

# Distribution Agreement

## *Exclusive*

🔊 Use this contract template to develop your agreement for product distribution whether you are the distributor or the manufacturer.



# [Company Legal Name]

[Address] \* [City], [State] [Zip Code]  
[Telephone] \* [WebSite Address]

🔊 Cover Letter

🔊 The first part of the Memorandum should be completed and distributed to [Distributor] / Supplier along with a copy of the Exclusive Distribution Agreement.

[Date]

[Name]

[Title]

[Distributor]

[Address]



Dear [First Name],

Thank you for your interest in marketing our products. We're sure you'll do very well marketing our products and we are looking forward to working with you.

Attached is our "Distributor Agreement," the purpose of which is to establish the terms and conditions of our Distributor relationship. The following is a synopsis of what our agreement says:

- We want you to be our EXCLUSIVE Distributor for our products in your area.
- You pay the prices spelled out in this agreement, but we will notify you of any changes and you can cancel orders already shipped if we change our prices. You've got 10 days. On the other hand, if we drop our prices, you'll be credited for unsold product on hand.
- We will do our best to accommodate your shipping requirements assuming we have stock on hand but, if you haven't paid us, we might hold shipments until you send us the money.
- We stand behind our products and if something is wrong, we will give you your money back and are not liable for anything more
- We are not related in any way except that you sell our stuff.
- You'll do everything you can to promote and sell our stuff to the appropriate customers.
- We own our trademarks, but you can use them under certain conditions.
- If we change any arrangements we do it in writing and it becomes part of this agreement. There are some time limits for working out any problems, and we can our relationship if we can't work it out.
- We will keep each other's secrets confidential.
- This is our entire deal with each other. We won't break any laws. We're off the hook in the event of an "Act of God."
- We will use binding Arbitration in the event of a dispute and live with the arbitrator's decision whether we like it or not—we agree that we both want to prevent any dispute from escalating to an expensive court battle.

- The usual general contract stuff.

Thank you for choosing to business with [Company]. If you have any questions, please feel free to contact me. We look forward to a profitable relationship together.

Sincerely,

[Owner/Founder]

[Title]

Enclosure: Distribution Agreement




# From JIAN

## NOTICE:

We wish we could provide an agreement that was tailored *exactly* to your business. While this is not always possible, we feel that we've come very close and that this document provides you with the head-start that you need to get your deal moving. Nevertheless, we must make this disclaimer:

- 🚫 **Do Not Use This Agreement 'As-Is.'**
- 🚫 **This Agreement Is Not Legal Advice.**
- 🚫 **Read it Thoroughly and Make All Appropriate Changes to Fit Your Requirements.**
- 🚫 **You Should Have this Agreement Reviewed and Approved by a Qualified Attorney at Law Before Using It.**
- 🚫 **JIAN Accepts No Liability for the Effectiveness of This Document For Your Purposes.**

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- Please visit our website under [Updates](#).
- Remember to bookmark our website: [www.JIAN.com](http://www.JIAN.com)

## Editing Your Sample Contract

Since this entire agreement is formatted in Word, you can edit it like any other Word document. You can jump from variable to variable by clicking the above  green arrows (JIAN Menu) which will take you forward / backward and highlight the entire sample text identified within the “[ ]” brackets – simply edit / type-over with your information.

To make sure you have filled in all the variables, use Word's 'FIND' function to locate any “[ ]” which may contain an unedited variable.

- Click the  icon in the JIAN menu above to turn the expert comments on/off.
- Upon completion, delete any unnecessary blank lines that remain.
- You may format this document any way you like.
- Delete this page.

# Distribution Agreement

- ☞ This is a standard introductory paragraph that lists the parties to the Agreement and the date the Agreement is being entered into. You need to enter the date of the Agreement, the names of the parties, the specific type of organization, and their addresses.

Effective Date of this Agreement: **[Date]**

This Agreement is by and between **[Company Legal Name]**, ([Company]),  
a [State], [Corporation / Partnership / Sole Proprietorship]  
with its principal place of business at [Address]  
[City], [State] [Zip Code]



AND **[Distributor's full legal name]**, ([Distributor's abbreviated name]),  
a [State],[Corporation/Partnership/Sole Proprietorship],  
with its principal place of business at [Distributor's Address].

- ☞ The following section is like an introduction. It states that [Company] is in the business of developing, marketing and supporting certain products and that since [Distributor] has the ability to distribute those products, [Company] is willing to grant an exclusive Distributorship to [Distributor].

## Purpose of this Agreement

[Company] is in the business of developing, marketing and supporting certain products (defined below).

[Distributor] wishes to distribute to the dealers and the remarketers of these products and assures [Company] that it has the facilities, personnel, and technical expertise necessary to market the products.

- ☞ You should indicate if [Distributor] can sell only to Authorized Dealers. If it can sell to anyone, then you need not say anything.

[Distributor] wishes to obtain from [Company], and [Company] is willing to grant to [Distributor], the exclusive right to distribute these products [solely to such dealers and remarketers as qualify to be Authorized Dealers (defined below)] for resale purposes.


In consideration for the mutual promises, covenants, and Agreements made below, the parties, intending to be legally bound, agree as follows:

## 1. Definitions

For purposes of this Agreement, the following terms will have the indicated definitions:

- **“Agreement”** This Agreement is by and between [Company] and [Distributor].
- **“Information”** The documentation, technical information and / or business information, either oral or written that [Company] or [Distributor] furnishes to the other marked as proprietary or confidential or simply treated as such by the disclosing party. The Information includes research, development or business activities, including any unannounced products and services, as well as any information

relating to services, developments, services, processes, plans, financial information, customer and Supplier lists, forecasts and projections. Information shall also include the terms of this Agreement. A party's information shall be deemed confidential under this Agreement unless the information: (1) is in the public domain through no act of other party; (2) is lawfully known by the other party from a source other than the first party with no restriction of confidentiality; or (3) must be disclosed by requirement of law or generally accepted accounting principles.

- **“Term”** The duration of this Agreement.
- 🔊 Describe as fully as possible all of the products to be supplied to [Distributor]. (For example, "the word processing software called Word-Processor, the spreadsheet software called Cell Maker, and the financial accounting software called Account Pro.") You may want to change the language in Section 1.4 if you do not want to include future versions of the product within the Agreement.
- **“Products”** The [Describe the products] developed or owned by [Company], along with all options to the products; all future versions of the products; and all enhancements, revisions, or modifications made to the products by [Company].
- 🔊 If [Company] is not limiting distribution to so called "Authorized Dealers," then you can remove this section. If the distribution is limited to "Authorized Dealers," you will need to complete an Exhibit A which is a list of those dealers, and attach it to the end of this Agreement.
- **“Authorized Dealer(s)”**  dealers and remarketers listed in Exhibit A.
- **“Territory”** The state(s) or country(s) set forth in Exhibit B (attached to the end of this Agreement).
- **“End-User”** Any person or entity who obtains the product(s).
- **“Intellectual Property Rights”** The intangible legal rights or interests evidenced by or embodied in (1) any idea, design, concept, technique, invention, discovery, or improvement regardless of patentability, but including patents, patent applications, trade secrets and know-how; (2) any work of authorship, regardless of copyrightability, but including copyrights and any moral rights recognized by law; and (3) any other similar rights, in each case on a worldwide basis.
- **“Quota”** Specified minimum quantities of the products as set forth in Exhibit C (attached to the end of this Agreement) consisting of an initial purchase order and a continual minimum monthly volume commitment.
- **“Trademarks”** The Trademarks specified in Exhibit D (attached to the end of this Agreement).

## 2. Term

- 🔊 In Section 2, you set the term of the distributorship. Note that you can always renew this or any other Agreement upon the mutual consent of the parties.

This Agreement shall commence on the date stated in the first section (the start date) and shall terminate [Month, Day, Year] following that start date, unless it terminates sooner according to the provisions of this Agreement. The Parties may renew this Agreement in writing upon mutual Agreement.

- 🔊 There are certain clauses in this Agreement that you will want to continue (referred to as survive) the actual termination of the Agreement. For example, while the Agreement may terminate, warranties regarding the products would still be effective, depending on how you wrote the Agreement.

### 2.1 Continuation or Survival of Certain Sections

Certain sections, as indicated below, will survive and remain effective even after the termination of this Agreement. All other rights and obligations of each party to the other shall terminate upon the termination of this Agreement.

### 3. Relationship

- ☞ [Distributor]'s name (entered in the brackets) is appointed [Company]'s exclusive Distributor. If [Distributor] will not be the exclusive Distributor, then you should use Non-Exclusive Distributor Agreement.

#### 3.1 Exclusive Distributor

[Company] grants [Distributor], and [Distributor] accepts from [Company], an irrevocable, nontransferable, exclusive right and license to distribute the products. This appointment is subject to the limitations set forth in Section 4.

- ☞ The following section gives fairly broad power to [Distributor] regarding the distribution of the products. If you are [Company], you should carefully review it, making sure that you are comfortable giving [Distributor] this much flexibility and power. Of course, it can be modified at either party's option.

