NZ-MADdis06

Consignment and distribution agreement: distributor version

Dated: [date]

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This agreement is dated: [date]

It is made between: [Super Network Ltd]

Of [address] ("Super Network")

And [Merchant name]

Of [address] ("the Merchant")

These are the agreed terms:

1. Definitions

These definitions apply unless the context [redacted]:

"Confidential Information" means all information about a party to this agreement, including any information which may give a commercially competitive advantage [redacted]. [redacted]:

information about employees, their performance and [redacted],

data or information relating to suppliers, product plans, marketing strategies, finance, performance, operations, customer [redacted], [redacted], [redacted], [redacted];

information about the Intellectual Property, know-how and all aspects [redacted];

information created or arising from this agreement;

It does not include information that it is reasonably necessary to disclose to a customer or other person in the usual course [redacted].

"Consignment Stock" means all stock of Products in the possession [redacted]

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[redacted].

"Control"	(including all derived terms), means, with respect to the relationship between two or more corporate bodies, the possession, directly or indirectly, of the power to direct the affairs or management of a corporate body, whether through the ownership of voting securities, as trustee or executor, by contract or otherwise, including, without limitation, [redacted].
[“Incoterm”	means latest version of pre-defined commercial rules of international trade published by [redacted] 2020].
“Customer”	means a customer of Super Network [redacted].
“Fee”	means a charge made by Super Network to the Merchant on [redacted].
"Intellectual Property"	means and includes: intellectual property of every sort, whether or not registered or registrable in any country, including know-how [redacted].
“Logistics Centre”	means premises used by Super Network [redacted].
“Price”	means the price at which the Merchant sells [redacted].
“Product”	means any product offered for sale from time to time [redacted].
“Territory”	means the [country / state/ [redacted] [[redacted]]].

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2. Interpretation

In this agreement unless the context otherwise requires:

2.1 a reference to a person includes a human individual, a corporate entity and any organisation [redacted].

2.2 in connection with any benefit given by this agreement, a reference to a party includes [redacted], [redacted].

2.3 a reference to a person includes reference to that person's successors, legal representatives, permitted assigns and any person to whom rights and obligations are transferred or pass as a [redacted], [redacted], [redacted]-[redacted].

2.4 a reference to a paragraph or schedule is to a paragraph or schedule to this agreement unless the context [redacted]. [redacted].

2.5 the headings to the paragraphs and schedules (if any) to this agreement are inserted [redacted].

2.6 any agreement by any party not to do or omit to do something includes an obligation not to allow some [redacted];

2.7 [except where stated otherwise], any obligation of any person arising from this [redacted];

2.8 a reference to the knowledge, information, belief or awareness of any person shall be deemed to include the knowledge, information, [redacted].

2.9 the words "without limitation" shall be deemed to follow any use of the words "[redacted]" [redacted] "[redacted]" [redacted].

2.10 a reference to an act or regulation includes new law of substantially the same [redacted].

2.11 all money sums mentioned in this agreement are calculated net of GST, which [redacted].

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2.12 this agreement is made only in the English language. If there is any conflict in meaning between the English language version of this agreement and any version or translation of this agreement in any other language, the English language version shall prevail. If a version of this agreement [redacted].

3. Relationship of parties

3.1 Each of the parties warrants that it has the authority to enter into this agreement [[redacted]].

3.2 Nothing in this agreement shall create a partnership, franchise or agency or other relationship between any of the parties, [redacted].

3.3 Neither party shall have, nor represent that it has, any authority to make any commitment on the [redacted].

4. Entire agreement

4.1 This agreement contains the entire agreement between the parties and supersedes all [redacted].

4.2 Each party acknowledges that, in entering into this agreement, it does not rely on any representation, warranty, information [redacted].

4.3 As an exception to the last previous sub paragraphs, the parties do rely [redacted]:

[Enter list of other docs and dates [redacted]]

5. Warranties by Merchant

The Merchant now warrants to Super Network that:

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5.1 it has or will have good title to every Product [redacted];

5.2 it has the unrestricted authority to grant the rights and licenses [redacted];

5.3 it has all the intellectual [redacted], [redacted], [redacted].

