.8.2, 9.7.2 or 18.5;
          2. its “business operations” liability for all types of losses, except bodily injury, in an amount of at least $[●] per Claim;
          3. its “professional” / “public” liability and/or liability “after delivery” / “after completion of work” / “product” liability for all types of losses in an amount of at least $[●] per Claim and per year;
          4. product liability for not less than $[●] per occurrence and in the aggregate;
          5. [property insurance for all property used to provide services under the Agreement, which shall provide “all risk” perils and be in accordance with local regulatory requirements];
          6. [workmen’s compensation insurance / “employee liability” policy in accordance with Applicable Law];
          7. loss of or damage to equipment used by it, including any equipment used by it belonging to the Supplier;
          8. transit insurance for the replacement cost of the Products; and
          9. any other insurance policy required under Applicable Law.
       4. All insurance must be current during the Term.
       5. Where requested, the Distributor shall provide the Supplier with certificates of insurance, receipts for the current year’s premiums, and any other proof of insurance the Supplier may reasonably require.
       6. Any amounts stated in this Clause 38 are considered to be minimum amounts and shall in no event constitute a limitation of the Distributor’s liability.
       7. The Distributor and its Subcontractors shall bear the cost and expense of any deductible amounts applied to them by their insurers.
       8. The requirements stated in this Clause 38 shall not be construed in any way as an acceptance by the Supplier of any liability in excess of such amounts.
       9. The Distributor shall ensure any Third Party used or engaged by it to discharge its obligations maintains sufficient insurance to comply with this Clause 38.
       10. Any breach of this Clause 38 shall be a Material Breach.
19. TERMINATION AND FORCE MAJEURE SCENARIOS
    1. MUTUAL TERMINATION
       1. Either Party may serve a Termination Notice to terminate this Agreement with immediate effect if the other Party:
          1. commits a Material Breach;
          2. experiences, or is reasonably likely to experience, an Insolvency Event; or
          3. ceases to trade, or threatens to cease trading.
    2. SUPPLIER TERMINATION
       1. [The Supplier may terminate this Agreement at any time and without cause by issuing a Termination Notice to the Distributor giving not less than 30 calendar days’ notice of such termination.]
       2. The Supplier may issue a Termination Notice to the Distributor terminating this Agreement with immediate effect where:
          1. a change in Control of the Distributor occurs;
          2. any Third Party Claim is initiated against the Supplier, which arises from or is related to any acts or omissions of the Distributor;
          3. the Distributor has failed to obtain and/or maintain any Approval(s);
          4. the Distributor is prevented from performing its obligations due to any Applicable Law;
          5. the Distributor has breached any applicable Supplier Policies;
          6. the Supplier reasonably apprehends that any of the events mentioned above in Clauses 40.2.1 to 40.2.5 are about to occur in relation to the Distributor;
          7. the Supplier or any of its Affiliates ceases to manufacture the Products, or for any reason desires to stop the sale of the Products in the Territory; or
          8. Clauses 8.2.1, 8.4, 8.10, 10.6 or 42.4 apply.
       3. The Parties acknowledge and agree that a court order will not be required in the Territory to give effect to any termination of this Agreement.
    3. CONSEQUENCES OF TERMINATION
       1. Termination of this Agreement shall not:
          1. of itself make the Supplier liable to pay any compensation to the Distributor, including, for any Losses or Indirect Losses; or
          2. affect any rights and remedies of the Supplier or any obligations or liabilities of the Distributor that have accrued up to the Termination Date.
       2. Upon the earlier of receipt of a Termination Notice or upon the Termination Date, each Party shall promptly (and in any event, within any time frame set out in any notice or communication including a Termination Notice):
          1. return all Confidential Information to the Party that disclosed it, or destroy such Confidential Information and provide evidence of destruction where requested;
          2. take all possible action at its own cost and expense to mitigate any liabilities which may arise as a result of such termination and to ensure the safety of all Personnel and the protection of all Products; and
          3. cease performance of their obligations under this Agreement in accordance with, and to the extent specified in, any Termination Notice.
       3. Upon receipt of a Termination Notice for whatever reason or upon the Termination Date, as applicable, the Distributor shall immediately:
          1. provide the Supplier with a detailed report in relation to any unsold Products, and Products in storage or in transit to Customers at the time of receipt of the Termination Notice;
          2. pay the Supplier all amounts due and outstanding up until the Termination Date;
          3. return to the Supplier any items or equipment issued to the Distributor by the Supplier during the Term;
          4. subject to Clause 41.5, cease to sell, supply or market the Products, cease to describe itself as a Distributor of the Products and cease to use the Supplier’s IPR,
