

The Contractual Governance of Transactions within Firms

Appendix

DISTRIBUTOR CONTRACT

This DISTRIBUTOR AGREEMENT (“Agreement”) is effective as of [EFFECTIVE DATE] (the “Effective Date”) by and between:

[UNIT A], a corporation organized and existing under the laws of [US STATE] U.S.A., with its principal place of business located at [ADDRESS]. (“Manufacturer”)

and

[UNIT B], a company organized and existing under the laws of [COUNTRY], with its principal place of business located at [ADDRESS] (“Distributor”).

RECITALS

- A. Manufacturer is in the business of developing, designing, and distributing certain [TYPES OF PRODUCTS] (defined herein as the “Products”).
- B. Manufacturer desires to appoint Distributor as its distributor in the Territory (as defined herein) for the purpose of marketing and distributing the Products within the Territory, and Distributor desires to accept such appointment, on all the terms and conditions set forth below.
- C. This agreement supersedes and replaces all earlier agreements made between the parties prior to the Effective Date.

AGREEMENT

THEREFORE, in consideration of the mutual terms and conditions hereinafter set forth, Manufacturer and Distributor agree as follows:

Article 1 - Definitions

For purposes of this Agreement, the following terms shall have the meanings described below:

1.1 “Confidential Information” shall mean all data and information of a confidential nature, including know-how and trade secrets, relating to the business, affairs, products and other goods or services of the respective parties to this Agreement. Confidential Information may be communicated orally, visually, in writing or in any other recorded or tangible form. Data and

information shall be considered to be Confidential Information (a) if the disclosing party has marked them as such, (b) if the disclosing party, orally or in writing, has advised the receiving party of their confidential nature, or (c) if, due to their character or nature, a reasonable person in a like position and under like circumstances as the receiving party would treat them as secret and confidential. This definition of Confidential Information shall not apply, or shall cease to apply, to data and information supplied by the disclosing party that (i) was in the receiving party's possession prior to receipt from the other party as shown by files existing at the time of disclosure; (ii) has come into the public domain other than through a breach of confidentiality by the receiving party; (iii) was developed independently by employees of the receiving party or by persons who have not had access to the disclosing party's Confidential Information; (iv) was or is lawfully obtained, directly or indirectly, by the receiving party from a third party under no obligation of confidentiality; or (v) is required to be disclosed pursuant to any statutory or regulatory provision or court order, *provided, however*, that the receiving party provides notice thereof to the disclosing party, together with the statutory or regulatory provision, or court order, on which such disclosure is based, as soon as practicable prior to such disclosure, so that the disclosing party has the opportunity to obtain a protective order or to take such other protective measures as it may deem necessary with respect to such information. The receiving party shall have the burden of establishing any of the foregoing exceptions.

1.2 “Distribution Rights” shall mean those rights granted to Distributor, or indirectly to a Subdistributor, pursuant to Section 2.1 hereof.

1.3 “Purchase Order Agreement” shall mean the written agreement pursuant to which an end-user customer obtains from Distributor the non-exclusive right to use the Products for its own internal use.

1.4 “Intellectual Property Rights” shall mean and include all patents, copyrights, data bases, designs, drawings, mask works, Marks and other proprietary rights, or applications, which Manufacturer may at any time own, adopt, license, use, or register with respect to the Products or its business.

1.5 “Marks” shall mean and include trademarks, service marks, trade names, brand names and trade dress and which are used on or in connection with any of the Products and/or on any brochures, manuals, promotional materials or other documents related to the Products.

1.6 “Person” shall mean and include any individual, corporation, trust, estate, partnership, joint venture, company, association, league, governmental bureau or agency, or any other natural or legal entity, regardless of the type or nature thereof.

1.7 “Products” shall mean and refer to, individually and/or collectively, the [TYPES OF PRODUCTS] for the [TYPE OF] market, spare parts, the documentation and Upgrades pursuant to related customer support agreements which are generally commercially supplied by Manufacturer from time to time during the term of this Agreement, or which are offered by Manufacturer.

1.8 “Subdistributor” shall mean any Person with whom Distributor enters into a Subdistributor Agreement.

1.9 “Subdistributor Agreement” shall mean a written agreement, which has been approved by Manufacturer, pursuant to which Distributor grants Distribution Rights to a Subdistributor in accordance with the terms of Section 2.1(b) hereof.

