Distribution kit 2

Save money with our Distribution Kit 2!

Our Kit 2 contains everything you will need for your distribution business.

- Distribution Agreement Version 2
- Confidentiality Agreement
- Arbitration & Procedure Clause
- Distribution Negotiation Checklist

Have a look at the following excerpts.

**DISTRIBUTION AGREEMENT VERSION 2**

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**DISTRIBUTOR AGREEMENT – TANGIBLE PRODUCTS VERSION 2**

**DRAFT**

| BETWEEN | AND |
|---|---|
| Company Name: | Distributor's Name: |
| Officer's Name: | Officer's Name: |
| Address: | Address: |
| Phone: | Phone: |
| Fax: | Fax: |
| Email: | Email: |
| Web Address: | Web Address: |
| hereinafter referred to as the "Company") | (hereinafter referred to as the "Distributor") |

(the Company and the Distributor hereinafter collectively referred to as the "Parties")

This agreement establishes an understanding between the parties and as such both parties agree to be bound by its Terms and Conditions. This agreement shall not become binding upon the parties until it has been signed by an authorized representative of Distributor and signed and accepted by authorized officers

WHEREAS, The Company is engaged in the business of producing and marketing various products which provide discounts or other price advantages on the products and services described therein; and,

WHEREAS, Distributor wishes to sell such products on behalf of The Company, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I - APPOINTMENT OF DISTRIBUTORSHIP

1. Distribution Right. The Company hereby appoints and grants Distributor the exclusive and non-assignable right to sell the products of the Company ("Products") listed in the then current "Price List" (Exhibit "A" attached hereto) . The distribution right shall be limited to customers who have places of business in, and will initially use the Company's products in the geographic area set forth in Exhibit "B" attached hereto.

Or

Distribution Right. The Company hereby appoints and grants Distributor the non-exclusive and non-assignable right to sell the products of the Company ("Products") listed in the then current "Price List" (Exhibit "A" attached hereto). The distribution right shall be limited to customers who have places of business in, and will initially use the Company's products in the geographic area set forth in Exhibit "B" attached hereto.

2. Prices. All prices stated are FOB the Company's offices in _____ [Address]. Prices do not include transportation costs which shall be borne by Distributor. Prices do not include federal, state or local taxes applicable to the products sold under this Agreement. An amount equal to the appropriate taxes will be added to the invoice by the Company where the Company has the legal obligation to collect such taxes. Distributor shall pay such amount to the Company unless Distributor provides Company with a valid tax exemption certificate authorized by the appropriate taxing authority.

3. Terms. Terms are net cash upon delivery, except where satisfactory credit is established in which case terms are net [e.g., thirty (30) ] days from date of delivery. The Company reserves the right to revoke any credit extended at the Company's sole discretion. Distributor agrees to pay such invoices when due regardless of other scheduled deliveries. Invoices not paid within [e.g., thirty (30) ] days of the invoice date will have one and [e.g., onehalf percent (1-1/2%)] per month finance charge assessed against the unpaid balance from the date of invoice until the date of payment.

4. Title to Products. The Company hereby reserves a purchase money security interest in each unit of Products sold or to be sold under this Agreement and in the proceeds thereof, if Distributor shall have sold or leased a unit(s) to another party prior to Distributor paying Company the purchase price for such Unit as set forth herein, in the amount of such unit's purchase price. These interests will be satisfied by payment in full. A copy of this Agreement may be filed with the appropriate authorities at any time after the signature by the Company as a financing statement in order to perfect the Company's security interest. On the request of the Company, Distributor shall execute financing statement(s) and other instruments the Company shall desire to perfect a security interest in the Products for its purchase price. Title to the Products shall pass to Distributor upon receipt by the Company of payment in full for all amounts due for such units of Products.

5. Competitive Products. Distributor agrees not to represent or sell other products which are deemed to be competitive with the Company's Products unless agreed to by the Company by written notice.

ARTICLE II - MARKETING AND SUPPORT

1. Sales. Distributor shall use its best efforts to promote the sale and distribution of the Products and to provide adequate support, which efforts shall include the following:

(a) Establishing and maintaining appropriate, attractive and accessible premises and facilities for the display and demonstration of Products;

(b) Provide an adequate, trained sales and technical staff to promote the sale and support of the Products;

(c) Undertake promotional campaigns and canvas prospective users to stimulate the sales of Products;

(d) Provide Company with forecasts every month of its probability requirements for the next six months for Products and accessories, such forecasts to be in such manner and on forms to be specified by Company and agreed to by Distributor.

2. Advertising. Company shall, upon request, assist the Distributor on all advertising, sales promotion, and public relations campaigns to be conducted, including providing Distributor with documentation of previous promotional campaigns conducted in connection with the Products, and shall provide necessary technical information and assistance.

3. Training. Company shall furnish training of Distributor's sales and technical representatives at various times and locations as shall be designated for this purpose by Company. Enrollment in training courses shall be limited to a reasonable number of persons who shall be sufficiently qualified to take the courses. Distributor shall pay the salaries and all travel and lodging expenses and subsistence of its representatives.