          5. immediately return, dispose of or transfer all unsold Products as per the Instructions of the Supplier;
          6. provide to the Supplier a list of names and addresses of all past and present Customers for the Products in the Territory known to the Distributor;
          7. apply to cancel the registration, if any, of this Agreement and/or all documents referring to the continuation in force of this Agreement in all places where this Agreement and such documents may have been registered;
          8. certify that:
             1. all registrations with and licences and other approvals given by authorities in the Territory with respect to this Agreement and the relationship between the Parties are void and of no further effect; and
             2. the Distributor has no objection to the appointment by the Supplier of a new distributor in the Territory in place of the Distributor;
             3. execute and hand over to the Supplier a certificate in a form and containing content which is approved by the Supplier and which is attested by a notary public in the Territory in evidence of the foregoing actions; and
             4. shall take any other action relating to the termination of this Agreement as the Supplier may reasonably require.
       4. Where requested, the Distributor shall render such assistance as the Supplier may reasonably require to effect the transition of the Products and the distribution arrangements to another distributor.
       5. Notwithstanding termination or expiration of this Agreement, the Supplier may, in its sole discretion:
          1. continue to deliver to the Distributor and permit the Distributor to supply such quantities of the Products which are subject to a Purchase Order that has been accepted by the Supplier before the Termination Date; and/or
          2. grant the Distributor 3 months after the Termination Date to sell its outstanding stock of Products provided that the Distributor complies with Clause 41.4 in respect of any remaining unsold Products after expiry of those 3 months.
       6. The Parties acknowledge and agree that Clause 41.5.2 shall only apply in respect of Products which:
          1. have been handled by the Distributor in accordance with Clause 17; and
          2. present a satisfactory state of conservation such that they are saleable under normal commercial conditions.
       7. Upon termination or expiry of this Agreement, apart from the obligations stated expressly herein, neither Party shall have any further obligation towards the other Party under this Agreement.
       8. The provisions of Clauses [●], [●] and [●] shall survive the termination and/or expiry of this Agreement.
       9. Clause 41.8 does not limit the survivability of other provisions, which by their nature, are likewise intended to survive the termination and/or expiry of this Agreement.
    4. FORCE MAJEURE
       1. Subject always to its compliance with Clause 42.2, no Party shall be liable to the other for any delay or non-performance of its obligations under this Agreement arising as a direct result of an established Force Majeure Event.
       2. A Party impacted by a Force Majeure Event shall:
          1. promptly notify the other Party as soon as reasonably practicable (and in any event within [●] calendar days) of the existence of the same and which of its obligations are impacted and to what extent;
          2. inform the other Party of the measures it has taken or intends to take to mitigate the impact of the Force Majeure Event;
          3. use reasonable efforts to mitigate the impact of the Force Majeure Event and promptly resume the performance of those obligations impacted as soon as reasonably practicable; and
          4. produce any necessary documentation that the non-affected Party might need to validate the existence of the Force Majeure Event.
       3. Without prejudice to any other obligation, when notice of a Force Majeure Event is given, the Parties shall initiate discussions in good faith with a view to adopting appropriate measures in light of the circumstances.
       4. Where a Force Majeure Event lasts for more than [30 Business Days] then the non-impacted Party may terminate this Agreement, either in whole or in part, at its election in accordance with Clause 40.2.8.
       5. If the Distributor claims a Force Majeure Event, then the Supplier may (but is not obliged to) distribute Products in the Territory directly itself or via a Third Party and this Agreement shall be de-scoped accordingly.
       6. Neither Party shall claim a Force Majeure Event in the following circumstances:
          1. labour strikes and/or disputes (and the like) involving a Party’s Personnel or that of its Subcontractors;
          2. a shortage of or increased price of labour, materials or utilities, except in the event of a natural disaster, or outbreak of war, or other civil disturbance;
          3. any delays, inefficiencies, late performance or similar occurrence of Subcontractors; or
          4. for any actions or circumstances caused by a Party’s own fault or negligence.
       7. Each Party shall bear its own costs and expenses that it incurs as a result of the Force Majeure Event.
       8. A Force Majeure Event shall not excuse the Distributor from any outstanding payment obligations under this Agreement unless such an event is the cause of non-payment.
20. INTELLECTUAL PROPERTY RIGHTS
    1. EXISTING IPR
       1. Subject to Clause 43.2, the IPR owned by a Party prior to the Agreement Date and made available to the other Party in connection with this Agreement shall remain the absolute property of the granting Party.