1.10 “Territory” shall mean [COUNTRY].

1.11 “Update” shall mean any change, upgrade, enhancement, revision, or modification with respect to the Products.

Article 2 - Appointment of Distributor

2.1 Appointment. Subject to the terms and conditions set forth in this Agreement, Manufacturer hereby appoints Distributor as its non-exclusive distributor of the Products in the Territory, and Distributor hereby accepts such appointment. Such appointment authorizes Distributor to:

- a) sell the Products and to enter into Purchase Order Agreements with end-users of the Products in the Territory;
- (b) enter into Subdistributor Agreements with Subdistributors, subject to the prior written approval of Manufacturer;
- (c) enter into maintenance contracts with customers in the Territory; and
- (d) perform consulting and training services for customers in the Territory.

2.2 Relationship Between Parties. Distributor shall act as an independent contractor under the terms of this Agreement, and not as a legal representative of Manufacturer for any purpose whatsoever. Nothing in this Agreement shall be construed (a) to give either party the power to direct or control the daily activities of the other party, or (b) to constitute the parties as employer and employee, seller and buyer, licensor and licensee, franchisor and franchisee, partners, joint venturers, co-owners or otherwise as participants in a joint undertaking. Except as expressly provided for in this Agreement, Distributor has no right or authority to (a) enter into any contract, or to assume or create any obligation of any kind, express or implied, on behalf of Manufacturer, or (b) waive any right, interest or claim that Manufacturer may have against any other Person. Distributor and its employees are not, and shall not act as employees of Manufacturer under the meaning or application of any employment or related laws, or under any other laws or regulations which would impute any obligations or liability to Manufacturer by reason of any employment relationship.

Article 3 - Duties of Distributor

3.1 General Conduct. Distributor shall use its best efforts to promote the sales, marketing and distribution of the Products in the Territory, and to enter into contracts in connection therewith. Distributor shall not engage in any illegal or unethical business practices.

3.2 Marketing. In furtherance of its best efforts obligation under Section 3.1 hereof, Distributor shall engage in the active and regular advertising and promotion of the Products within the Territory, including but not limited to (a) organizing and participating in trade shows, exhibitions, seminars, and user group meetings, (b) maintaining press relations, and (c) performing sales presentations and Product demonstrations. Distributor shall, at its own expense, prepare promotional and marketing materials which are appropriate for the effective marketing of the Products within the Territory; provided, however, that all such promotional and marketing materials shall be subject to Manufacturer's review and approval prior to commercial release or use by Distributor.

3.3 Purchase Order Agreement. Distributor shall cause each customer to which any of the Products are sublicensed to execute a Purchase Order Agreement in a form which has been approved by Manufacturer. Manufacturer shall approve Distributor's Purchase Order Agreement, provided that such agreement contains substantially similar terms as those contained in the Manufacturer's Purchase Order Agreement. Distributor shall provide Manufacturer with copies of each Purchase Order Agreement in accordance with those policies communicated by Manufacturer to Distributor from time to time.

3.4 Professional Services. Distributor shall provide, in its own name and for its own account, adequate professional services for the Products, in particular training and consulting services to end-users. The professional services shall include, but not be limited to, providing project-oriented advice and information regarding the selection, maintenance, application, installation and debugging of the Products. All services that Distributor provides to customer under this article 3.4 shall conform to Manufacturer's quality standards, which Manufacturer shall make known to Distributor from time to time.

3.5 Local Technical Support. To supplement the worldwide support effort for the Products, Manufacturer may require Distributor to provide local technical support for the account of Manufacturer. Such technical support shall include the provision of advice and information regarding the Products in accordance with the worldwide standard support agreement.

3.6 Warranties. Distributor shall provide, in its own name and for its own account, warranty work for the Products. Distributor shall not make representations or warranties with respect to the Products greater in scope or duration than those generally made by Manufacturer in the Territory, except where required by local law.

Article 4 - Obligations of Manufacturer

4.1 Marketing Materials. Manufacturer shall, at no cost, provide Distributor with a reasonable quantity of marketing and promotional materials to assist Distributor in its marketing activities hereunder.

4.2 Warranty Materials. Manufacturer shall, at no cost, provide Distributor with a reasonable quantity of spare parts and equipment to assist Distributor in its warranty work as described in Article 3.6.