#### 3.2 Powers as Distributor

[Distributor] may incorporate, combine, integrate or modify the products; sell them either alone or in combination with other products; and sell them under its own label. No payment of any fee or charge is required as a condition of such appointment. No franchise is granted in this Agreement. Except as expressly provided in this Agreement, all aspects of the distribution and marketing of the products by [Distributor] shall be in [Distributor]'s sole control, including without limitation the methods of marketing, pricing, naming, packaging, labeling, and advertising, and the terms and conditions of any sale, unless otherwise provided for in this Agreement.

- ☞ This next section makes clear that neither [Company] nor [Distributor] is authorized to act on the other's behalf and that each is an independent contractor acting on its own behalf. It is important for this to be stated since it might appear that one is an agent for the other, when, in fact, neither wants the other to be able to bind it to contracts or otherwise create legal liabilities.

#### 3.3 Supplier & Distributor as Independent Contractors

[Company] and [Distributor] agree that their relationship is that of the seller and the buyer (or the licensor and the licensee) and not that of joint venturers, principals or agents, or franchiser and franchisee. Both are independent contractors acting for their own accounts, and neither is authorized to make any commitment or representation, express or implied, on the other's behalf unless authorized to do so by the other in writing.

- ☞ Section 3.4 says that while [Distributor] may use [Company]'s trademarks and trade names, it has no legal right or interest in that property. Furthermore, [Company] may set forth specifics regarding their use in writing, and [Distributor] must conform its use accordingly.

#### 3.4 Use of Trademarks and Trade Names

No right, title or interest in or to any trademarks, trade names, slogans, labels and designs used by either [Company] or [Distributor], nor the goodwill connected, is conveyed by this Agreement. [Distributor] may, in connection with the promotion and sale of the products pursuant to the terms of this Agreement, refer to [Company]'s applicable trade names or trademarks provided that all such references are in conformance with [Company]'s requirements regarding such use, as such requirements are communicated to [Distributor] in writing from time to time by [Company].

#### 3.5 Territorial Responsibility

[Distributor] shall pursue vigorously sales policies and procedures to realize the maximum sales potential for the products in the Territory. [Distributor] shall not advertise or solicit the sale of the products outside the Territory or establish a repair or maintenance facility outside the territory.

- ☞ Section 4 establishes [Distributor]'s distribution rights. Note, that it permits [Company] to sell the products to certain parties under specific circumstances. While it may be important for [Company] to be able to sell its products, it is equally or more important that [Distributor] be able to limit these sales. Otherwise, [Company] might circumvent [Distributor] altogether, reducing the value of Distributorship.

## 4. Distribution Rights

In recognition of the investment to be made by [Distributor] in connection with its marketing and distribution of the products, the parties agree to each of the following provisions:

- ☞ The following section details exactly what is meant by "exclusive" in this exclusive Distributorship Agreement.

### 4.1 Exclusivity

- ☞ Except as specifically explained below, [Distributor] is the only entity that will distribute the products anywhere in the world.

4.1.1 [Company] hereby grants [Distributor] the exclusive right to distribute the products in all countries in the world in which it is legal to sell the products, subject to the limitations below and in Section 4.1.2.

- ☞ You should indicate to whom [Distributor] may distribute the products. You may want to limit the distribution to certain types of businesses or users, or you may not want to limit the distribution at all.

4.1.2 [Distributor] may resell or distribute the products to [end-user customers / resellers / other] without restriction.

- ☞ Assuming you have limited [Distributor]'s ability to distribute the products above, this section merely states that it cannot sell to those not authorized above.

4.1.3 [Distributor]'s obligations with respect to Section 4.1.2 shall be limited to refraining from intentionally selling to the customers other than the customers to whom it is authorized to sell.

- ☞ In Section 4.1.4, the first insert indicates the term of the exclusive Distributorship. However, if prior to the end of that term, [Distributor] has submitted orders for the amount (set in the second set of brackets) either dollar or quantity, that includes any initial orders (the amount entered in the third set of brackets), then the term of [Distributor]ship will last for the period entered in the final set of brackets.

4.1.4 The exclusive distribution rights granted to [Distributor] pursuant to this Agreement terminates [Enter number] months following the start date unless prior to that time [Distributor] has submitted binding orders to purchase an aggregate of [Enter amount] from [Company] (including [any initial orders] ordered pursuant to the initial order as stated in Section 8.1) in that event, such exclusive distribution rights shall terminate [months / years] following the start date.

- ☞ Under certain circumstances, [Company] may sell the products. It is important for [Distributor] to limit these exceptions or the value of its exclusive Distributorship will be diminished. In other words, if not properly stated, [Company] might pre-empt [Distributor] from selling products altogether. On the other hand, it is also important for [Company] to retain these rights if he wants to be able to sell the products directly.

### 4.2 Reservation of Rights by Supplier

Despite the exclusive distribution rights granted to [Distributor] pursuant to Section 4.1, [Company] specifically reserves the following rights with respect to the sale of the products:

- ☞ [Company] can sell to any of the customers listed in Exhibit E (attached to the end of this Agreement). [Company] should try to be as thorough as possible regarding the completion of that exhibit.



4.2.1 [Company] reserves the right to sell the products to its existing end-user customers as of the date of this Agreement, all the customers are identified in Exhibit E.

☞ [Company] can also sell to other customers if the product is part of a system being sold to the customer. For example, if one of the products is a computer monitor and you are selling an entire computer system to a customer.

4.2.2 [Company] further reserves the right to sell products to other customers if such sales are part of an integrated sale with other systems.

☞ In the following section, regarding the first insert, enter the commission, if any, to be paid by [Company] to [Distributor] for any of the products sold by [Company]. If no commission is to be paid, you should say so. For the second insert, select the method by which [Distributor]'s obligations will be decreased. Assuming [Distributor] is selling several products and the sales price of each is low, then you have probably set up a dollar minimum; here, therefore, you should select dollar-for-dollar. Where you are dealing with high ticket items, you have probably set up a minimum volume requirement; in that case, select the one-for-one option.

### 4.3 Sales by Supplier

[Company] shall pay [Distributor] a commission on the sale of any products by [Company] pursuant to Section 4.2. Such commission  will be equal to [x]% of the end-user sales price for each product sold. In addition, any sales by [Company] pursuant to Section 4.2 shall be credited against [Distributor]'s obligation to purchase products in order to maintain its exclusive rights under this Agreement. Any such sales shall reduce any Distributor obligation to purchase products on a (one-for-one / dollar-for-dollar) basis.

☞ The following section prohibits [Company] from selling products that are similar to the products defined in this Agreement. If [Company] will be able to sell such products, you should say so.

### 4.4 Other Products

[Company] shall not sell any products with specifications comparable to those of the products.

☞ Section 5 describes [Distributor]'s specific responsibilities. Obviously, since each distribution arrangement is unique, you might want to add (or even delete) certain obligations that will be imposed on [Distributor].

## 5. Distributor's Responsibilities

During the term of this Agreement, [Distributor] agrees to the following:

☞ Following, are two Section 5.1's. Choose the one that fits your needs.

☞ Select the first Section 5.1 if [Distributor] can distribute only to Authorized Dealers. If [Distributor] can distribute otherwise, then select the second one.

### 5.1 Distribution to Authorized Dealers

[Distributor] shall distribute the products only to Authorized Dealers.

☞ ~ [Or] ~

### 5.1 Distribution to Dealers

[Distributor] may distribute the products to any dealers.

☞ Section 5.2 requires [Distributor] to maintain certain inventory levels based on the number of days anticipated (enter the number in the brackets). The quota is the absolute minimum time [Distributor] has to order from [Company] each month.

## 5.2 Minimum Commitments

[Distributor] shall maintain an inventory of products and warehousing facilities sufficient to adequately serve the demands of its dealers on a timely basis. Such inventory shall equal or exceed the quantity of products necessary to meet reasonably anticipated demands of the dealers for at least [Enter number] days. [Distributor] shall in all cases order from [Company] at least the quota of each product each and every month.

☞ Section 5.3 describes certain marketing requirements imposed on [Distributor]. Basically, [Distributor] has to use its best efforts to distribute the products.

## 5.3 Promotional Efforts

[Distributor] shall use its best efforts to promote vigorously and aggressively the marketing and distribution of the products. [Distributor] may advertise the products in advertising media of [Distributor]'s choice. [Distributor] shall make full use of all promotional material supplied by [Company]. In all advertising and promotion of the products, [Distributor] shall comply with [Company]'s standard cooperative advertising policies as specified from time to time.

☞ [Distributor] must use any packaging provided by [Company].

## 5.4 Supplier Packaging

[Distributor] shall distribute products with all packaging, warranties, disclaimers, and End-User Agreements intact as shipped by [Company] and shall require all the Dealers to adhere to the terms of the End-User Agreements applicable to such products.