5.4 every Product will be of merchantable quality and [redacted], [redacted], [redacted].

5.5 it is not aware of any right of or claim by, any third party in the Territory which [redacted], [redacted], [redacted], [redacted].

5.6 the Product will be free from defects in performance for its [redacted] [[redacted]] [redacted].

5.7 sale of the Product by [redacted], [redacted].

6. Appointment of Super Network

6.1 The Merchant now appoints Super Network as its [exclusive / non-exclusive] [redacted], [redacted], [redacted].

6.2 This is a consignment agreement whereby Super Network agrees [redacted], [redacted].

6.3 Super Network shall hold the Merchant's stock until sold, whereupon it will [redacted]. [redacted]

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[redacted], [redacted].

7. Representative liaison

7.1 With effect from today, Super Network and the Merchant [redacted].

7.2 Super Network will provide a document setting out detailed practical [redacted].

7.3 The representative of a party at a design review meeting shall be a person with [redacted], [redacted].

8. Consignment Stock management

8.1 Super Network [redacted].

8.2 Super Network and the Merchant shall mutually agree [redacted]. [redacted] 1.

8.3 An appropriate level of Consignment Stock is for between [[redacted]] [redacted].

8.4 It is the responsibility of the Merchant [redacted], [redacted]:

8.4.1 The Merchant shall calculate from Super Network records supplied, the likely [redacted]

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[redacted].

8.4.2 The warehouse manager shall send to the Merchant a formal [redacted], [redacted].

8.4.3 The Merchant shall deliver the Consignment Stock.

8.5 [Based on orders taken], Super Network shall purchase whatever quantity of Product it requires [from time to time / [redacted]] [redacted]. [redacted] [redacted] [redacted]).

8.6 Title in the Products ordered shall pass from [redacted] [redacted] / [redacted] / [redacted]).

8.7 The space allocated to [redacted].

8.8 If ever Super Network decides to allocate less space or no space to a Product it may give notice to Merchant [redacted], [redacted]. [redacted], [redacted] [redacted] [redacted].

9. Delivery to Super Network

9.1 Risk shall pass when the Super Network warehouse manager hands a signed form of acceptance to the driver. [redacted] "[redacted]" [redacted]. [redacted]. [redacted] [redacted] - [redacted].

OR

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9.2 Super Network is solely responsible for payment of all costs associated with [redacted].

9.3 In the event that any person or authority charges Super Network for some service or tax in connection with the Products, Super [redacted].

9.4 Product will not be accepted by Super Network unless each package or unit designed for point-of-sale is marked with [redacted].

OR

9.5 Product will not be accepted by Super Network unless each [redacted].

9.6 So far as any failure by Merchant to supply the required information [redacted].

9.7 If Super Network accepts an order for a Product for which [redacted].

9.8 The Merchant will pack with every Product, [redacted].

9.9 The Merchant will maintain warranty and post- [redacted].

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10. Transportation

[There are many ways and alternative deals possible. [redacted]*].*

10.1 The following Incoterms [redacted]:

10.1.1 EXW [named [redacted], [redacted]] [redacted]® 2020 .

10.1.2 FCA [named [redacted], [redacted]] [redacted]® 2020 .

10.1.3 CPT [named [redacted], [redacted]] [redacted]® 2020 .

10.1.4 CIP [named [redacted], [redacted]] [redacted]® 2020 .

10.1.5 DPU [named [redacted], [redacted]] [redacted]® 2020 .

10.1.6 DAP [named [redacted], [redacted]] [redacted]® 2020 .

10.1.7 DDP [named [redacted], [redacted]] [redacted]® 2020 .

10.1.8 FAS [named [redacted], [redacted]] [redacted]® 2020 .

10.1.9 FOB [named [redacted], [redacted]] [redacted]® 2020 .

10.1.10 CFR [named [redacted], [redacted]] [redacted]® 2020 .

10.1.11 CIF [named [redacted], [redacted]] [redacted]® 2020 .

10.2 All rights, obligations, [redacted].

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10.3 Unless otherwise agreed in this agreement so far [redacted], [redacted] [[redacted]].