4.3 Technical Support Services. Manufacturer shall be responsible for the performance of the technical support services under the maintenance contracts sold by Distributor to its customers. Accordingly, Manufacturer, or one of its affiliates, shall maintain a technical support center with Internet and telephone access adequate to service the needs of Distributor's customers.

4.4 Inventory. Manufacturer shall supply inventory; however, Distributor may maintain some inventory on hand as needed for purposes of sales and marketing of products.

Article 5 - Orders and Shipments

5.1 Orders. All orders for the Products submitted by Distributor to Manufacturer shall specify the type and quantity of Products and the requested delivery date. Each order shall be governed by and deemed to incorporate all the terms and conditions of this Agreement. Manufacturer shall, at its sole discretion, accept or reject the order without undue delay. Manufacturer shall use commercially reasonable efforts to ship the Products by the delivery date requested by Distributor and shall indemnify and hold Distributor harmless for any damages incurred by Distributor as a result of delays in shipment that are caused by Manufacturer.

5.2 Shipment. All shipments hereunder shall be made in Manufacturer's standard shipping packages. Except as otherwise agreed by the parties, all Products supplied by Manufacturer shall be delivered FOB Distributor's place of business, or such other destination within the Territory specified by Distributor in the applicable order. Risk of loss for the Products and documentation relating to the Products, shall be transferred from Manufacturer to Distributor at Distributor's place of business or such other agreed destination within the Territory. Manufacturer shall be responsible for all actions necessary to obtain clearance to import the Products into the Territory; provided that Distributor shall pay Manufacturer for costs and expenses incurred in connection therewith, including shipping, freight, insurance, taxes, duty and other related shipping charges as determined by Manufacturer.

5.3 Inspection of Products. Upon delivery of the Products, Distributor shall inspect the Products and notify Manufacturer of any damage, tampering, shortage or other discrepancy between the Products and shipping documents.

Article 6 - Prices and Payments

6.1 Prices. Distributor shall pay to Manufacturer a purchase price for each Product equal to the actual price collected by Distributor from the first sale of the Product to a non-Affiliate in the Territory, less a Discount as shown in Exhibit A. Distributor and Manufacturer will review the performance of Distributor on a periodic basis, and will negotiate to amend this discount if circumstances warrant in accordance with the intercompany pricing study attached as Exhibit B as amended or superseded from time to time.

6.2 Payment. Distributor shall pay the full amount of the purchase price as set forth in Section 6.1 hereof within fifteen calendar days after Distributor receives the amount from the customer. Each payment by Distributor hereunder shall be made in [CURRENCY], unless otherwise directed by Manufacturer. In the event that Distributor fails to make any payment hereunder on the due date therefor, such overdue amount shall bear interest, from the due date to the date such amount is paid in full, at a rate of one and one-half percent per month or portion thereof by which such payment is overdue, or the maximum rate permitted by law, whichever is less.

6.3 Distributor Compensation for Services.

- (a) Unless excepted in this subsection (c), Distributor shall be responsible for costs incurred for Professional Services and Local Technical Support related to the Products.
- (b) Distributor shall retain [PERCENTAGE] percent of net revenue from the Professional Services, described in Article 3.4.
- (c) Manufacturer shall pay Distributor for local technical support, described in Article 3.5, a fee equal to the Local Technical Support Costs plus [PERCENTAGE] of the Local Technical Support Costs related to Manufacturer's products in the Territory not sold by Distributor.

6.4 Local Technical Support Costs. For purpose of this Agreement, "Local Technical Support Costs" shall mean all (a) direct costs, as accounted for by Distributor under U.S. GAAP, which are incurred in connection with performing local technical support, and (b) indirect costs allocable to local technical support as calculated by a methodology agreed to by the parties. "Local Technical Support Costs" do not include direct or indirect costs attributable to the marketing effort of the Products, as described in Article 3.2; the performance of professional services, as described in Article 3.4.

6.5 Withholding. In the event that any amount payable by Distributor hereunder is subject to any withholding or other, similar tax under the laws of the Territory, Distributor shall provide Manufacturer, on a timely basis, with copies of official tax receipts or other evidence of payment of such withholding taxes sufficient to permit Manufacturer to support a claim for a credit for such taxes against Manufacturer's United States income tax liability. To the extent that any withholding tax is payable under applicable law in the Territory, Distributor shall provide

Manufacturer with any and all assistance reasonably requested by Manufacturer to obtain the benefits of any applicable tax treaty.