       2. Clause 43.1 shall not apply where title to that IPR is intended to pass to the other Party or that other Party is to be granted a licence or right to use that IPR post termination of this Agreement.
       3. The Distributor acknowledges and agrees that ownership of all rights in and to the Supplier’s IPR shall at all times remain vested in and belong to the Supplier.
       4. The Distributor shall not:
          1. use or permit the use of any IPR belonging to the Supplier or any of its Affiliates for any purpose whatsoever, without the express prior written consent of the Supplier; or
          2. misrepresent or otherwise misuse any IPR belonging to the Supplier or any of its Affiliates.
       5. Any breach of Clause 43.4 by the Distributor, shall be a Material Breach.
       6. Subject to Clause 43.2, upon termination or expiry of this Agreement, each Party shall return to the other all materials made available to it by the other Party under this Agreement.
    2. NEW IPR
       1. Subject to Clause 44.2, all IPR created by a Party during the Term shall vest unconditionally and immediately upon its creation with that Party.
       2. The Supplier may, from time to time, request the Distributor to create/develop New IPR as a part of this Agreement, in which case the Distributor:
          1. acknowledges and agrees that all New IPR is created at the request, and for the benefit of the Supplier (on a commissioned/work- for- hire basis), and that the Supplier owns that IPR; and
          2. shall do everything necessary or requested by the Supplier to enable it to own the New IPR, including formally assigning/procuring the assignment of all rights in the New IPR.
21. AUDIT
    1. AUDIT
       1. During the Term the Supplier may, at its own cost, Audit or inspect the performance of the Distributor’s obligations under this Agreement in accordance with this Clause 45 upon giving 10 Business Days’ notice.
       2. The Distributor shall maintain a complete audit trail of all financial and non-financial transactions relating to the performance of its obligations under or in connection with this Agreement.
       3. The Distributor shall keep such Audit Items as are necessary to comply with its obligations under Clause 10, this Clause 45, Applicable Law and any reasonable written requests made by the Supplier and its Auditors.
       4. The Distributor shall fully co-operate with the Supplier and its Auditors and promptly provide such Auditors with reasonable access to the Audit Items.
       5. The Distributor shall promptly (and in any event within not more than 10 Business Days of being notified) rectify any breaches identified by the Audit, failing which the Distributor shall be deemed to be in Material Breach.
       6. The Supplier shall be entitled to exercise its Audit rights under this Clause 45 twice each year, provided however that any Audit revealing non-performance by the Distributor shall not be counted against this entitlement.
22. DISPUTES
    1. DISPUTES
       1. If a Dispute arises under this Agreement, a Party may give to the other Party a notice requiring its resolution in accordance with this Clause 46.
       2. Each Party must nominate 1 representative from its senior management to resolve the dispute within 10 Business Days after a Dispute notice is given.
       3. During a Dispute, the Parties shall:
          1. continue to perform all of their obligations under this Agreement without prejudice to their position in respect of such Dispute, unless the Parties agree otherwise; and
          2. act in good faith and in a fair and equitable manner with a view to resolving the Dispute without the requirement for formal proceedings.
       4. If the senior managers designated in Clause 46.2 are unable to reach a resolution within 10 Business Days, then the Parties shall resolve the dispute pursuant to Clause 67.2.
    2. SPECIFIC PERFORMANCE
       1. Nothing in this Agreement prevents the Supplier from seeking interim or interlocutory relief to prevent a breach of, and to compel specific performance by the Distributor of, this Agreement
23. PRIVACY
    1. CONFIDENTIALITY
       1. During the Term and for 3 years afterwards, each Party shall keep the other Party’s Confidential Information strictly confidential.
       2. Each Party may only use the other Party’s Confidential Information strictly for the purposes of performing its obligations under this Agreement.
       3. Neither Party shall disclose Confidential Information to any Person other than an Authorised Recipient and even then only on a strictly ‘need to know’ basis.
       4. Each Receiving Party shall procure that its Authorised Recipients (including its own Personnel) are aware of, and fully comply with, its obligations under this Clause 48 as if that Authorised Recipient were themselves a Party.
       5. This Clause 48 does not apply to Confidential Information which:
          1. is the subject of a Mandatory Disclosure;
          2. is in or comes into the public domain other than by breach of this Agreement; or of any obligation of confidence owed under or in connection with this Agreement;
          3. the Receiving Party can show it knew before disclosure;
          4. was subsequently to the Receiving Party lawfully by a Third Party who did not acquire the information under an obligation of confidentiality; or
          5. is independently developed by or for the Receiving Party at any time by Persons who have had no access to or knowledge of the said information.