☞ Section 5.5 sets forth the regular reports required of [Distributor]. The first number is the number of days (in brackets) following the end of the month that the Reports are due. The second insert is the number of days following the termination of this Agreement that reports will be due.

## 5.5 Reports

[Distributor] shall deliver to [Company] no later than [Enter number] days after the end of each month during the term of this Agreement and for [Enter number] days thereafter, a written report showing for the preceding month (1) [Distributor]'s current inventory of each product (listed in units); (2) the quantity of each product shipped into a zip code area; (3) the number of returns of or refunds on products granted; and (4) other relevant information for the prior month as requested from time to time by [Company]. [Distributor] shall cooperate with [Company] to make the format, microcomputer environment, and coding of its monthly records compatible with [Company]'s record-keeping system.

☞ Section 5.6 requires [Distributor] to comply with all applicable laws.

## 5.6 Compliance with Laws

[Distributor] shall comply with all material applicable present and future federal, state, county, local, and, where necessary, foreign laws, ordinances and regulations relating to the sale of the products.

☞ If [Company] provides instructions for the products, [Distributor] must provide those instructions to its customers.

## 5.7 Instruction of Customers

[Distributor] shall supply its customers with those instructions for the installation and operation of the products that [Company] provides (or that [Distributor] adapts from instructions provided by [Company]).

☞ [Distributor] must train and maintain a sales force to work with the products. You may want to reword this section, so that the language is appropriate to your products.

## 5.8 Training

[Distributor] shall train a sufficient number of its sales personnel in connection with the demonstration, use and sale of the products in order to maintain a staff of competent sales personnel conversant in the specifications, features and advantages of those products. Such training of sales personnel shall include instruction as to the proper use of, and restrictions on the use of, information provided by [Company].

- ☞ [Distributor] is required to provide the customer support for the products. You may elect to remove the brackets from the second half of the section if you choose to have [Distributor] subcontract its service support obligations to [Company].

## 5.9 Service Support

Subject to the terms of [Distributor]'s customer service arrangements, [Distributor] shall provide service support for the products it purchases pursuant to this Agreement, including but not limited to providing qualified personnel to receive end-user inquiries and to conduct field maintenance. [[Distributor] may, at its option, subcontract service support for the products to [Company]. In this event [Company] shall perform [Distributor]'s service support obligations under this Section 5.4 at prices agreed upon by the parties. At no time shall these prices exceed [Company]'s price for similar service support provided to other customers.]

## 6. Supplier's Rights & Responsibilities

- ☞ Following are two Section 6.1's. Choose the one that fits your needs.
- ☞ Assuming [Company] will be providing manual(s) to [Distributor], you should use the first Section 6.1. If [Company] will not be providing a manual you should select the second one.
- ☞ For the first insert in the first Section 6.1, indicate how soon after this Agreement is signed that [Distributor] will be required to provide these manuals. For the second insert, you should try to explain what the manuals will be documenting.

### 6.1 Service Manual(s)

Within [Enter number] days of execution of this Agreement, [Company] shall provide [Distributor] with manuals documenting the [appropriate method(s) of servicing / installing / using the products].

- ☞ ~ [Or] ~

### 6.1 Service Manual(s)

[Company] will not provide any manual(s) regarding the products to [Distributor].

- ☞ Following, are two Section 6.2's. Choose the one that fits your needs.
- ☞ If [Company] will be providing any training to [Distributor], that training should be described below. Therefore, choose the first Section 6.2. If there will be no training, you should select the second Section 6.2.

### 6.2 Training

During the Term of this Agreement and within [Enter number] days of any request by [Distributor], [Company] shall train a total of [Enter number] of [Company]'s employees for a maximum of [Enter number] hours / days free of charge at its facilities or at [Distributor]'s facilities, as the [Supplier / Distributor] shall select. [Distributor] shall bear all out of pocket costs incurred by the employees during the course of the training, including, but not limited to the cost of travel, meals and lodging expenses. In addition, [Distributor] will bear any reasonable expenses for travel, meals and lodging of [Company]'s instructors if classes are held at [Company]'s facilities.

- ☞ ~ [Or] ~

## 6.2 Training

[Distributor] will not provide training to [Company] or its customers.

- Following, are two Section 6.3's. Choose the one that fits your needs.
- If there is any installation involved with the products, you should use the first Section 6.3. In the first insert, indicate how many installations [Distributor] will help with free of charge. If there will be no installation services provided, select the second Section 6.3.

## 6.3 Installation

[Company] shall assist and support [Distributor]'s employees in installing the products at the initial installation site for each of the first [Enter number] customer sites at no charge. Thereafter, [Company] shall provide the support and consultation for additional installation at reasonable and customary charges for such services.

[Or]

## 6.3 Installation

[Company] shall not be obligated to provide either [Distributor] or its customer(s) with any installation support.

- Section 6.4 requires [Company] to cooperate with [Distributor] in the event that [Distributor] makes any improvements to the products.

## 6.4 Implementation of Enhancements

[Company] shall cooperate with [Distributor] in evaluating, reviewing, and aggressively implementing mutually approved enhancements and refinements to the products.

- Following are two Section 6.5's. Choose the one that fits your needs.
- The first Section 6.5 deals with technical support provided by [Company] directly to [Distributor]. If technical support will be provided, define the scope of that support. The bracketed items are to help you define the parameters of the support. The second Section 6.5 should be used if no support will be given.

## 6.5 Technical Support

[Company] shall provide the following technical support during its' normal business hours: [(1) engineering support at no charge to [Distributor]'s engineering personnel in the form of telephone consultation, and (2) field support at no charge to [Distributor]'s field engineering personnel in the form of telephone consultation.]

[Or] ~

## 6.5 Technical Support

[Company] shall not provide any technical support to [Distributor].

- Following are two Section 6.6's. Choose the one that fits your needs.
- Assuming [Company] will be providing system documentation to [Distributor], you should include the following Section 6.2. This section not only describes the documentation and designates the number to be provided, but it allows [Distributor] to reproduce and translate them. If [Company] will not be providing any system documentation, you should select the second Section 6.6.
- For the first insert, in the first Section 6.6, indicate the number of copies of the documents [Company] will be providing. For the second insert, you should try to explain what the manuals will be documenting. The third insert designates the period of time, if any, following the expiration of this Agreement that [Company] will be required to provide system documentation.

## 6.6 System Documentation

[Company] shall provide at no charge to [Distributor] [Enter number] copies of each [technical publication / document, including without limitation service and installation manuals that [Company] prepares or uses for the products] during the Term of this Agreement and for [Enter number] years thereafter. [Distributor] may use and / or reproduce and / or translate such materials, in whole or in part, but shall reproduce and include any copyright and proprietary notice of [Distributor] on all copies of such materials.


☞ ~ [Or] ~

## 6.6 System Documentation

[Company] shall provide no system documentation to [Distributor].

- ☞ Section 6.7 requires [Company] to provide spare parts to [Distributor] at its lowest resale price, or it must find an alternative supply.
- ☞ For the first insert in Section 6.7, state the period following the expiration date of this Agreement during which [Company] will be required to continue supplying [Distributor] spare parts. For the second insert describe what the parts will be used for.

## 6.7 Spare Parts

[Company] shall, during the  Term of this Agreement and for [Enter number] years thereafter, supply to [Distributor] at its most buyer-favorable then-prevailing resale price, or develop a competitively-priced alternative source of supply for [the use / operation of the products].

- ☞ Section 6.8 gives [Company] sole control over what products are made as well as the content of those products. Basically, pursuant to this section [Distributor] has no say in these matters.

## 6.8 Supplier Determination of Product Content

[Company] reserves the right at any time without liability or prior notice to (1) determine the contents of each product, including its specifications, features, and functions, as well as any documentation or related materials; (2) discontinue distribution of any or all products in some or all markets or through some or all channels of distribution; (3) change or terminate any of the specifications, features, or functions of the products; or (4) change or terminate the level or type of support or service that [Company] makes available for each product. Any change or discontinuance of a product shall be indicated by an addition to our deletion from [Company]'s "United States Suggested Price List." [Distributor] may cancel any orders for discontinued products without liability.

## 7. Purchase Orders

- ☞ Section 7.1 sets the exact amount and terms for the initial order.
- ☞ For the first insert in Section 7, state the quantity and description of the products comprising the initial order. For the second through tenth inserts, state the delivery schedule. We have broken the initial order into three separate deliveries, you can increase or decrease this number. For each, enter the number to be delivered and the month and year that the delivery is to be completed. You should complete Exhibit G which is a copy of the purchase order for the initial order, and attach it to the end of this Agreement. The last two inserts give [Distributor] the option of increasing the initial order. If you elect to keep this option, the first insert simply describes the product(s), and the second insert sets the number it can be increased to. If you don't want this option, delete the sentence.