Article 7 - Product Warranty; Limitation of Liability

7.1 DURING THE WARRANTY PERIODS APPLICABLE TO EACH RESPECTIVE PRODUCT, MANUFACTURER WARRANTS THAT THE PRODUCTS SHALL BE FREE FROM MATERIAL DEFECTS IN DESIGN, MATERIALS AND WORKMANSHIP, AND THAT THEY SHALL PERFORM IN SUBSTANTIAL CONFORMANCE WITH MANUFACTURER'S PUBLISHED PRODUCT SPECIFICATIONS IN EFFECT ON THE DATE OF DELIVERY. THIS IS THE SOLE WARRANTY MADE BY MANUFACTURER WITH RESPECT TO THE PRODUCTS, AND MANUFACTURER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND WHATSOEVER, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MANUFACTURER DOES NOT WARRANT THAT THE PRODUCTS WILL PERFORM IN AN UNINTERRUPTED OR ERROR-FREE MANNER. EXCEPT AS MAY OTHERWISE BE STATED IN THIS SECTION 7.1, THE PRODUCTS, RELATED DOCUMENTATION, AND ANY CONFIDENTIAL INFORMATION ARE PROVIDED TO DISTRIBUTOR "AS IS."

7.2 UPON DISTRIBUTOR'S GIVING PROMPT WRITTEN NOTICE OF ANY FAILURE OF THE PRODUCTS TO CONFORM TO THE WARRANTY DESCRIBED IN SECTION 7.1, MANUFACTURER SHALL EITHER REPAIR OR REPLACE THE DEFECTIVE PRODUCT, OR PROVIDE DISTRIBUTOR WITH A REFUND OF THE PRODUCT PURCHASE PRICE, IN MANUFACTURER'S SOLE DISCRETION. THE FOREGOING IS DISTRIBUTOR'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF MANUFACTURER'S PRODUCT WARRANTY UNDER THIS AGREEMENT.

7.3 NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE FOR ANY REASON WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE BREACH OF THIS AGREEMENT OR ANY TERMINATION OF THIS AGREEMENT, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN PLACED ON NOTICE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. IN NO EVENT SHALL MANUFACTURER'S LIABILITY FOR DAMAGES ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE AGGREGATE AMOUNT OF COMPENSATION WHICH MANUFACTURER HAS RECEIVED FROM DISTRIBUTOR PURSUANT TO THIS AGREEMENT.

Article 8 - Cooperation With Manufacturer

8.1 Record Keeping. At all times during the term of this Agreement, Distributor shall maintain full, complete and accurate books of account and records with regard to its activities under this Agreement, including updating Manufacturer's internal tracking system for the distribution of the Products in accordance with Manufacturer's instructions. Upon reasonable notice, Distributor shall consent to Manufacturer reviewing, during normal business hours, Distributor's books, records and systems in order that Manufacturer, at its expense, may verify compliance by Distributor with its obligations under this Agreement.

8.2 Additional Information. Distributor shall maintain at its facility a list of names and addresses of all customers in the Territory and the amount of sales to each, and shall provide Manufacturer with such list upon Manufacturer's request. Distributor shall maintain its records in such a manner that permits Manufacturer to differentiate between costs associated with sales of Products (including Updates), costs associated with performing professional services, and costs associated with providing local technical support. Distributor shall also maintain copies of Purchase Order Agreements and supporting documentation for at least five (5) years after termination or expiration of this Agreement. All other records and accounts relating to the sale of the Products shall be maintained by Distributor for at least three (3) years after termination or expiration of this Agreement. From time to time during the term of this Agreement, Manufacturer may request that Distributor maintain and provide Manufacturer with (a) a summary of competitors' product introductions and activities in the Territory, and (b) sales forecasts with respect to the Products for the next following six calendar months. Distributor shall provide such information to Manufacturer as and when requested. Distributor shall also immediately report to Manufacturer all claimed or suspected Product defects.

Article 9 - Intellectual Property Rights

9.1 Acknowledgment. Distributor acknowledges Manufacturer's exclusive right, title and interest in and to any and all Intellectual Property Rights embodied in or pertaining to the Products and that, except as specified in this Agreement, Distributor shall acquire no rights whatsoever in or to any of such Intellectual Property Rights.