       6. For the purpose of Clause 48.5.1, where a Receiving Party is required to make a Mandatory Disclosure, then that Party shall:
          1. give the Disclosing Party as much notice of such disclosure as is reasonably practicable (provided Applicable Law permits the same); and
          2. take into account the reasonable requests of the Disclosing Party in relation to the content of such disclosure before it is made.
    2. PUBLICITY
       1. Neither Party shall issue any press release nor other public document about the entering into of this Agreement or its content without the prior written approval of the other Party.
    3. DATA PROTECTION
       1. In addition to its general obligations to comply with Applicable Law, the Distributor shall:
          1. comply at all times with all applicable data protection and privacy legislation;
          2. comply with the Distributor’s internal data protection policies as are communicated to it;
          3. process Personal Information strictly in accordance with the Supplier’s Instructions;
          4. utilise adequate organisational and technical measures so as to safeguard Personal Information from loss, destruction and/or unauthorised access; and
          5. where required, enter into a data transfer agreement and/or data processor agreement (or equivalent) in the form required by the Distributor.
       2. The Distributor acknowledges and agrees that the Supplier may share any Personal Information that it provides to it under this Agreement with Third Parties contracted to provide services to the Supplier.
       3. The Distributor shall Indemnify the Supplier against any loss or damage (of whatever nature) incurred by or awarded against the Supplier relating to any breach of this Clause 50.
       4. The Distributor acknowledges and agrees that any breach of this Clause 50 shall be considered an Indemnified Event and the obligations under this Clause ‎shall survive the termination or expiry of this Agreement.
24. CONTRACT MANAGEMENT
    1. THIRD PARTY CO-OPERATION
       1. The Distributor acknowledges and agrees that the performance of its obligations under this Agreement may require interaction and co-operation with Third Parties engaged by the Supplier.
       2. Where Clause 51.1 applies, the Distributor shall provide such reasonable co-operation as the Supplier may require in connection with any Third Party engaged by the Supplier.
       3. A failure by the Distributor to comply with any of its obligations under this Clause 51 shall be a Material Breach.
    2. CO-OPERATION
       1. The Parties shall meet as regularly as the Supplier may reasonably require to oversee the correct performance of this Agreement.
    3. AUTHORISED REPRESENTATIVES
       1. For the purposes of this Agreement, each Party’s Authorised Representative (and their contact details) shall be as follows:
          1. [●];
          2. [●].
       2. A change to each Party’s Authorised Representative may only be made pursuant to Clause 65.
25. CORPORATE CONDUCT MATTERS
    1. ANTI-BRIBERY AND CORRUPTION
       1. The Distributor warrants and represents to the Supplier that it shall at all times during the Term comply with the Supplier’s Anti-Bribery & Corruption Policy as may be communicated to it and updated from time to time.
       2. The Distributor warrants and represents to the Supplier that as at the Agreement Date and throughout the Term:
          1. it is and shall remain knowledgeable about and will comply with all ABC Laws at all times and will ensure all of its Personnel are appropriately trained with respect to ABC Laws;
          2. no payment nor any other advantage or favour that might give an improper advantage to the Distributor’s business has been or shall be, directly or indirectly, offered, promised or provided to any Person including specifically a Public Official; and
          3. none of its directors, officers or Personnel performing any of the obligations under this Agreement shall be a Public Official or have any close or personal association with any Public Official.
       3. [The Distributor shall immediately notify the Supplier, in writing, if any foreign Public Official becomes a Personnel, Officer, director, Affiliate or shareholder of the Distributor or acquires a direct or indirect interest in the Distributor’s business.]
       4. [The Distributor acknowledges and agrees it shall not use any funds connected in any way to unlawful activity in any relevant jurisdiction in connection with the performance of its obligations under this Agreement.]
       5. [The Distributor acknowledges and agrees to fully cooperate with the Supplier in providing any information reasonably necessary to permit the Supplier to comply with its obligations under applicable anti-money laundering laws.]
       6. [The Distributor shall:
          * 1. immediately advise the Supplier in writing once it learns of any breaches of this Clause 54; and
            2. report to the Supplier in writing any request or demand for any undue advantage of any kind received by the Distributor in connection with the performance of this Agreement.]
       7. Any breach by the Distributor of this Clause 54 shall be a Material Breach.
       8. The Supplier shall have a right to Audit the Distributor’s compliance with this Clause 54 in accordance with Clause 45 and such right shall extend for 1 year post termination and/or expiry of this Agreement.
    2. REPUTATION
       1. The Distributor shall not (and shall procure that its Personnel shall not) do anything, or engage in any activity, which is likely to adversely affect, or damage, the Supplier’s good name and/or reputation.