11. The Price

11.1 The Price shall be the price [redacted].

OR

11.2 The Merchant will sell the [redacted] 1.

AND

11.3 Once agreed, the Price for the [redacted] [[redacted]] [redacted].

OR

11.4 The Merchant may increase the Prices at any time upon giving [12] weeks [redacted]. [redacted], [redacted].

11.5 The Prices are exclusive of goods [redacted].

11.6 The maximum amount of [redacted] [[redacted]] [redacted].

11.7 Super Network may choose the [redacted].

12. Purchase procedure: deductions and invoicing

12.1 The Merchant shall issue an invoice [redacted].

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12.2 Super Network will pay the Merchant within [30] [redacted] :

12.2.1 any debt [redacted] ;

12.2.2 agreed costs of any marketing [redacted] ;

12.2.3 the invoiced price of Products returned by Customers;

12.2.4 Products ordered by Super Network in [redacted] ;

12.2.5 a reserve against possible future [redacted] [10] [redacted] .

12.2.6 agreed fixed costs of any future marketing programme;

12.3 At any time, the Parties may agree the terms of a specific promotional campaign for [redacted] .

13. Terms of payment by Super Network for Products

13.1 All sums due under this agreement:

13.1.1 shall be made in full, without any set-[redacted] .

13.1.2 shall be paid by the due date, failing which the Merchant may charge Super [redacted] [8] % [redacted] ;

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13.1.3 Payments shall be made by Super [redacted].

OR

13.1.4 Payments shall be made by Super Network [redacted].

OR

13.1.5 [specify method of payment and due date].

13.2 On request, the Merchant will supply [redacted].

13.3 If any applicable law requires any tax or charge to be deducted before payment, [redacted] [[redacted]] [redacted].

13.4 Any sum due under this agreement not expressed in dollars shall be [redacted].

13.5 Banking charges by the receiving bank on payments to the Merchant [redacted]. [redacted].

13.6 The parties shall collaborate [redacted].

13.7 Where credit has been agreed in writing between [redacted], [redacted] 30 [redacted].

13.8 No right of set off shall arise.

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14. Fees for Super Network services

14.1 Fees for all services provided [redacted] 2 .

14.2 Fees shall be invoiced in any month for obligations incurred by Merchant [redacted] . [redacted] [14] [redacted] / [redacted] .

14.3 The Price to be paid by Super [redacted] .

15. Loss of, or damage to Consignment Stock

15.1 Super Network will pay the Merchant the replacement cost of any Consignment Stock [redacted] , [redacted] . [redacted] :

15.1.1 that occurred before [redacted] .

15.1.2 to the extent that it arose directly [redacted] .

15.1.3 which is indirect, incidental, consequential, or special damages including, but [redacted] , [redacted] , [redacted] .

15.2 Each of the parties undertakes to assist the [redacted] .

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16. Product returns

16.1 At any time, Super Network may return [redacted] , [redacted] :

16.1.1 for some reason [redacted] - [redacted] ;

16.1.2 the Product has been discontinued by either Party;

16.1.3 the Product has been returned by a Customer;

16.1.4 this agreement has [redacted] [[redacted] [100] [redacted] ;

16.1.5 the Product is defective or not of merchantable quality [redacted] , [redacted] , [redacted] ;

16.1.6 the Product [redacted] ;

16.2 A Product returned for the either of the [redacted] [2 / 3] [redacted] , [redacted] ;

16.3 So far as any Product has been returned by a Customer of Super Network, the [redacted] $ [20]. [redacted] " [redacted] " [redacted] .

16.4 Upon its receipt of any Product return permitted under this paragraph, [redacted] .

16.5 If ever, for any reason whatever, there [redacted] , [redacted] .

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17. Products defective or not as ordered

17.1 Immediately upon taking delivery of any [redacted], [redacted]:

17.1.1 comply with their description on the order; and

17.1.2 are of satisfactory [redacted] / [redacted].

17.2 If Super Network finds any defect in the quality or quantity of the Products, or a failure to comply with [redacted], [redacted]. [redacted] [7] [redacted], [redacted].