9.2 Right to Use Marks. Distributor is hereby granted the non-exclusive right to use, in the Territory during the term of this Agreement, those Marks of Manufacturer, solely in connection with the marketing and distribution of the Products. Distributor hereby expressly acknowledges Manufacturer's exclusive ownership of said Marks and their value to Manufacturer, both in the Territory and worldwide. Distributor agrees that, in the performance of its obligations contained herein, all of the Marks used by Distributor in connection with the Products shall at all times be correctly referred to and designated by Distributor in the manner prescribed by Manufacturer and the Products shall be identified as the Products of Manufacturer which are offered for sale by Distributor. Distributor further agrees not to register the Marks or to use or register any name or mark confusingly similar to the Marks without the specific authorization of Manufacturer. Distributor shall discontinue using all of Marks immediately upon expiration or termination of this Agreement except in connection with the sale of any inventory remaining as of

the effective date of termination in accordance with the terms and subject to the conditions contained in Section 13.5 hereof.

9.3 Notices, Marks, Legends and Name. Distributor shall not alter, remove, cover, or add to, in any manner whatsoever, any patent notice, copyright notice, Mark, serial number, model number, brand name or legend that Manufacturer may attach or affix to the Products.

9.4 Assistance. Distributor shall promptly notify Manufacturer (a) of any claims or objections that its use of the Intellectual Property Rights in connection with the distribution of the Products may or will infringe the Intellectual Property Rights of any other Person, and (b) of any and all infringements, imitations, illegal use, or misuse, by any Person, of Manufacturer's Intellectual Property Rights which come to its attention; provided, however, that Distributor shall not take any legal action relating to the protection of Manufacturer's Intellectual Property Rights without the prior written approval of Manufacturer; and provided further that Distributor shall render Manufacturer, at Manufacturer's expense, all reasonable assistance in connection with any matter pertaining to the protection of its Intellectual Property Rights.

Article 10 - Non-Disclosure of Confidential Information

10.1 Non-Disclosure Obligations. During the term of this Agreement, each party may disclose certain Confidential Information to the other party, solely to permit the other party to perform its obligations under this Agreement. The receiving party shall refrain from using or otherwise exploiting any and all Confidential Information received by the disclosing party for any purposes or activities other than those specifically authorized in this Agreement. The receiving party shall not disclose such Confidential Information to any third party without the prior written authorization of the disclosing party, which authorization may be withheld in the disclosing party's sole discretion. The receiving party shall keep such Confidential Information secret during the term of this Agreement and after termination thereof and shall implement effective security procedures in order to avoid disclosure or misappropriation of such Confidential Information. The receiving party shall immediately notify the disclosing party of any unauthorized disclosure or use of any Confidential Information that comes to the receiving party's attention, and shall take all action that the disclosing party reasonably requests to prevent any further unauthorized use or disclosure thereof.

10.2 Ownership of Materials. Distributor expressly acknowledges and agrees that, except as specifically provided in this Agreement, at no time shall it acquire or retain, or appropriate for its own use, any right, title or interest in or to any Confidential Information. All files, lists, records, documents, drawings, specifications and computer programs which incorporate, embody or refer to all or a portion of the Confidential Information shall remain the sole property of Manufacturer. Such materials shall be promptly returned (a) upon Manufacturer's reasonable request, or (b) in accordance with Section 13.2 of this Agreement upon termination of this Agreement, whichever is earlier.

Article 11 - Indemnification

11.1 Indemnification Generally. Distributor shall indemnify and hold Manufacturer harmless from and against all claims, suits, demands, actions and proceedings, judgments, penalties, damages, costs and expenses (including reasonable legal fees and costs), losses or liabilities (collectively, “Damages”) which may arise or result from (a) the marketing or distribution by Distributor of the Products, and (b) any distribution of the Products outside the Territory, and (c) a breach by Distributor of any representation, warranty or other provision of this Agreement. Manufacturer shall indemnify and hold Distributor harmless from and against all Damages which may arise or result from (a) a breach by Manufacturer of any representation, warranty or other provision of this Agreement, (b) such other warranty as Distributor may be unable to disclaim as a matter of local law, and (c) product liability or other claims howsoever arising out of the Distributor’s exercise of its rights and performance of its obligations under this Agreement, other than those caused by Distributor’s negligence.