26. MISCELLANEOUS
    1. ENTIRE AGREEMENT AND COUNTERPARTS
       1. This Agreement constitutes the entire agreement of the Parties relating to the provision and distribution of the Products, to the exclusion of all other terms and conditions, and any prior written or oral agreement between them.
       2. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, and all the counterparts together shall constitute a single instrument.
    2. ASSIGNMENT AND NOVATION
       1. The Distributor shall not assign, novate or otherwise transfer all or any of its rights, benefits or obligations under this Agreement without the Supplier’s prior written approval.
       2. The Supplier may assign, transfer or deal in any way with its rights under this Agreement including to an Affiliate or any Third Party.
       3. Where the Supplier gives its approval for the purpose of Clause 57.1, the Distributor shall, unless otherwise agreed, remain jointly and severally liable with the relevant Third Party.
    3. SUBCONTRACTING
       1. The Distributor shall not subcontract the performance of any of its obligations under this Agreement without the Supplier’s prior written approval.
       2. The Supplier reserves the right to investigate the qualifications of any proposed Subcontractor before giving such approval under Clause 58.1 and the Distributor shall provide any such information that is reasonably requested.
       3. The performance of this Agreement (or any part thereof) by a Subcontractor shall not relieve the Distributor of any of its obligations in this Agreement and the Distributor shall remain strictly and primarily liable for the same.
       4. The Personnel of the Distributor or of its Subcontractors, agents, etc., working under the Agreement shall be the Supplier’s sole responsibility.
       5. Under no circumstance whatsoever shall any Personnel of the Distributor, its Subcontractors, agents, etc., be regarded or claimed as the Supplier’s Personnel, employees or agents.
       6. The Distributor acknowledges and agrees that any breach of its obligations under this Clause 58 shall be deemed a Material Breach.
    4. WAIVERS
       1. No failure to exercise, nor any delay in exercising, any right, power or remedy under this Agreement shall operate or be deemed a waiver of the same. Waivers must always be given in writing.
       2. Any waiver of any breach of this Agreement shall not be deemed to be a waiver of any subsequent breach.
    5. SEVERABILITY AND ILLEGALITY
       1. If any provision of this Agreement is determined to be invalid, illegal or void by any court or administrative body of competent jurisdiction then the rest of this Agreement shall still remain in full force and effect.
       2. Where Clause 60.1 applies, the Parties shall co-operate to promptly amend or replace the affected provision with a new provision that achieves a legal result that is as similar as possible.
    6. CUMULATIVE RIGHTS
       1. Unless otherwise stated, the rights and remedies of a Party under this Agreement are cumulative and do not exclude any other right or remedy provided by Applicable Law.
    7. RELATIONSHIP
       1. The Distributor and the Supplier are and shall remain independent Parties, and neither Party shall have, or represent itself to have, any authority to bind the other Party or to act on its behalf.
       2. Nothing in this Agreement shall be construed to make either Party an agent, employee, franchisee, joint venturer or legal representative of the other Party.
    8. THIRD PARTY RIGHTS
       1. Except where expressly provided, this Agreement does not create any rights that are enforceable by any Person who is not a Party to this Agreement.
    9. NOTICES
       1. Any notice or other communication given under or in connection with this Agreement shall be in writing and shall be delivered by:
          1. hand to the Party due to receive it at the Party’s address; or
          2. email to the Party due to receive it at the Party’s email address.
       2. The Parties’ addresses and fax numbers for the purposes of this Agreement are:
          1. [insert details]
          2. [insert details]
       3. Any notice or communication which is not delivered on a Business Day, or which is delivered outside of Business Hours, shall be deemed to have been delivered on the next Business Day.
       4. No change to a Party’s Authorised Representative or contact details for notices shall be effective until the other Party has been notified of the change in writing in accordance with this Clause 64.
       5. Any notice not served in accordance with this Clause 64 shall be deemed defective. Any Party receiving a defective notice shall be entitled to ignore such notice as though it was never issued or received.
    10. VARIATION
        1. No variation of this Agreement shall be effective unless in writing and signed by or on behalf of each Party or by its Authorised Representative.
    11. LANGUAGE
        1. This Agreement is drawn up in the English language and the English language version of this Agreement shall always prevail over any translation. This Agreement shall be construed, interpreted and administered in English.
        2. All documents and/or notice documents provided under this Agreement shall be in English or accompanied by a certified English translation.
    12. GOVERNING LAW AND JURISDICTION
        1. This Agreement is governed by, and shall be construed in accordance with, the law of [●].
        2. The Parties irrevocably submit to the [non /] exclusive jurisdiction of the courts of [●] in relation to any Disputes.