### 7.1 Initial Order

[Distributor] hereby places, effective upon execution of this Agreement, an order for [Enter quantity] delivery as follows: [Enter schedule] to be delivered in [Month, Day, Year]; [Enter schedule] to be delivered in [Month, Day, Year]; and [Enter schedule] to be delivered in [Month, Day, Year] (the "Initial

Order”). Attached to this Agreement as Exhibit G is a copy of the purchase order for the Initial Order. The Initial Order shall be non-cancelable except as set forth in Sections 7.3 and 13.3 below. [Distributor] has the option of increasing the number of [Enter description] subject to the Initial Order to [Enter number] (the "subsequent orders").

- ☞ All orders following the initial order are referred to as subsequent orders. Section 7.2 states what [Distributor] has to specify when making those orders. It also says that this Agreement governs those orders, not other purchase orders or documents unless agreed to in writing by the other party.

## 7.2 Subsequent Orders

All subsequent orders shall be in writing or if placed orally, shall be confirmed in writing within [Enter number] business days after such oral order. All orders, whether in writing or verbal shall specify: (1) this Agreement; (2) the quantity and description of the products; (3) requested delivery dates (4) applicable price; and (5) any special instructions. All orders shall be governed solely by the terms and conditions of this Agreement. No additional or different provisions contained in [Distributor]'s purchase orders, [Company]'s sales acknowledgments or any other business forms shall be of any force or effect whatsoever unless agreed to in writing by the other party.

- ☞ [Company] does not have to accept [Distributor]'s orders.

## 7.3 Supplier Acceptance

All orders for products by [Distributor] shall be subject to acceptance by [Company] and shall not be binding on [Company] until the earlier of confirmation or shipment, and, in the case of acceptance by shipment, only as to the portion of the order actually shipped.

- ☞ Unless otherwise agreed to in writing, this Agreement controls all of the terms and conditions of any sales between [Company] and [Distributor], not purchase orders or other documents.

## 7.4 Controlling Terms

The terms and conditions of this Agreement and of the applicable Supplier, confirmation shall apply to each order accepted or shipped by [Company] under this Agreement. Any terms or conditions appearing on the face or reverse side of any purchase order, acknowledgment, or confirmation that are different from or in addition to those required under this Agreement shall not be binding on the parties, even if signed and returned, unless both parties expressly agree in a separate writing to be bound by such separate or additional terms and conditions.

- ☞ Section 7.5 describes what happens when an order is canceled and states situations where orders will be automatically canceled.

## 7.5 Cancellation of Orders

- ☞ In the unlikely event that a lawsuit is filed and [Company] is no longer allowed to supply the products, [Company] agrees to try to replace the products or refund [Distributor] if it cannot obtain permission for [Distributor] to continue distribution of those products.

7.5.1 Any order under this Agreement, including, without limitation, the Initial Order set forth in Section 7.1 shall be cancelable by [Distributor] upon an adverse ruling in the form of a restraining order, injunction or other remedy issued by any court of competent jurisdiction preventing or restraining [Company] from selling, or [Distributor] from reselling, the products. In the event of such an adverse court ruling [Company] shall, at its own expense, immediately (1) procure for [Distributor] the right to continue the use, sale or resale of such products purchased under this Agreement, or (2) having failed to obtain such right, replace or modify such products in order that [Distributor] may continue to use, sell or resell such products, or (3) having failed to replace or modify such products, refund to [Distributor] the purchase price of all unsold products. If [Company] elects to replace or modify any of the products, such replacement or modification shall substantially meet the respective performance and interface

specifications of the replaced or modified products.

- ☞ Following are two Section 7.5.2's. Choose the one that first your needs.
- ☞ You have two options with regard to [Distributor] cancellation. The first option is more favorable to [Company]; the second option allows [Distributor] more leeway in canceling its orders.
- ☞ [Distributor] cannot cancel the initial order, but it can cancel subsequent orders up to the first period (entered in the brackets) before the scheduled delivery date. If he cancels between the second and third number of days before the scheduled delivery date, the cancellation charge equal to the amount entered in the fourth set of brackets will be charged. There is no charge for cancellations made more than the number of days entered in the fifth set of brackets.

7.5.2 In addition to the rights set forth in Section 7.5.1, [Distributor] may cancel any order except the Initial Order at any time prior to [Enter number] days in advance of a scheduled delivery date, subject to the cancellation charges set forth below. If [Distributor] cancels deliveries scheduled between [Enter number] and [Enter number] days from the date of cancellation, a cancellation charge of [x]% of the purchase price of those deliveries will immediately be due and payable to [Company]. Cancellations of deliveries scheduled more than [Enter number] days from the date of cancellation may be effected without charge. Despite the foregoing, [Distributor] shall not incur any cancellation charges in the event it cancels any order pursuant to Section 7.5.1.

- ☞ ~ [Or] ~

7.5.2. Once an order has been accepted by [Company], it may not be canceled by [Distributor] unless (1) [Company] has failed to ship the order, or any portion thereof, within [Enter number] days of the date of [Company]'s confirmation of such order; and (2) [Distributor] provides written notice of such cancellation, and [Company] acknowledges such cancellation in writing; and (3) [Company] has not yet shipped the order or portion thereof that [Distributor] desires to cancel.

- ☞ Under certain circumstances, [Company] can cancel orders even after it has accepted them.

## 7.6 Supplier Cancellation

[Company] reserves the right to cancel or suspend any orders placed by [Distributor] and accepted by [Company], or refuse or delay shipment thereof, if [Distributor] fails (1) to make any payment as provided in this Agreement or in any invoice; (2) to meet credit or financial requirements established by [Company]; or (3) otherwise to comply with the terms and conditions of this Agreement.

- ☞ With proper notice, deliveries can be rescheduled at no charge.
- ☞ For the first insert in Section 7.7, enter the minimum number of days notice required to reschedule a delivery. For the second insert, set the maximum period for postponing a delivery.

## 7.7 Rescheduling of Delivery.

At no charge, [Distributor] may at any time with at least [Enter number] days' prior written notice to [Company], reschedule and postpone for up to [Enter number] days the delivery of any products.

- ☞ [Company] must get [Distributor]'s approval before making a partial shipment.

## 7.8 Partial Shipments

No Partial shipments shall be made without [Distributor]'s prior written approval.

- ☞ [Company] pays freight charges up front and invoices [Distributor] for any amounts due. So long as [Distributor] provides tax exemption certificates or licenses to [Company], he does not have to pay taxes to [Company].
- ☞ If [Distributor] wants to designate a shipping company and / or wants specific insurance coverage, he should do so in writing for at least the amount of time prior to the scheduled shipment date (enter the amount of time in the brackets). If [Distributor] says nothing, [Company] will do so on its own.

## 7.9 Freight & Tax Charges

[Company] shall pay initially the cost of freight and any taxes, levies, duties or fees of any kind, nature or description whatsoever applicable to the sale of any products by [Company] to [Distributor], and [Distributor] shall forthwith reimburse [Company] for all such sums upon invoice, exclusive of taxes based on [Company]'s net income. [Distributor] shall not be required to pay taxes for which it provides [Company], by the time of the submission of its purchase order to [Company], tax exemption certificates or licenses acceptable to the appropriate taxing authorities. In connection with the delivery of the products, [Distributor] may designate in writing, not less than [Enter number] business days prior to the shipment date, the carrier for shipment and the amount of insurance and nature of coverage. If [Distributor] fails to so designate any or all such items, [Company], at its discretion, may specify any item not so designated.

- ☞ Depending on the nature of the product(s), you may wish to use an acceptance test. If [Company] will formulate an acceptance test for the products, leave this section in place. Otherwise, you can delete it. If a product is properly rejected, [Distributor] must give notice of that rejection to [Company] and will not have to pay for that product(s).

## 7.10 Acceptance Tests

[Distributor] shall formulate,  subject to [Company]'s approval, Acceptance Test Procedures. [Distributor] has the right to conduct acceptance tests on any of the products and may reject those that fail to pass that test. Such rejection shall be evidenced by notice of rejection to [Company], together with an indication of the basis for that rejection. [Distributor] shall have no obligations with respect to any products properly rejected by it pursuant to this Agreement.

- ☞ You should state the payment terms below. Be as specific as possible.

## 7.11 Payment Terms

[Distributor shall pay [x]% of the purchase price with the placement of any order, and shall pay any invoices rendered to it in connection with the sale of any products to [Company] within [Enter number] days of its receipt.)

- ☞ [Company] will provide [Distributor] with the products in the Supplier's packaging, so that the Distributor doesn't have to handle the products directly.

## 7.12 Packaging

[Company] agrees to provide appropriate packaging, and similar matters as requested by [Distributor] in order to permit the products to be shipped directly into [Distributor]'s distribution system without reopening the boxes or otherwise re-handling the finished goods.

- ☞ If you want [Company] to ship directly, leave Section 7.13 in place.
- ☞ Enter the period prior to shipment that [Distributor] must supply [Company] with shipping instructions.

## 7.13 Direct Shipping

[Distributor] may request that [Company] ship directly to any location designated by [Distributor]. [Company] agrees to comply with these requests at no additional charge (other than transportation charges) provided that [Distributor] furnishes [Company] with shipping instructions at least [Enter number] days prior to shipment.