11.2 Indemnification for Infringement. Manufacturer shall defend at its own expense any action brought against Distributor, to the extent that such action is based on a claim that the use or supply of any Product in the Territory infringes the Intellectual Property Rights of any other Person and shall pay any costs and damages finally awarded against Distributor in any such action which are attributable to any such claim. Manufacturer’s obligation under the preceding sentence is subject to the conditions that (a) Distributor shall promptly have notified Manufacturer in writing of any such claim, and (b) Manufacturer shall have had sole control of such defense and all negotiations for any settlement or compromise. Should any Product become, or in Manufacturer’s opinion be likely to become, the subject of any infringement claim, Manufacturer shall have the right to instruct Distributor to refrain from supplying the Product or to take such other steps as Manufacturer may consider appropriate in order to limit its liability exposure.

11.3 Limitations. Manufacturer shall have no liability to Distributor under this Article 11 with respect to any claim of infringement which is based upon or results from (a) the combination of any Product with any machine, device, firmware or software not furnished by Manufacturer, (b) any modification of any Product by a Person other than Manufacturer, or (c) Distributor’s failure to install Product changes or Updates as instructed by Manufacturer.

Article 12 - Term and Termination

12.1 Term and Renewal. This Agreement shall commence on the Effective Date and shall continue in full force and effect until the end of the first fiscal year thereafter, unless earlier terminated as provided in Sections 12.2 or 12.3 below. After this initial term, the Agreement shall be automatically renewed for one year periods, unless either party gives notice of non-renewal at least ninety (90) days prior to the renewal date.

12.2 Termination for Cause. This Agreement may be terminated by written notice of termination, effective on the date such notice is received, after the occurrence of any of the following events:

- (a) By the non-breaching party, upon any breach of the other party's obligations under Articles 9 or 10 of this Agreement;
- (b) By either party, to the extent permitted by law, upon the insolvency or bankruptcy of the other party, the inability of the other party to pay its debts as they fall due or upon the appointment of a trustee or receiver or the equivalent for the other party, or upon the institution of proceedings relating to dissolution, liquidation, winding up, bankruptcy, insolvency or the relief of creditors, if such proceedings are not terminated or discharged within thirty days;
- (c) By the affected party, upon the enactment of a law, decree, or regulation within the Territory or any portion thereof which would impair or restrict (a) either party's right to terminate or elect not to renew this Agreement as herein provided; (b) Manufacturer's right, title or interest in and to the Products or the Intellectual Property Rights therein; or (c) Manufacturer's right to receive the prices and fees as set forth in this Agreement;
- (d) Upon any final decision by Manufacturer or one of its affiliates to liquidate or dissolve Manufacturer or otherwise end Manufacturer's existence; or
- (e) Upon a violation by either party or their respective obligations under the United States Foreign Corrupt Practices Act or the United States Export Administration Regulations.

12.3 Termination For Change of Control. In the event of a "Change of Control" (as defined below) of Distributor, Distributor immediately shall provide written notice of such event to Manufacturer, and Manufacturer shall have the right, at its sole discretion, immediately to terminate this Agreement by providing Distributor written notice given within sixty (60) days after its receipt of such notification, or at any time prior to such notification if Manufacturer independently learns of such event, with such termination to be effective immediately upon the receipt by Distributor of such notice. For purposes hereof, a "Change of Control" of Distributor means: (i) the consolidation or merger of Distributor with any other legal entity, in which all voting securities of Distributor outstanding immediately prior thereto represent less than fifty percent (50%) of the voting power of Distributor or the surviving entity outstanding immediately thereafter; or (ii) the sale or disposition by Distributor (in one transaction or a series of transactions) of all or substantially all of its assets.

12.4 Termination Without Cause. This Agreement may also be terminated with or without cause, for any reason or no reason whatsoever, upon ninety (90) days prior written notice given by either party to the other at any time after the expiration of the initial term of one (1) year from the Effective Date hereof.

12.5 Cure Period. If either party shall commit any breach or be in default of its duties and obligations under this Agreement, other than those set forth in Section 12.2, the non-breaching party shall give to the breaching party written notice of such breach or default and shall request

that such breach or default be cured. If the breaching party shall fail to cure such breach or default within thirty (30) days of the date of the notice of breach or default, the non-breaching party may terminate this Agreement immediately by giving written notice of termination to the breaching party.