**EXECUTION PAGE**

**EXECUTED** as an Agreement on the date and year first above written.

|  |  |  |
| --- | --- | --- |
| **Signed** for and on behalf of | |  |
| [●]  as its duly authorised representative: | |  |
|  | |  |
|  | Signature of authorised representative |  |
|  | |  |
|  | Name & title of authorised representative (print) |  |

|  |  |  |
| --- | --- | --- |
| **Signed** for and on behalf of | |  |
| [●]  as its duly authorised representative: | |  |
|  | |  |
|  | Signature of authorised representative |  |
|  | |  |
|  | Name & title of authorised representative (print) |  |

SCHEDULE 1 | DEFINITIONS

* 1. DEFINITIONS
     1. In this Agreement (unless the context otherwise requires), the following words and phrases shall have the following meaning:

|  |  |
| --- | --- |
| **ABC Laws** | means all applicable anti-corruption, anti-bribery, antitrust and anti-money laundering laws, applicable tax laws and any other applicable criminal laws; |
| **Administration Event** | means an order that is made for the appointment of an administrator (or equivalent) to manage the affairs, business and property of a Party; or documents are filed with a court of competent jurisdiction for the appointment of an administrator (or equivalent) of a Party; or notice of intention to appoint an administrator is given by a Party or its legal representative; |
| **Affiliate** | means any entity that is Controlled by a Party or under common Control of that Party; |
| **Agreed Incoterms** | means “carriage, insurance and freight”, as per the Incoterms; |
| **Agreement** | means this agreement and the Purchase Order(s) and the Schedules hereto; |
| **Agreement Date** | means the date of this Agreement; |
| **Anti-Bribery & Corruption Policy** | means the anti-bribery and corruption policy of the Supplier as may be communicated to the Distributor and amended from time to time by the Supplier; |
| **Applicable Law** | means all national, state, local and municipal legislation, regulations, statutes, by-laws, conditions for obtaining and maintaining any Approvals and/or other laws and any other instrument or direction from officials having the force of law as may be issued and in force from time to time (and any amendment or subordinate provisions thereto) relating to or connected with the activities contemplated under this Agreement, wherever so located and/or performed; |
| **Approvals** | means any licenses, permits, consents, approvals and authorisations (statutory, regulatory or otherwise) that a Party may require (whether to comply with Applicable Law or otherwise) to perform its obligations under this Agreement; |
| **Audit** | means an examination of the Audit Items of the Distributor (or its Subcontractors) in order to confirm the Distributor’s compliance with its obligations under or in connection with this Agreement; |
| **Audit Items** | means any books, systems, reports, practices, data, records and documents in the possession, custody or control of the Distributor relating to the Distributor’s (or its Subcontractors’) performance of its obligations under or in connection with this Agreement; |
| **Auditor** | means an auditor appointed by the Supplier from time to time in order to exercise its rights of Audit under or in connection with this Agreement; |
| **Authorised Recipient** | means any Person to whom a Party may disclose Confidential Information under this Agreement and/or as may be required by Applicable Law; |
| **Authorised Representative(s)** | means the duly authorised representative(s) of the Parties who has/have the authority to agree variations under this Agreement, as specified in Clause 53, or as may be otherwise be notified by one Party to another from time to time; |
| **Business Day** | means a day other than a weekend, official public holiday or a day upon which banks are otherwise generally closed for business in the Territory; |
| **Business Hours** | means the hours of 8:00 a.m. to 5:00 p.m. during a business day in the Territory; |
| **Claim** | means any allegation, debt, judgment, cause of action, action, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise asserted by any Person at any time; |
| **Competing Products** | means any poultry-based food products; |
| **Confidential Information** | means this Agreement and all information of any nature which a Party may have or acquire before or after the Agreement Date, however conveyed (whether in writing, verbally, in a machine- readable format or by any other means and whether directly or indirectly), which relates to the business, products, price lists, developments, Personnel, suppliers and customers of a Party and its Affiliates (whether or not designated as Confidential Information by the disclosing Party), and all information designated as confidential or which ought reasonably to be considered confidential; |
| **Control** | means the: (1) ownership or control (whether directly or indirectly) of more than 50% of the voting share capital of the relevant entity; (2) ability to direct the casting of more than 50% of the votes exercisable at general meetings of the relevant entity on all, or substantially all, matters; or (3) right to appoint or remove directors of the relevant entity holding a majority of the voting rights at meetings of the board on all, or substantially all, matters, and the terms “Controls”, “Controlled” or “Controlling” shall have the equivalent grammatical meaning; |
| **Creditor Event** | means where a Party makes any arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for protection from its creditors in any way; |
| **Customer** | means a Person that is based in the Territory and that enquires about or expresses an interest in the purchase of the Products; |
| **Defect** | Means in respect of a Product an un-merchantable quality, or unfitness for intended purpose, and/or any non-conformance with the Specifications, and includes Latent Defects and Patent Defects; |
| **Delivery Point** | means delivery of the Products to [●], in accordance with the Agreed Incoterms; |