- ☞ Section 7.14 provides an alternative shipping destination that [Distributor] can designate. Such shipments are treated pretty much the same as shipments directly to [Distributor] in that [Distributor] has to reimburse [Company] for insurance and transportation charges.



## 7.14 Warehousing

[Distributor] may request that [Company] ship to its own warehouse, or to another warehouse owned by a third party. In this event, [Company]'s shipment will constitute delivery to [Distributor]. [Company] shall procure insurance on behalf of [Distributor] to cover risk of damage or loss to these shipments while in the warehouse awaiting final delivery to the customers. [Distributor] shall reimburse [Company] for all insurance premiums and transportation charges incurred by [Company] in the warehousing of these shipments. [Company] shall arrange for final shipment to the customers designated by [Distributor] at [Distributor]'s instruction. Final shipment shall be made in full conformity with Section 7.6, except that [Company] shall also arrange for insurance coverage of these final shipments, the cost of which will be reimbursed by [Distributor].

- ☞ Section 8 sets the prices to be charged [Distributor] for the initial order and all subsequent orders. Most of the sections are not commented on as they are fairly straightforward.

## 8. Prices, Discounts & Payments

### 8.1 Suggested List Prices

A copy of [Company]'s current suggested list price schedule for the products is set forth in Exhibit F (attached to the end of this Agreement). [Company] may change the suggested list prices of any products at any time.

- ☞ Section 8.2 is the price for the initial order. For the first insert, enter the discount off the list price, and for the second insert give the total price for the initial order.

### 8.2 Supplier Prices to Distributor for the Initial Order

[Company] shall sell each product in the Initial Order to [Distributor] at a [x]% discount off the list price. The aggregate purchase price for the initial order is \$[x].

- ☞ Section 8.3 sets the discount off the list price for all subsequent orders. Insert the discount to be applied to those orders.

### 8.3 Supplier Prices to Distributor for Subsequent Orders

[Company] shall sell each product in subsequent orders to [Distributor] at a [x]% discount off the list price.

### 8.4 Taxes

Prices to [Distributor] do not include taxes of any nature. [Distributor] shall pay such taxes when invoiced by [Company] or will supply appropriate tax exemption certificates in a form satisfactory to [Company].

- ☞ Indicate when the payment is due. The number of days following the invoice (enter amount in the brackets). Note, this section gives [Company] a great deal of leeway in changing payment and credit terms.

### 8.5 Payment

[Distributor] shall pay for products within [Enter number] days after the date of [Company]'s invoice or on such terms as may be otherwise specified in [Company]'s invoice. At [Company]'s option, shipments may be made on credit terms in effect at the time an order is accepted. [Company] reserves the right, upon written notice to [Distributor], to declare all sums immediately due and payable in the event of a breach by [Distributor] of any of its obligations to [Company], including the failure of [Distributor] to comply with credit terms and limitations. Furthermore, [Company] reserves the right to vary, change, or limit the amount or duration of credit to be allowed to [Distributor], either generally or with respect to a particular order.

- ☞ Insert the monthly interest rate to be applied to delinquent amounts owed by [Distributor].

## 8.6 Interest

Interest shall accrue on any delinquent amounts owed by [Distributor] for the products at the rate of [x]% percent per month, or the maximum rate permitted by applicable law, whichever is less.

- ☞ Section 8.7 is a guarantee of [Distributor]'s financial condition. It is assuring [Company] of its ability to pay for the amount of products on an annual basis (enter amount in the brackets).

## 8.7 Distributor Financial Condition

[Distributor] represents and warrants that it is and at all times during the term of this Agreement shall remain in good financial condition, solvent and able to pay its bills when due. [Distributor] further represents and warrants that it has and at all times during the term of this Agreement shall retain the ability to order and pay for a minimum of \$[x] in total annual orders for products. [Distributor] shall maintain and employ in connection with [Distributor]'s business under this Agreement such working capital and net worth as may be required in the reasonable opinion of [Company] to enable [Distributor] to carry out and perform all of [Distributor]'s obligations and responsibilities under this Agreement. From time to time, on reasonable notice by [Company], [Distributor] shall furnish financial reports as necessary to determine [Distributor]'s financial condition. [Company] shall have the right to change its financial requirements at any time.

## 8.8 Distributor Pricing



[Distributor] is free to determine its own resale prices for the products. Although [Company] may publish suggested list prices, these are suggestions only and are not binding in any way.

## 8.9 Dealer Pricing

[Distributor] shall inform each Dealer that it is free to determine its own retail prices and that, although [Company] may publish suggested retail price lists, they are suggestions only and are not binding in any way.

## 9. Shipment, Risk of Loss & Delivery

- ☞ Section 9 addresses the issue of who bears the risk of loss and who owns the modifications made to the products along with a number of matters related to shipping. Again, numerous sections are without comments as they are self-explanatory.
- ☞ Following are two Section 9.1's. Choose the one that fits your needs.
- ☞ Choose the first Section 9.1 if you want [Company] to bear the risk of loss for the products, (until they are actually delivered to [Distributor]). Choose the second Section 9.1 if you want [Distributor] to assume that risk.

### 9.1 Risk of Loss

Except as provided below, title to the products purchased pursuant to this Agreement will pass upon delivery to [Distributor]. [Company] assumes the risk of loss and damage of the products in transit from [Company]'s shipping point to the point of destination.

- ☞ [Or]

### 9.1 Risk of Loss

Except as provided below, title to the products purchased under this Agreement will pass upon shipment to [Distributor]. [Distributor] assumes the risk of loss and damage of the products in transit from [Company]'s shipping point.

- ☞ Section 9.2 not only permits [Distributor] to make changes to the products, but it also states [Distributor] owns the rights to those changes. You should change this if you want [Company] to have greater rights with respect to modifications.

## 9.2 Modifications

[Distributor] shall have the right to modify any of the products, and may combine such with other products or material to form derivative works. All rights in improvements made by [Distributor] shall be held exclusively by [Distributor]; [Company] may not use, reproduce or distribute [Distributor]'s improvements in any manner except as otherwise expressly provided under this Agreement.

☞ [Distributor] pays all shipping and associated costs.

## 9.3 Shipment

All products shall be shipped by [Company] F.O.B. [Company]'s point of shipment. Shipments shall be made to [Distributor]'s identified warehouse facilities or freight forwarded. Unless specified in [Distributor]'s order, [Company] shall select the mode of shipment and the carrier. [Distributor] shall be responsible for and shall pay all shipping, freight, and insurance charges, which charges [Company] may require [Distributor] to pay in advance.

## 9.4 Partial Delivery

Unless [Distributor] clearly advises [Company] to the contrary in writing, [Company] may make partial shipments of [Distributor]'s orders, to be separately invoiced and paid for when due. Delay in delivery of any installment shall not relieve [Distributor] of its obligation to accept the remaining deliveries, unless canceled pursuant to Section 7.7 of this Agreement.

## 9.5 Delivery Schedule & Delays

[Company] shall use reasonable efforts to meet [Distributor]'s requested delivery schedules for the products. Should orders for products exceed [Company]'s available inventory, [Company] will allocate its available inventory and make deliveries on a basis [Company] deems equitable, in its sole discretion, and without liability to [Distributor] on account of the method of allocation chosen or its implementation.

## 10. Limited Warranty

- ☞ This is a general warranty provision that [Distributor] agrees to pass on to its dealers / customers; it basically warrants that the products are not defective and provides recourse in the event that they are. You may want to replace [Company] with your company's name to avoid any confusion.
- ☞ [Company] agrees to repair defective products at its manufacturing facility so long as the end-user returns the product postage prepaid. You may wish to change this.
- ☞ We have set the duration of the warranty at one year after the product is shipped to the end-user or eighteen months after shipment from [Company] to [Distributor], whichever comes first. You may wish to modify these periods.

### 10.1 Warranty to Distributor's Customers

The standard limited warranty. [Distributor] shall pass on to its Customers [Company]'s standard limited warranty for the products, as follows:

#### One-Year Limited Warranty

“For one year after the date of shipment to End-user or eighteen months after the date of shipment from [Company], whichever first occurs, [Company] will at its sole discretion, replace, repair or furnish credit for any product purchased by End-user that, in [Company]'s judgment, has a defect in material or workmanship provided the product is returned, transportation charges prepaid, to [Company] with [Company]'s prior permission and return authorization number, and provided further that the product has not been misused (including electrostatic discharge), improperly operated, or subject to unauthorized repairs or modifications. This warranty is in lieu of all other warranties, expressed, implied or statutory, including the warranty of merchantability and the warranty of fitness or of suitability for a particular

purpose and of all other obligations or liabilities on [Company]'s part, and [Company] neither assumes nor authorizes any other person to assume for [Company] any other liabilities in connection with the sale of the said product. If [Company]'s examination does not disclose a defect in material or workmanship on a product claimed to be defective. The End-user agrees to pay [Company]'s established charges for unpacking, testing, and repackaging the product for reshipment to the End-user. This provision states the End-user's exclusive and sole remedy for breach of warranty. This provision does not extend the original warranty period of any product that has been repaired or replaced by [Company].