Article 13 - Rights And Obligations Upon Termination

13.1 Cessation of Rights. Upon termination of this Agreement for any reason whatsoever, all rights and obligations of the parties hereunder shall cease; provided, however, that termination of this Agreement shall not relieve the parties hereto of any obligations accrued prior to said termination, including but in no way limited to the parties' obligations to make payments in accordance with the terms hereof.

13.2 Return of Products and Sales Materials. Upon termination, Distributor shall, at Manufacturer's option and in Manufacturer's sole discretion, promptly destroy, return to Manufacturer, or turn over to a third party designated by Manufacturer, all marketing materials and Confidential Information remaining in Distributor's possession, whether in written, recorded or other tangible form.

13.3 Survival of Non-Disclosure Obligation. Notwithstanding the termination of this Agreement, Distributor shall continue to abide by the terms of its non-disclosure obligations with respect to Confidential Information under Article 10 of this Agreement.

13.4 Waiver of Termination Compensation. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER MANUFACTURER NOR DISTRIBUTOR SHALL, BY REASON OF THE EXPIRATION, NON-RENEWAL OR TERMINATION OF THIS AGREEMENT FOR ANY REASON, BE LIABLE TO THE OTHER FOR COMPENSATION OR REIMBURSEMENT OF DAMAGES ON ACCOUNT OF ANY LOSS OF PRESENT OR PROSPECTIVE PROFITS ON SALES OR ANTICIPATED SALES, ON ACCOUNT OF ANY EXPENDITURES, INVESTMENTS, INVENTORY, LEASES OR OTHER COMMITMENTS MADE IN CONNECTION WITH THIS AGREEMENT, IN ANTICIPATION OF CONTINUED PERFORMANCE HEREUNDER, OR IN CONNECTION WITH THE ESTABLISHMENT, DEVELOPMENT OR MAINTENANCE OF MANUFACTURER'S OR DISTRIBUTOR'S BUSINESS OR GOODWILL.

13.5 Repurchase of Inventory. Upon termination of this Agreement for any reason, Manufacturer shall either repurchase Distributor's existing inventory of Products for the amount actually paid by Distributor for such Products, or authorize Distributor to sell the existing inventory in accordance with the terms of this Agreement, in Manufacturer's sole discretion.

13.6 Assignment of Distributor Agreements. Upon termination of this Agreement for any reason whatsoever, Distributor shall assign to Manufacturer all Subdistributor Agreements and maintenance contracts with customers within the Territory and shall cooperate with Manufacturer to execute any documents necessary or appropriate to effect such assignment.

Article 14 - Compliance with Applicable Laws

14.1 General Compliance. Distributor shall at all times strictly comply with all applicable laws, rules, regulations and governmental orders, now or hereafter in effect, relating to its performance of this Agreement. Distributor further agrees to make, obtain, and maintain in force at all times during the term of this Agreement, all filings, registrations, reports, licenses, permits and authorizations (collectively "Authorizations") required under applicable law, regulation or order in order for Distributor to perform its obligations under this Agreement. Manufacturer shall provide Distributor with such assistance as Distributor may reasonably request in making or obtaining any such Authorizations.

14.2 U.S. Foreign Corrupt Practices Act. Without limiting the generality of Section 14.1 hereof, Distributor represents and warrants that it shall not engage in any action that would constitute a violation of the United States Foreign Corrupt Practices Act, as amended, 15 U.S.C. Section 78dd-1 et seq. ("FCPA"). Distributor and its employees and agents shall not offer, pay, promise to pay, give or promise to give any money or anything of value, whether directly or through third parties, to any government official, political party, political official, candidate for political office or to any person, while knowing or having reason to know that all or a portion of such money or thing of value will be offered, paid, given or promised, directly or indirectly, for purposes of influencing any act or decision of the foregoing or inducing the foregoing to use his, her or its influence with a government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality. Distributor represents and warrants that none of its officers, directors, or employees is an official or employee of a government or of any governmental agency or instrumentality and that Distributor shall not employ any such individual during the term of this Agreement. Distributor further represents and warrants that it, and each of its agents, officers, directors or employees engaging in acts pursuant to this Agreement, have read the FCPA and is aware of the duties, liabilities and obligations set forth in the FCPA.