## ARTICLE III – DELIVERY

1. Purchase Orders. Distributor shall order Products by written notice to Company. Each order shall specify the number of units to be shipped, the type of units to be shipped (as identified by Company model number designations indicated in the Price List) including all optional features, the desired method of shipment and the installation site. Company shall indicate its acceptance of such release by returning a signed copy to Distributor. Company agrees to ship units to Distributor as close as possible to the delivery schedule set forth in each order as accepted by Company, unless Company otherwise indicates in writing. Company shall not be required to honor any release which: (a) specifies a shipping date earlier than Company's then current delivery schedule for the date such release is received by Company and/or (b) specifies a quantity to be delivered in any one month within the current delivery schedule which is greater than [e.g., one hundred percent (100%)] of the total quantity shipped in the preceding [e.g., sixty (60) ] day period.

2. Products Acceptance. The criterion for acceptance of Company Products by Distributor shall be the successful operation of the Products using Company's standard test procedures and diagnostic test programs applicable to the Products involved.

**MUTUAL NON-DISCLOSURE AND NON-CIRCUMVENTION AGREEMENT**

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**Mutual Non-Disclosure and Non-Circumvention Agreement**

This Mutual Non-Disclosure and Non-Circumvention Agreement ("Agreement") is made and entered into as of the ____ day of_____200_ by and between:

| Company Name: | Company Name: |
|---|---|
| Officer's Name: | Officer's Name: |
| Address: | Address: |
| (having its principal place of business at) | (having its principal place of business at) |
| Phone: | Phone: |
| Fax: | Fax: |
| Email: | Email: |
| Web Address: | Web Address: |
| (hereinafter referred to as the "First Party") | (hereinafter referred to as the "Second Party") |

(hereinafter collectively referred to as the "Parties")

This agreement establishes an understanding between the parties and as such both parties agree to be bound by its Terms and Conditions. This agreement shall not become binding upon the parties until it has been signed by an authorized representative of the Parties and signed and accepted by authorized officers.

**W I T N E S S E T H:**

1. Purpose. The First Party and Second Party wish to explore a business opportunity of mutual interest concerning each Party's business, operations, proprietary technology, and products. In connection with this opportunity certain trade secrets and business information proprietary to each Party and which each Party considers Confidential Information (as defined below) may be provided to one Party (the "Promisor") by the other party (the "Discloser"). This Agreement is intended to allow both Parties to have open discussions regarding Confidential Information, while still affording complete protection of the Discloser's confidential Information against disclosure or unauthorized use. Written agreements regarding authorized disclosures or use of the

Discloser's Confidential Information may, but need not, be entered into between the Parties in the future.

2. Definition. "Confidential Information" means any disclosure of proprietary information relating to:

   i. the Discloser's proprietary technology and products, including without limitation, technical data, trade secrets, know-how, research, product plans, ideas or concepts, products, services software, inventions, algorithms, formulas, technology, designs, schematics, drawings, engineering, and hardware configuration information (collectively "Technical Information"), and
   ii. proprietary information relating to the discloser's operations and business or financial plans or strategies, including but not limited to customers, customer lists, vendors, suppliers, markets, financial statements and projections, product pricing and marketing, financial or other strategic business plans or information (collectively, "Business Information"),disclosed to Promisor by the Discloser, either directly or indirectly, in writing, orally or by drawings or inspection of samples, equipment or facilities.

   Confidential Information does not include any of the foregoing items which:

   i. is known to Promisor at the time of the disclosure to Promisor by the Discloser as evidenced by written records of Promisor,
   ii. has become publicly known and made generally availablethrough no wrongful act of Promisor, or
   iii. has been rightfully received by Promisor from a third party who is authorized to make such disclosures.

3. Non-Disclosure of Confidential Information. Promisor agrees not use any Confidential Information disclosed to it by the Discloser for its own purpose except to carry out discussions concerning, and the undertaking of, any business relationship

between Promisor and the Discloser. Promisor will not disclose any Confidential Information of the Discloser to third parties or to employees of Promisor except to its employees who are required to have the information in order to carry out the discussions of the contemplated business. Promisor will have or has had its employees, contractors or agents who have access to Confidential Information of the Discloser sign a non-disclosure agreement in content substantially similar to this Agreement and will promptly notify the Discloser in writing of the names of each such employee upon the request of the Discloser at any time. Promisor agrees that it will take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of the Discloser in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized hereunder to have any such Confidential Information, which measures shall include the highest degree of care that Promisor utilizes to protect its own Confidential Information of a similar nature, but in any event not less than a reasonable degree of care. Promisor agrees to notify the Discloser promptly in writing of any misuse or misappropriation of Confidential Information of the Discloser which may come to the Promisor's attention.