This warranty is the only warranty made by [Company] with respect to the goods delivered under this Agreement, and may be modified or amended only by a written instrument signed by a corporate officer of [Company] and accepted by the End-user.

The products that at the End-user's request are delivered without complete encapsulation are specifically excluded from the warranty set out in this Agreement. All such products are sold "as is."

### **10.2 Disclaimer, No Other Warranty**

Except for the express warranty set forth above, [Company] grants no other warranties, express or implied, by statute or otherwise, regarding the products, their fitness for any purpose, their quality their merchantability, or otherwise.



### **10.3 Limitation of Liability**

[Company]'s liability under the warranty shall be limited to replacement, repair or credit for the customer's purchase price. In no event shall [Company] be liable for the cost of procurement of substitute goods by the customer or for any special, consequential or incidental damages for breach of warranty.

🔊 Indicate how long the repairs and warranties are for.

### **10.4 Repairs are warranted for [Enter number] days.**

### **10.5 Distributor Duties**

[Distributor] agrees to honor all replacement requests received from the Dealers or End-Users pursuant to the terms of the End-User Agreement pertaining to the defective units. [Distributor] shall instruct all the Dealers to submit all replacement requests to [Distributor].

🔊 You may or may not want to include the following section that provides additional protection for the period of time within the number of months entered in the first bracket. The percentage of products have the same problem, so you would enter the percent in the second set of brackets. For the third insert, indicate how soon after the discovery of the problem [Distributor] is required to give notice to [Company], and for the final insert indicate how long [Distributor] must keep the product before disposing of it.

### **10.6 Additional Protection**

If, within any [Enter number]-month period, [x]% percent or more of the products, while within the warranty period specified in this Agreement, exhibit defects of the same kind and nature, and such defects are the result of faulty design or workmanship on the part of [Company] or defects in materials arising from any cause for which [Company] is responsible, then [Company] agrees to give compensation, or render assistance, at [Company]'s sole expense, to [Distributor] as specified: (1) Delivery of replacement products found to be defective to the place designated by [Distributor]; (2) Field service for the replacement of such defective products or reimbursement to [Distributor] of [Distributor]'s labor costs in replacing such defective products at such rates as may be mutually agreed upon from time to time; and (3) Redesign or reprogramming of the products to the extent necessary to cure such defects. The warranty provided in this section shall be subject to [Distributor]'s satisfaction of the following conditions: (1) the particulars concerning the failure of the products alleged or found to be defective shall be furnished to

[Company] in writing within [Enter number] weeks of discovery by [Distributor] of such defect; (2) the defects so particularized shall be subject to [Company]'s verification; (3) no products alleged or found to be defective shall be disposed of by [Distributor] for at least [Enter number] weeks after [Company] receives the written particulars concerning such defects; and (4) such defective products shall forthwith be returned to [Company] by [Distributor], freight payable at destination, if [Company] so requests.

☞ [Distributor] must give [Company] a written report of claims once every (designated in brackets) number of months.

### 10.7 Notice Requirements

[Distributor] shall provide [Company] a written report of all warranty claims at least once every [Enter number] months.

### 10.8 Non-Exclusive Remedy

The remedy stated in this Section 10 constitutes the sole and exclusive remedy of [Distributor] and, insofar as the End-User Agreement effectively so provides, any Dealer or End-User, as well as their successors and assigns, for any defect or nonconformity in the products.

### 10.9 Product Liability



#### 10.9.1 Indemnification

[Company] shall indemnify and hold harmless [Distributor] for damages or expenses resulting from any claim, suit or proceeding brought against [Distributor] on the issue of product liability. [Distributor] agrees that [Company] has the right to defend, or at its option to settle, and [Company] agrees, at its own expense, to defend or at its option to settle, any claim, suit or proceeding brought against [Distributor] or its Customer on the issue of product liability, subject to the limitations set forth in this Agreement. [Company] shall have sole control of any such action or settlement negotiations, and [Company] agrees to pay, subject to the limitations of this Agreement set forth, any final judgment entered against [Distributor] or its Customer on such issue in any such suit or proceeding defended by [Company]. [Distributor] agrees that [Company] at its sole option shall be relieved of the foregoing obligations unless [Distributor] or its Customer notifies [Company] promptly in writing of such claim, suit or proceeding and gives [Company] authority to proceed as contemplated herein, and, at [Company]'s expense, gives [Company] proper and full information and assistance to settle and / or defend any such claim, suit or proceeding.

#### 10.9.2 Entire Liability

The foregoing provisions of this Section 10.9 state the entire liability and obligations of [Company] and the exclusive remedy of [Distributor] and its Customers, with respect to any alleged product liability suit related to the products or any part thereof.

## 11. Ownership Warranty & Indemnification

☞ Section 11 deals with warranties by Supplier to Distributor that it has the right to manufacture and / or sell the products to Distributor and if it turns out that it doesn't, Supplier agrees to indemnify or reimburse Distributor for any resulting damages.

☞ [Company] warrants that he has the right to supply the products to [Distributor].

### 11.1 Supplier Ownership Warranty

[Company] represents and warrants to [Distributor] that: (1) the products are the originals with [Company]; (2) the products do not infringe upon any patent, Copyright, trade secret or other proprietary rights of others; (3) [Company] has full power and authority to grant the rights granted within this Agreement to [Distributor]; and (4) [Company] has not previously or otherwise granted any other rights in the products to any third party that conflict with the rights in this Agreement granted to [Distributor].

- ☞ In the event that [Company] breaches the warranty described above, [Company] will pay any and all damages and expenses resulting from that breach.

## 11.2 Indemnification

[Company] agrees to defend at its expense and hold [Distributor] harmless from any claim, demand, or suit against [Distributor] resulting from a breach of any of the warranties set forth above in Section 11.1 and to pay any costs, damages, or expenses (including attorneys' fees) arising from any such claim, demand, or suit. [Company] shall have sole control of the defense of such action and all negotiations for its compromise or settlement. [Distributor] shall timely notify [Company] in writing of any such claim, demand, or suit, and, at [Company]'s request and expense, provide [Company] with all available information, assistance and authority to enable [Company] to defend the same. [Company] shall indemnify [Distributor] for all such costs, damages, and expenses as they are incurred.

- ☞ In addition to paying for damages from a breach of this warranty, [Company] agrees to try to obtain the right to the products so that they are no longer infringing.

## 11.3 Continued Use

Following notice of a claim or demand or a threatened or actual suit, [Company] shall immediately, at its own expense, procure for [Distributor] the right to continue the use of the products subject to such claim, demand or suit, or, having failed to obtain such right, replace or modify such products to make them non-infringing, or, having failed to replace or modify the products, refund to [Distributor] the purchase price of all unsold products. If [Distributor] elects to replace or modify any of the products, such replacement or modification shall substantially meet the performance and interface specifications of the replaced or modified products.

- ☞ If [Distributor] makes changes to the products, and those changes result in an infringement, then [Company] will not be liable.

## 11.4 Modification of the Products

[Company] shall have no liability for any claim of infringement based on [Distributor]'s combination of the products with products not supplied by [Company] if such claim would have been avoided by the use of the products without such specific products.

- ☞ Even after this Distribution Agreement expires or is terminated, these warranties and indemnification's are still effective.

## 11.5 Survival of Warranties

The warranties and indemnities stated in this Section 11 shall survive the expiration or termination of this Agreement.

- ☞ Section 12 limits the liability of both [Company] and [Distributor].

## 12. Limitation of Liability

- ☞ The only warranties that [Company] is making are those stated in the two previous sections. [Company] is specifically disclaiming any other warranties, including all implied warranties of merchantability.

### 12.1 Limitation of Liability

The warranties contained in Sections 10 and 11 above are in lieu of all other warranties and conditions expressed or implied, including, but not limited to, those governing merchantability or fitness for a particular purpose. In the event that, despite Section 10, [Company] is found liable for damages based on any defect of nonconformity in the products, its total liability for each defective product shall not exceed the discounted price of such defective product.

- ☞ Neither party will be liable for consequential or indirect damages. An example of consequential damages would be lost profits when a part failed to work, and that caused the factory to shut down.

## 12.2 Exclusion of Consequential Damages

In no event shall either party be liable to the other or any dealer or end-user for any indirect, special or consequential damages including, without limitation, lost profits, costs of delay, any failure of delivery or liability to third parties arising from any source even if the party had been advised of the foreseeability of the same.

- ☞ Section 13 describes situations where this Agreement can be terminated.

## 13. Termination

- ☞ Either party can terminate the Agreement if any of the following occur.

### 13.1 Termination Events

This Agreement may be terminated by either party upon the occurrence of any of the following circumstances:

- ☞ In the event that bankruptcy proceedings are initiated and not dismissed or stayed within the amount of time entered in the brackets.