14.3 U.S. Export Controls. Without limiting the generality of Section 14.1 hereof, Distributor hereby acknowledges and agrees that the Products, and all of the Confidential Information, are subject to export controls under the laws and regulations of the United States, including the Export Administration Regulations, 15 C.F.R. Parts 730-774. In the exercise of its rights, and the performance of its obligations under this Agreement, Distributor shall comply strictly with all such United States export control laws and regulations applicable to the Products, and the Confidential Information, and shall not export, reexport, transfer, divert or disclose any such Products or Confidential Information, or any direct product thereof, to any destination or any national or resident thereof, or to any other natural or legal entity restricted or prohibited under U.S. export controls, except in accordance with all U.S. export controls. Distributor's obligations under this Section 14.3 shall survive the termination of this Agreement for any reason whatsoever.

Article 15 - General Provisions

15.1 Waivers. The waiver by either party of a breach or default in any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach

of the same or other provisions; nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

15.2 Entire Agreement and Amendments. This Agreement, the purchase orders accepted by Manufacturer hereunder, and the attachments hereto, constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements between the parties, whether written or oral, relating to the same subject matter. No modification, amendments or supplements to this Agreement shall be effective for any purpose unless in writing and signed by each party. Approvals or consents hereunder of a party shall also be in writing.

15.3 Assignments. Neither party shall have the right or power to assign any of its rights, or delegate the performance of any of its duties, under this Agreement without the prior written authorization of the other party, except that Manufacturer may assign or otherwise transfer any of its rights, and/or delegate the performance of any of its duties hereunder to any existing or newly formed entity or association controlled by, controlling or under common control with Manufacturer. For the purposes of this definition, the term “control” shall mean the ownership of at least 50% of the voting rights in any entity or association.

15.4 Force Majeure. Neither party shall be liable to the other party for any delay or omission in the performance of any obligation under this Agreement, other than the obligation to pay monies, where the delay or omission is due to any cause or condition beyond the reasonable control of the party obliged to perform (except to the extent that the non-performing party has expressly or impliedly assumed the risk of such cause or condition pursuant to the terms of this Agreement), including but not limited to, strikes or other labor difficulties, acts of God, acts of government (in particular with respect to the refusal to issue necessary import or export licenses), war, riots, embargoes, or inability to obtain supplies (“Force Majeure”). If Force Majeure prevents or delays the performance by a party of any obligation under this Agreement, then the party claiming Force Majeure shall promptly notify the other party thereof in writing.

15.5 Notices. All notices, reports, invoices and other communications between the parties shall be in writing and sent by facsimile, by registered or certified, first-class airmail, return receipt requested and postage prepaid, or by overnight courier. All such communications shall be sent to a party at the address shown at the beginning of this Agreement or to such other address of which the receiving party has given prior notice to the sending party. All such communications shall be deemed to have been received (a) if sent by facsimile, with electronic confirmation of receipt, twenty four hours after such transmission or the time of actual receipt, whichever is earlier, (b) if sent by registered first class airmail, ten (10) calendar days after dispatch, or (c) if sent by overnight courier, two (2) calendar days after the date of dispatch.

Article 16 - Enforcement of Agreement

16.1 Governing Law and Forum. This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of [U.S.A. STATE], U.S.A., excluding its conflicts of laws rules. The U.N. Convention on the International Sale of Goods shall not apply to this Agreement. Any dispute between the parties relating to the validity, performance, interpretation

or construction of this Agreement shall be submitted to the courts located within the State of [U.S.A. STATE], U.S.A., which courts shall have exclusive jurisdiction to adjudicate any disputes arising out of or in connection with this Agreement. Both parties specifically consent to the exercise of personal jurisdiction by such courts. Notwithstanding the provisions of this Section 16.1, Manufacturer shall have the right to seek relief in any court of competent jurisdiction to prevent or enjoin any unauthorized use, disclosure, misappropriation or infringement of any of its Intellectual Property Rights or Confidential Information.

16.2 Legal Expenses. The prevailing party in any legal proceeding brought by one party against the other party and arising out of or in connection with this Agreement shall be entitled to recover its legal expenses, including court costs and reasonable attorneys' fees.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

[UNIT A]

[UNIT B]

[SIGNED BELOW BY UNIT A EXECUTIVE] [SIGNED BELOW BY UNIT B EXECUTIVE]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A: PURCHASE ORDER AGREEMENT
EXHIBIT B: INTERCOMPANY PRICING AGREEMENT
EXHIBIT C: MARKS