17.3 If Super Network claims that any Product [redacted], [redacted].

17.4 If the Merchant agrees concerning the defect, [redacted].

17.5 The Merchant will repair [redacted]:

17.5.1 the defect is reported [redacted] [12] [redacted];

17.5.2 the defect results only from faulty design;

17.5.3 Super Network has returned the [redacted].

17.6 If the Merchant repairs or replaces Products, Super Network [redacted], [redacted].

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18. Super Network right of resale to the Merchant

If any Customer returns a Product to Super Network [redacted] , [redacted] - [redacted] . [redacted] , [redacted] :

18.1 Super Network shall invoice [redacted] .

18.2 the consequent sum due [redacted] [28] [redacted] .

18.3 the Products shall become Consignment Stock.

18.4 Super Network may require the [redacted] , [redacted] .

19. Marketing arrangements

19.1 Super Network will list and display the Products in [redacted] . [redacted] .

19.2 Subject to this agreement, Super Network is [redacted] .

19.3 Super Network may offer marketing [opportunities / promotions] to [redacted] . [redacted] , [redacted] [[redacted] / [redacted]].

19.4 The Merchant agrees that from time to time it will be necessary for [redacted] . [redacted] .

19.5 Super Network agrees [redacted] :

19.5.1 sell any other [redacted] ;

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19.5.2 be involved in any way in [redacted];

19.5.3 sell the Products outside the Territory or [redacted].

19.6 Super Network is solely responsible for compliance with [redacted], [redacted].

19.7 Super Network will make sure that its marketing team attends the offices of the Merchant from [redacted] [[redacted] 3].

20. Reconciliation of stock records

20.1 [redacted]:

20.1.1 shipped to a Logistics Centre;

20.1.2 recorded as received at a Logistics Centre;

20.1.3 sold out of the Logistics Centre;

20.1.4 paid for by Super Network;

20.1.5 returned by a Customer;

20.1.6 returned by Super Network to the Merchant.

20.2 [redacted], [redacted], [redacted].

20.3 [redacted] [[redacted]] [redacted], [redacted], [redacted].

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21. Products recall

21.1 [redacted].[redacted], [redacted], [redacted].

21.2 [redacted].[redacted], [redacted], [redacted].

21.3 [redacted], [redacted], [redacted], [redacted].

21.4 [redacted], [redacted], [redacted], [redacted], [redacted], [redacted]. [redacted], [redacted], [redacted].

22. Super Network's reports

[redacted]:

22.1 [redacted][redacted][redacted]:[redacted];

22.2 [redacted][redacted][redacted]:[redacted][redacted][redacted];

22.3 [redacted][redacted][redacted]:[redacted];

22.4 [redacted][redacted][redacted]:[redacted], [redacted];

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22.5 [redacted] [redacted] [redacted]: [redacted], [redacted], [redacted], [redacted].

23. Insurance

[redacted], [redacted], [redacted]:

23.1 [redacted], [redacted], [redacted] $ [2 , 000 , 000] [redacted].

23.2 [redacted] $ [5 , 000 , 000] [redacted].

23.3 [redacted].

24. Mutual Indemnities

24.1 [redacted], [redacted], [redacted]:

24.1.1 [redacted], [redacted], [redacted], [redacted];

24.1.2 [redacted];

24.1.3 [redacted];

24.1.4 [redacted]

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[redacted].

24.2 [redacted], [redacted], [redacted]:

24.2.1 [redacted], [redacted], [redacted], [redacted];

24.2.2 [redacted];

24.2.3 [redacted], [redacted], [redacted];

24.2.4 [redacted], [redacted], [redacted];

24.2.5 [redacted].

24.3 [redacted].

24.4 [redacted] ([redacted]) [redacted], [redacted], [redacted], [redacted], [redacted] ([redacted] 2017), [redacted].

25. Disclaimers and limitation of liability

25.1 [redacted].

25.2 [redacted], [redacted], [redacted].

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25.3 [redacted]:

25.3.1 [redacted];

25.3.2 [redacted];

25.3.3 [redacted], [redacted], [redacted].

25.4 [redacted]:

25.4.1 indirect or consequential loss; or

25.4.2 [redacted], [redacted], [redacted].