| **Disclosing Party** | means the Party that is disclosing Confidential Information to the other Party under or in connection with this Agreement; |
| **Dispute** | means any Claim or dispute between the Parties under or in connection with this Agreement; |
| **Force Majeure Event** | means any event or occurrence which prevents or delays a Party from performing any or all of its obligations under this Agreement and which arises directly from, or is directly attributable to acts, events, omissions or accidents which are unforeseeable and beyond the reasonable control of the Party so prevented or affected, and may include acts of God, governmental act, war, fire, flood, explosion or civil commotion; |
| **Forecast Period** | means [each [1] Gregorian calendar month period] [each consecutive period of forty-five (45) Gregorian calendar days] [each consecutive period of three (3) Gregorian calendar months] commencing from the Agreement Date; |
| **Good Industry Practice** | means the exercise of that degree of skill, diligence and prudence which would reasonably and ordinarily be expected from time to time from a skilled and experienced Person carrying out the same type of activity, and applying the best industry practices under the same or equivalent circumstances, acting generally in accordance with all Applicable Laws; |
| **INCOTERMS** | means the International Chamber of Commerce INCOTERMS® 2010, as may be updated from time to time; |
| **Indemnified Event(s)** | means any event(s) where one Party has agreed to Indemnify the other Party under this Agreement; |
| **Indemnified Party** | means the Party to receive the benefit of the Indemnity; |
| **Indemnity** | means the indemnification and holding harmless of the Indemnified Party by the other against any Losses and/or Claims, of whatsoever nature, which the Indemnified Party may suffer, incur or sustain arising out of or in connection with, a particular Indemnified Event, and the words “Indemnify” and “Indemnifying” shall have the equivalent grammatical meaning; |
| **Indirect Loss** | means in relation to a breach of this Agreement any loss of production, loss of use, loss of revenue, loss of profit, loss of contract, loss of goodwill, or any indirect, consequential or special loss; |
| **Insolvency Event** | means a Creditor Event, Receivership Event, Administration Event or a Winding-up Event; |
| **Instruction** | means any reasonable instruction given by the Supplier to the Distributor under or in connection with this Agreement; |
| **Intellectual Property Rights or IPR** | means patents, inventions (whether patentable or not), copyrights, moral rights, design rights, trade-marks, trade names, business names, service marks, brands, logos, service names, trade secrets, know-how, domain names, database rights and any other intellectual property or proprietary rights (whether registered or unregistered, and whether in electronic form or otherwise) including rights in computer software, and all registrations and applications to register any of the aforesaid items, rights in the nature of the aforesaid items in any country or jurisdiction, any rights in the nature of unfair competition rights, and rights to sue for passing off; |
| **Invoice Amount** | means the total price payable for any Purchase Order; |
| **Latent Defect** | means a hidden flaw, weakness, or imperfection that cannot be discovered by reasonable inspection of the Product and that has not been partially or wholly caused by the Distributor’s breach of any of the provisions of Clause 17; |
| **Letter of Credit** | means an irrevocable standby letter of credit or guarantee issued by a bank acceptable to the Supplier [and which is equivalent to the total value of amounts specified in a Yearly Forecast]; |
| **Lien** | means any lien, charge, security interest, attachment or encumbrance of whatever nature including material personnel, labourers, mechanics, sub-suppliers, and sub-suppliers’ and vendors’ liens; |
| **Loss or Losses** | means any loss, expense, claim, penalty expenses or equivalent which the Supplier suffers as a result of the Distributor’s actions or inactions in respect of this Agreement or otherwise as a result of the Distributor’s performance under or in connection with this Agreement, but excluding any consequential losses; |
| **Mandatory Disclosure** | means any announcement or disclosure of Confidential Information that a Party is required to make under Applicable Law or as otherwise required by any order of a court of competent jurisdiction; |
| **Material Breach** | means: (1) a breach of this Agreement that is not remedied by the breaching Party within 30 calendar days of being notified of the breach; [(2) a persistent pattern of minor breaches of this Agreement, which when taken as a whole, constitute a material breach; or] (3) any breach of any term in this Agreement which is designated as a Material Breach term; |
| **Minimum Amount** | means the Distributor’s annual minimum amount of Products to be ordered and purchased by the Distributor from the Supplier and the relevant purchase expenditures, as agreed in the Yearly Forecast; |
| **Minimum Marketing Spend** | means the annual minimum expenditures to be made by the Distributor in marketing the Products; |
| **New IPR** | means IPR developed by a Party after the Agreement Date; |
| **Patent Defect** | means an obvious and visible flaw in a Product that can be discovered by reasonable inspection of the Product and that has not been partially or wholly caused by the Distributor’s breach of any of the provisions of Clause 17; |
| **Person** | means any natural person, corporate or unincorporated body or government body (whether or not having separate legal personality), Relevant Authority, individual, corporation, partnership, limited liability company or similar entity; |
| **Personal Information** | means data relating to a living individual who is or can be identified either from the data or from the data in conjunction with other information that is in, or is likely to come into, the possession of the data controller; |