13.1.1 Any assignment for the benefit of the creditors, or any bankruptcy, reorganization, or other proceeding under any bankruptcy or insolvency law is initiated by the other party, or is initiated against it and not dismissed or stayed within [Enter number] days;

- ☞ Where [Company] or [Distributor] is in material breach, the non-breaching party can terminate the Agreement if the breach is not cured within the period after receiving notice of the breach. Enter the period of time in the brackets.

13.1.2 A material breach by the other party of any of the terms of this Agreement, which breach is not remedied by the other party within [Enter number] days of the other party's receipt of notice of such breach; or

- ☞ If [Company] supplies products to other Distributors in violation of this Agreement, [Distributor] may terminate the Agreement. The Agreement will terminate after the number of days (entered in brackets) following the mailing of the termination notice.

### 13.2 Violation of Distributor's Distribution Rights

This Agreement may be terminated by [Distributor] upon the sale or distribution of the products in violation of [Distributor]'s exclusive distribution rights as described in Section 4.1. The Written notice of termination shall be given by registered or certified mail, in which event this Agreement shall terminate [Enter number] days from the date of mailing of the notice.

- ☞ If the Agreement is terminated, neither party is released from their financial obligations to the other. The second sentence of this section states that if the Agreement is properly terminated, neither party can sue the other for damages.

### 13.3 Fulfillment of Obligations

The termination of this Agreement shall not otherwise release either party from its obligation to pay any sum that may be then or thereafter owing to the other party nor operate to discharge any liability that had been incurred by either party prior to any such termination. Except as qualified by the preceding sentence, neither party shall, by reason of the termination of this Agreement, be liable to the other for any damages (whether direct, consequential or incidental to and including loss of profit or prospective profits of any kind) sustained or arising out of any such termination.

- ☞ If [Distributor]ship is terminated, [Distributor] may sell the balance of its inventories, but that's about it. With respect to the first insert, this sets the number of days after termination that an order was scheduled to be shipped. If the order goes beyond that period, [Company] may cancel. The second insert is a restocking fee that [Company] can charge to [Distributor] to take back products upon termination.

### **13.4 Effect of Termination & Survival**

Upon termination of this Agreement, [Distributor] may continue to dispose of its existing inventories of products, but [Distributor] shall otherwise discontinue all further promotion, marketing, and support of the products. Without limiting the generality of the foregoing, [Distributor] shall cease all display, advertising, and use of all [Company] names, trademarks, logos, and designations and will not thereafter use, advertise, or display any such names, trademarks, logos, or designations.

Upon termination of this Agreement, the due date of all outstanding invoices for the products shall automatically be accelerated and all such invoices shall become due and payable.

All orders or portions thereof remaining unshipped as of the effective date of termination may be canceled by [Company], at its option, to the extent they call for delivery more than [Enter number] days after the date of termination. Upon termination of this Agreement, [Company] shall have the option, exercisable at any time in its discretion, to repurchase some or the entire remaining uncommitted inventory of the products held by [Distributor].

[Company] shall pay [Distributor] for all products so repurchased (if received in a new and re-saleable condition) an amount equal to the discounted price paid by [Distributor] to [Company], less a restocking charge of [x]% percent of such price. Upon receipt of any products so reacquired from [Distributor], [Company] shall issue an appropriate credit to [Distributor]'s account.

Despite any termination of this Agreement, the provisions in Sections 5.4 through 5.6, 7.4 through 7.9, 7.11 through 7.14, 8 through 12, and 14 through 15 shall remain in full force and effect.

- ☞ This next section deals with the protection of certain proprietary information.

## **14. Confidential Information, Trademarks & Intellectual Property Rights**

- ☞ Both parties agree to keep the confidential or proprietary information confidential.
- ☞ This is a standard non-disclosure provision so that both parties agree that any confidential information disclosed to the other is the property of the disclosing party and such information, in addition to the terms of this Agreement, may not be disclosed to any third parties. The exception to this is when the disclosing party can prove that it already had the information, or the information becomes available to the general public. This non-disclosure requirement continues to be effective even upon or after termination of this Agreement.

### **14.1 Proprietary Information**

Each party acknowledges that it may be furnished with or may otherwise receive or have access to information or material that relates to past, present or future products, software, research development, inventions, processes, techniques, designs or technical information and data, and marketing plans. (The "Proprietary Information"). Each party agrees to preserve and protect the confidentiality of the Proprietary Information and all of its physical forms, whether disclosed to the other party before this Agreement is signed or afterward, including the terms of this Agreement. In addition, a party shall not disclose or disseminate the Proprietary Information for its own benefit or for the benefit of any third party. The previously stated obligations do not apply to any information that (1) is publicly known; (2) is given to a party by someone else who is not obligated to maintain confidentiality; or (3) a party had already developed prior to the day this Agreement is signed, as evidenced by documents. Neither party shall take or cause to be taken any physical forms of Proprietary Information (nor make copies of same) without the



other party's written permission. Within three (3) days after the termination of this Agreement (or any other time at the other party's request), a party shall return to the other party all copies of Proprietary Information in tangible form. Despite any other provisions of this Agreement, the requirements of this Section shall survive termination of this Agreement.

- ☞ The parties acknowledge their respective right to seek an injunction regarding the disclosure of confidential information.

#### **14.2 Right to Injunction**

If any party shall attempt to use or dispose of any Information or any of its aspects or components or any duplication or modification thereof in a manner contrary to the terms of this Section, the other party shall have the right, without the necessity of filing a bond or other security, in addition to such other remedies that may be available to it, to injunctive relief enjoining such acts or attempts, it being acknowledged that legal remedies are inadequate.

- ☞ Whenever one party plans to mention the other party or this Agreement in a press release, it must obtain the written permission of the other party.

#### **14.3 Press Releases**

No press releases or other publicity or advertising of any nature regarding this Agreement that mentions this Agreement or the other party by name shall be released by a party without the prior written Agreement of the other party.

- ☞ Make sure that Section 14.4 covers your trademarks in sufficient detail as it makes clear exactly what [Distributor] can and cannot do with those trademarks.

#### **14.4 Trademarks**

[Company] shall have and retain sole ownership of the Trademarks, including the goodwill pertaining thereto. Subject to [Distributor]'s compliance with [Company]'s standard cooperative advertising policies, [Company] hereby grants to [Distributor] the right to use and display the Trademarks solely in connection with and solely to the extent reasonably necessary for the marketing, distribution, and support of the products within the Territory according to the terms and conditions of this Agreement. [Distributor] shall market, distribute, and support the products only under the Trademarks, and not any other trademark or logo. [Distributor] shall not use the Trademarks or any other trademarks or trade names of [Company] or any word, symbol, or design confusingly similar thereto, as part of its corporate name, or as part of the name of any product of [Distributor]. [Distributor] shall not remove or alter the products' copyright notices, trademarks, and logs, or packaging. To protect and preserve the goodwill and image of the products, [Distributor] shall (1) conduct business in a manner that reflects favorably at all times on the products and the reputation of [Company]; (2) avoid deceptive, misleading, or unethical practices that are or might be detrimental to [Company], the products, Authorized Dealers, or the public, including any disparagement of [Company] or the products; (3) make no false or misleading representations with regard to [Company] or the products; (4) refrain from publishing or employing any misleading or deceptive advertising material; and (5) refrain from making any representations, warranties, or guarantees to Authorized Dealers or to the trade with respect to the specifications, features, or capabilities of the products that are inconsistent with the literature distributed by [Company], including all warranties and disclaimers contained in such literature.

#### **14.5 No Copying**

Without the prior written consent of [Company], [Distributor] shall refrain from copying, reverse engineering, disassembling, decompiling, translating, or modifying the products, or granting any other person or entity the right to do so.

## 14.6 Notification

[Distributor] shall promptly notify [Company] of (1) any claims, allegations, or notification that its marketing, licensing, support, or service of the products may or will infringe the Intellectual Property Rights of any other person or entity; and (2) any determination, discovery, or notification that any person or entity is or may be infringing the Intellectual Property Rights of [Company]. [Distributor] shall not take any legal action relating to the protection or defense of any Intellectual Property Rights pertaining to the products without the prior written approval of [Company]. [Distributor] shall assist in the protection and defense of such Intellectual Property Rights.

☞ Section 14.7 makes it [Company]'s responsibility to defend [Distributor] in the event that a suit is brought claiming an infringement.

## 14.7 Infringement

14.7.1 If notified promptly in writing of and given sole control of the defense and all related negotiations and settlements, [Company] shall defend [Distributor] against any claim based on an allegation that a product supplied under this Agreement infringes any United States Intellectual Property Rights. [Company] shall pay any resulting costs, damages, and attorney fees finally awarded by a court with respect to any such claims.