4. Non-Circumvention. In consideration of the Owner's disclosure of the Confidential Information, the Promisor shall not at any time prior to the date immediately preceding the fifth anniversary date of this Agreement, attempt in any manner to commercially exploit, either directly or indirectly, the proposed and existing business concepts and plans of the Owner or any of the Confidential Information without the Owner's prior written consent, that may be given or withheld by the Owner in its sole discretion. The parties specifically understand and agree that this prohibition is specifically intended to include any direct or indirect contact by First Party (or any other related or unrelated person or entity) with Second Party's then current Internet access network carrier(s), payment processor(s) or financial institution(s).

5. Breach of Agreement. Each party hereby acknowledges and agrees that in the event of any breach of this Agreement by the other party, including, without limitations, the actual or threatened disclosure of a disclosing party's Proprietary Information without

**Distribution Agreement: A Checklist of Negotiation Key Issues**

1. **Details about the Distributor**

   - ❑ Name:
   - ❑ Address:
   - ❑ Telephone No:
   - ❑ Fax No:
   - ❑ Email:
   - ❑ Web site address:
   - ❑ Name of Principal:
   - ❑ Title?

2. **The Products**

   - ❑ Describe the Products in as much details as possible.

3. **Distributorship territory**

   - ❑ What is the territory?

4. **Is the distribution license exclusive**

5. **Exactly what are the Manufacturer's obligations**

   - ❑ Technical support: What type and how much.
   - ❑ Supply of any raw materials and/or components.
   - ❑ Marketing support. What type and how much.
   - ❑ Other?

6. **Exactly what are the Distributors obligations**

   - ❑ Marketing and promotion.
   - ❑ Distribution.
   - ❑ Other obligations.

7. **Term of agreement**

   - ❑ Initial term. [e.g. three (3) years]
   - ❑ Renewal options: on same or different terms and conditions.
   - ❑ What are the parties' rights and obligations upon termination: Can the Distributor continue to sell unsold stock of Products after the termination date?

8. **Minimum requirements to maintain distributorship**

   Establish minimum sales during the term of the agreement: Failure to meet those minimums shall give rise to termination at Manufacturer's option.

**9. Promotion**

- Describe the Distributor's obligations to promote the Products: Will the Distributor be required to commit to spend a certain sum, expressed as a percentage of sales, to promote the Products?

**10. Payment terms**

- Will money be paid up front by way of an establishment fee.
- Margins: Fixed or variable depending upon turnover.
- Any other form of compensation.
- Frequency of payment.
- Manner of payment.

**11. Will the Distributor be using any of the Manufacturer's patents**

- Include clauses relating to incontestability, action against infringers, etc.

**12. Will the Distributor be using any of the Manufacturer's trademarks**

- Include clauses relating to incontestability, action against infringers, etc.

**13. Support**

- Describe the Manufacturer's obligations to provide:
    1. Documentation to facilitate distributorship (i.e. Drawings and specifications, manuals, instructions, quality control procedures, etc.)
    2. Technical support.
    3. Training of distributor's employees
    4. Marketing support.
    5. Quality control guidance.
- Indicate what support will be supplied on-site and what support will be provided off-site : Who bears the cost of on-site support?

**14. Manufacturing competitive products**

- Can the Distributor handle products which are competitive to the Products.
- Set limitations.
- Define what constitutes a "competitive product".
- Establish a time limit: For example, during the term of the agreement and ___ years thereafter.
- Distributor shall not purchase the same or similar products from any other manufacturer but the Manufacturer, anywhere in the world.

**15. Confidentiality and Non-Disclosure**

# ARBITRATION & PROCEDURES CLAUSE

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**ARBITRATION & PROCEDURES CLAUSE.**

1. **Exclusive Remedy.** After a [e.g., thirty (30)] day waiting period (the "Waiting Period"), any dispute, controversy, or claim arising out of or relating to this Agreement, or the formation, breach, termination or invalidity thereof, shall be settled by submission to final, binding and non-appealable arbitration ("Arbitration") in accordance with the Rules of the American Arbitration Association (the "Association"), as then in effect, except as varied or excluded by this Agreement, without any right by any party to a trial de novo in a court of competent jurisdiction. During the Waiting Period, the parties shall work diligently and in good faith and use their best efforts to amicably resolve the dispute.

2. **Place of Arbitration**. The Arbitration shall be conducted in [City], [State], by the Regional Office of the Association.

3. **Costs and Fees**. Each party shall, except as otherwise provided herein, be responsible for its own expenses, including legal fees, incurred in the course of any arbitration proceedings. The fees of the arbitrators shall be divided evenly between the parties.

4. **Procedure**. The parties shall follow the procedures described below:

   (a) Following the Waiting Period, the party seeking Arbitration (the "Demanding Party") shall give notice of a demand to arbitrate (herein referred to as the "Demand") to the other party (the "Non-Demanding Party") and to the Association. The Demand shall include (A) a statement of the nature of the dispute, (B) copies (if any) of all supporting documentation in the possession of the Demanding Party, (C) a copy of this Section, and (D) the name of the arbitrator selected by the Demanding Party.