| **Personnel** | means all employees, agents and Subcontractors of a Party who are assigned, engaged or otherwise employed from time to time to work in connection with the performance or discharge of a Party’s obligations under this Agreement; |
| **Price List** | means the price list for the Products, attached as **Schedule 6 (Price List)** and as amended by the Supplier from time to time; |
| **Product Rebates** | means routine promotional offers for the Products implemented by the Distributor, such as “buy-one get one-free” offers, which are compliant with Applicable Law and are not contrary to the interests or reputation of the Supplier or the Products; |
| **Products** | means the products to be provided by the Supplier under or in connection with this Agreement including as set out in the Purchase Order and/or **Schedule 2 (Products)**; |
| **Public Official** | means a public official, member of the judicial system or any other government-related or state-owned entity or Person; |
| **Purchase Order** | means a purchase order issued by the Distributor under this Agreement; |
| **Quarter** | means one-fourth of a Year; |
| **Quarterly Target** | means the target amount of expenditures on the purchase, marketing and sale of Products in the Territory to be met by the Distributor in each [Forecast Period/Quarter];  [DN: If targets are to be assessed on a monthly basis – i.e. in each Forecast Period - then we would refer instead to “Forecast Targets”] |
| **Rebate** | means where the Distributor has achieved:  (1) 95-105% of a Quarterly Target, a rebate of 1% of the price paid for Products by the Distributor to the Supplier in the relevant [Forecast Period/ Quarter];  (2) 105-115% of a Quarterly Target, a rebate of 2% of the price paid for Products by the Distributor to the Supplier in the relevant [Forecast Period/ Quarter]; and  (3) 115% or more of a Quarterly Target, a rebate of 5% of the price paid for Products by the Distributor to the Supplier in the relevant [Forecast Period/ Quarter];  [DN: The Distributor Rebate Incentives will be set out in a Schedule – if the Distributor fails to meet a Quarterly Target, then its requirement to meet the target will roll over into the next Quarter] |
| **Receivership Event** | means where a receiver (or equivalent) is appointed over any of a Party’s assets or undertaking or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager (or equivalent) of a Party, or if any other Person takes possession of or sells a Party’s assets; |
| **Receiving Party** | means the Party receiving Confidential Information from the other Party under or in connection with this Agreement; |
| **Relevant Authority** | means any governmental or regulatory authority, court or other authority of competent jurisdiction; |
| **Rolling Forecast** | means the Distributor’s forecast of its anticipated requirement for Products for each Forecast Period; |
| **Specifications** | means the specifications for the Products as set out in **Schedule 2 (Products)** and includes any specifications, quantities, description and other information relating to the Products; |
| **Storage Requirements** | means, in relation to the storage, handling and transport of the Products, ensuring that the Products are at all times:  (1) kept at below -18 degrees Celsius;  (2) handled only by adequately trained and experienced Personnel;  (3) not contaminated by any other products;  (4) stored and transferred only using appropriate equipment and packaging materials; and  (5) otherwise handled in accordance with the Supplier Policies; |
| **Subcontractor** | means any Person subcontracted by a Party to perform or assist in the performance of that Party’s obligations under this Agreement; |
| **Supplier Policies** | means any and all policies maintained by the Supplier in connection with its business and being set out in **Schedule 7 (Supplier Policies)**, and as the Supplier may notify from time to time; |
| **Tax** | means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of them); |
| **Term** | means the term of 3 years from the Agreement Date; |
| **Termination Date** | means the date of termination or expiry of this Agreement; |
| **Termination Notice** | means a notice to terminate this Agreement issued by a Party in accordance with Clauses 39 or 40 of this Agreement; |
| **Territory** | means [●]; |
| **Third Party** | means a Person who is not a Party; |
| **Title** | means ownership of real property or personal property; |
| **VAT** | means value-added tax or any other sales tax or any other taxes similar thereto in the Territory which may be payable in relation to the supply and delivery of the Products; |
| **Winding-up Event** | means where an order is made or a resolution is passed for the winding-up of a Party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of a Party; |
| **Withholding** | means the holding back of a portion of money by the Distributor from monies owed to the Supplier in respect of withholding tax as may be required under Applicable Law; |
| **Workplace Matters** | means those matters pertaining to labour standards, income tax, workers’ compensation, annual leave, long service leave, superannuation (or any other mandatory employee benefits) or any applicable award, determination or agreement of a competent industrial tribunal that relates to the Distributor’s Personnel; |
| **Year** | means each consecutive period of 12 Gregorian calendar months during the Term, commencing on the Agreement Date; and |
| **Yearly Forecast** | means, for each Year, the Distributor’s forecast of the: (1) maximum amount of Products that may be purchased by the Distributor and maximum expenditures to be made by the Distributor for such purchases; (2) Minimum Amount; (3) Minimum Marketing Spend; and (4) Quarterly Targets to be met by the Distributor. |

SCHEDULE 2 | PRODUCTS

* 1. [●]
     1. [●]

SCHEDULE 3 | FIRST YEAR FORECAST

* 1. [●]
     1. [●]

SCHEDULE 4 | FIRST ROLLING FORECAST

* 1. [●]
     1. [●]

SCHEDULE 5 | DISTRIBUTOR REBATE INCENTIVES

* 1. [●]
     1. [●]

SCHEDULE 6 | PRICE LIST

* 1. [●]
     1. [●]

SCHEDULE 7 | SUPPLIER POLICIES

* 1. [●]
     1. [●]