14.7.2 If the products in the inventory of [Distributor], or the distribution or use thereof, become, or in [Company]'s opinion could seriously be contended to be, the subject of such a claim, and if [Company] cannot offer reasonable proof that such claim is without merit, [Distributor] shall permit [Company], at [Company]'s option and expense, either to procure the right for [Distributor] to continue marketing and using such products, or to replace or modify them so that they become non-infringing. If neither of the foregoing alternatives is available on terms that [Company] in its sole discretion deems reasonable, [Distributor] shall return such products on written request from [Company], in which event [Company] shall grant [Distributor] a credit equal to the amounts paid by [Distributor] for such returned products, provided that such returned products are in an undamaged condition.

14.7.3 Despite any other provision of this Section 9.5, [Company] shall not be liable to [Distributor] for any claim arising from or based upon the combination, operation, or use of any product with equipment, data, or programming not supplied by [Company], or arising from any alteration or modification of products.

14.7.4 [Company] shall have no obligation to [Distributor] with respect to any infringement involving or concerning the products except as stated in this Section 14.7.

☞ This section, often titled "Miscellaneous," lists a number of standard clauses found in most Agreements.

## 15. General Provisions

☞ The General Provisions that follow are fairly standard. These provisions enhance the balance of the Agreement by explaining issues such as notice, assignment, legal remedies, waiver, and attorney fees.

15.1 **Independent [Company]s.** The relationship between both parties established by this Agreement is that of independent [Company]s, and nothing contained in this Agreement shall be construed to give either party the power to direct and control the day-to-day activities of the other. Neither party is an agent, representative or partner of the other party. Neither party shall have any right, power or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture or partnership between the parties or to impose any liability attributable to such relationship upon either party.

- ☞ You must decide which state governs this Agreement and where any legal action would be taken. Generally, it is your (company's) state of residence.

**15.2 Governing Law & Jurisdiction.** This agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of [State], without reference to conflict of law principles. The parties hereby expressly consent to the jurisdiction and venue of the federal and state courts within the state of [State]. Each party hereby irrevocably consents to the service of process in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to such party at its address set forth in the preamble of this Agreement, such service to become effective thirty (30) days after such mailing.

- ☞ This Agreement is intended to be the only Agreement, and that no other documents or communications are binding. Therefore, it is very important to make sure that everything [Company] and [Client] have agreed to be included in this Agreement. Otherwise, it is as if it was not agreed to.

**15.3 Entire Agreement.** This Agreement, including the attached exhibits, constitutes the entire Agreement between both parties concerning this transaction, and replaces all previous communications, representations, understandings, and Agreements, whether verbal or written between the parties to this Agreement or their representatives. No representations or statements of any kind made by either party, which are not expressly stated in this Agreement, shall be binding on such parties.

- ☞ Any changes to this Agreement must be in writing and signed by the party against whom that writing is to be used.

**15.4 All Amendments in Writing.** No waiver, amendment or modification of any provisions of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom such waiver, amendment or modification is sought to be enforced. Furthermore, no provisions in either party's purchase orders, or in any other business forms employed by either party will supersede the terms and conditions of this Agreement.

- ☞ All notices between the parties must be in writing and either delivered in person or by certified or registered mail, return receipt requested.

**15.5 Notices.** Any notice required or permitted by this Agreement shall be deemed given if sent by registered mail, postage prepaid with return receipt requested, addressed to the other party at the address set forth in the preamble of this Agreement or at such other address for which such party gives notice hereunder. Delivery shall be deemed effective three (3) days after deposit with postal authorities.

- ☞ In the event of a lawsuit or any legal proceeding involving this Agreement, the losing party will have to pay the winning party his or her costs and expenses, including reasonable attorney fees.

**15.6 Costs of Legal Action.** In the event any action is brought to enforce this Agreement, the prevailing party shall be entitled to recover its costs of enforcement including, without limitation, attorneys' fees and court costs.

- ☞ Legal remedies, i.e., money damages, may not be sufficient; therefore, both parties agree to equitable remedies such as an injunction where the breaching party would be required to do or not to do something.

**15.7 Inadequate Legal Remedy.** Both parties understand and acknowledge that violation of their respective covenants and Agreements may cause the other irreparable harm and damage, that may not be recovered at law, and each agrees that the other's remedies for breach may be in equity by way of injunctive relief, as well as for damages and any other relief available to the non-breaching party, whether in law or in equity.

- ☞ Assuming the parties wish to use Arbitration in the event of a dispute, the following section should be included. You take your chances with an arbitrator, but it keeps legal costs down and keeps you out of a drawn out legal process.

15.8. **Arbitration.** Any dispute relating to the interpretation or performance of this Agreement shall be resolved at the request of either party through binding arbitration. Arbitration shall be conducted in [County], [State] in accordance with the then-existing rules of the American Arbitration Association. Judgment upon any award by the arbitrators may be entered by any state or federal court having jurisdiction. [Company] and [Client] intend that this Agreement to arbitrate be irrevocable.

☞ Merely delaying to bring an action that one party has a right to bring does not cause that party to lose or waive his right to pursue that action.

15.8 **Delay is Not a Waiver.** No failure or delay by either party in exercising any right, power or remedy under this Agreement, except as specifically provided in this Agreement, shall operate as a waiver of any such right, power or remedy.

☞ Neither party will be blamed if there is a problem resulting from something beyond its control, such as an earthquake, flood, war.

15.9 **Force Majeure.** In the event that either party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of any Act of God, strike, fire, flood, governmental acts, orders or restrictions, Internet system unavailability, system malfunctions or any other reason where failure to perform is beyond the reasonable control and not caused by the negligence of the non-performing party (a “Force Majeure Event”), the party who has been so affected shall give notice immediately to the other party and shall use its reasonable best efforts to resume performance. Failure to meet due dates resulting from a Force Majeure Event shall extend such due dates for a reasonable period. However, if the period of nonperformance exceeds sixty (60) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been affected may, by giving written notice, terminate this Agreement effective immediately upon such notice or at such later date as is therein specified.

☞ This section limits the ability of either party to transfer any of its rights or delegate any of its duties to third parties.

☞ You want to make sure that you can sell your business along with all of the relationships you have developed along the way. (Often these relationships can add tremendous value to your business and you want to make sure that all of your agreements can be transferred to the new owners.) I wouldn't want to seek (let alone pay for) permission to sell my company.

☞ Generally, neither party may assign their respective rights to a third party; however, with the possible exception of assignment to a successor corporation or partnership, either party may transfer its rights or obligations under this Agreement without the approval of the other party. This Agreement would be binding on the 3<sup>rd</sup> party.

☞ However, you may want to limit each other's ability to pass along this deal to another possibly unknown and possibly unfriendly entity. The second paragraph prevents unauthorized transfer of responsibilities...

☞ CHOOSE one or the other of these two following paragraphs.

15.10 **Assignability & Binding Effect.** Except as expressly set forth within this Agreement, neither party may transfer or assign, directly or indirectly, this Agreement or its rights and obligations hereunder without the express written permission of the other party, not to be unreasonably withheld; provided, however, that both parties shall have the right to assign or otherwise transfer this Agreement to any parent, subsidiary, affiliated entity or pursuant to any merger, consolidation or reorganization, provided that all such assignees and transferees agree in writing to be bound by the terms of this Agreement prior to such assignment or transfer. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

🔊 This paragraph DOES NOT ALLOW either party to transfer its rights to a successor company without prior approval.

15.10 **Non-Assignability & Binding Effect.** Except as otherwise provided for within this Agreement, neither party may assign any of its rights or delegate any of its obligations under this Agreement to any third party without the express written permission of the other. Any such assignment is deemed null and void.

🔊 If any part of this Agreement is unenforceable or invalid, the balance of the Agreement should still be enforced. Basically, ignore any sections that are invalid.

15.11 **Certain Sections Invalid.** If any provisions of this Agreement are held by a court of competent jurisdiction to be invalid under any applicable statute or rule of law, they are to that extent to be deemed omitted and the remaining provisions of this Agreement shall remain in full force and effect.

🔊 The headings of the various sections are meant to explain or otherwise give meaning to those sections; they are for convenience only.

15.13 **Headings.** The titles and headings of the various sections and sections in this Agreement are intended solely for convenience of reference and are not intended for any other purpose whatsoever, or to explain, modify or place any construction upon or on any of the provisions of this Agreement.

🔊 Even after the termination of the Agreement, the parties may still have certain responsibilities such as keeping information confidential.

15.14 **Survival of Certain Provisions.** The warranties and the indemnification and confidentiality obligations set forth in the Agreement shall survive the termination of the Agreement by either party for any reason.

## Understood, Agreed & Approved

We have carefully reviewed this contract and agree to and accept all of its terms and conditions. We are executing this Agreement as of the Effective Date above.

[Company]

Distributor

\_\_\_\_\_  
[Owner/Founder]

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

# Exhibit A

## Authorized Dealers

xxx



# Exhibit B

**Territory**

xxx



# Exhibit C

## Product Quota

xxx





# Exhibit D

## Trademarks

xxx



# Exhibit E

## Supplier Customers

xxx



# Exhibit F

## Suggested List Price Schedule

xxx \$00.00



# Exhibit G

## Initial Order

xxx