25.5 [redacted] ([redacted]) [redacted], [redacted], [redacted], [redacted], [redacted] ([redacted] 2017) [redacted].

25.6 [redacted], [redacted], [redacted], [redacted] $ [10 , 000]. [redacted], [redacted].

25.7 [redacted].

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26. Compliance and regulation

26.1 [redacted].

26.2 [redacted] [redacted], [redacted], [redacted].

26.3 [redacted].

27. Confidential Information

27.1 [redacted], [redacted]:

27.1.1 [redacted];

27.1.2 [redacted];

27.1.3 [redacted], [redacted], [redacted] [redacted] [redacted]. . . .];

27.1.4 [redacted], [redacted].

28. Intellectual Property

[redacted], [redacted]. [redacted]:

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28.1 [redacted];

28.2 [redacted];

28.3 [redacted];

28.4 [redacted];

28.5 [redacted];

28.6 [redacted].

29. Assignment

29.1 [redacted], [redacted], [redacted]-[redacted], [redacted], [redacted], [redacted], [redacted].

29.2 [redacted].

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30. Sale of business or change of Control

30.1 [redacted].

30.2 [redacted], [redacted].

30.3 [redacted], [redacted].

30.4 The Merchant agrees that this provision is fair.

31. Duration and termination

This agreement shall continue until terminated:

31.1 on [date];

OR

31.2 [redacted] [3 [redacted]] [redacted];

AND

31.3 [redacted] [28 [redacted]] [redacted] [28 [redacted]] [redacted]; [redacted]

31.4 [redacted] 30 [redacted]; [redacted]

31.5 [redacted], [redacted], [redacted]

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[redacted] ([redacted]).

32. Upon termination

[redacted], [redacted].

32.1 [redacted]-[redacted], [redacted] [12] [redacted]. [redacted], [redacted].

32.2 [redacted], [redacted] [28 [redacted]] [redacted].

32.3 [redacted], [redacted].

32.4 [redacted].

32.5 [redacted].

32.6 [redacted].

32.7 [redacted], [redacted], [redacted], [redacted], [redacted]

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[redacted], [redacted]
.

33. Miscellaneous matters

33.1 [redacted], [redacted].

33.2 [redacted].

33.3 [redacted], [redacted], [redacted].

33.4 [redacted], [redacted], [redacted], [redacted]. [redacted], [redacted].

33.5 [redacted].

33.6 [redacted] 1993 [redacted] ([redacted], [redacted]) [redacted], [redacted] [[redacted]/[redacted]] [[redacted]].

33.7 [redacted]
.

33.8 [redacted], [redacted]

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[redacted].

33.9 [redacted] - [redacted].

It shall be deemed to have been delivered:

[redacted]: [redacted];

[redacted]: [redacted] 72 [redacted];

[redacted] - [redacted] - [redacted]: [redacted] 24 [redacted] - [redacted]. [[redacted] - [redacted]. [redacted], [redacted]]

33.10 [redacted], [redacted].

33.11 [redacted], [redacted] 2017 [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted].

33.12 [redacted], [[redacted]].

33.13 [redacted]

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[redacted], [redacted].

33.14 [redacted].

33.15 [redacted], [redacted].

33.16 [redacted], [redacted].

Signed by / on behalf of the named parties by their representatives who personally accept liability for the proper authorisation by their respective employer or principal to enter into this agreement

For, and on behalf of [name]

print name

Witness to signature:

Name:

Address

For, and on behalf of [name]

print name

Witness to signature:

Name:

Address

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Schedule 1 The Products and Prices

[[redacted] *]*

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Schedule 2 Super Network's Fees

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Schedule 3 The sales training scheme

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Explanatory notes:

Consignment and distribution agreement: distributor version

General notes

This agreement

We have drawn this agreement very widely. It covers many types of business. It has been drawn to be tough on the merchant. You will see that there are a very large number of variables. You can therefore choose whether you wish to settle your agreement [redacted].

Terms may overlap to give you the option of [redacted].

This agreement is drawn in general terms without specific reference to any industry. Net Lawman advises that you should give careful thought to [redacted].

Paragraph specific notes:

Notes numbering refers to paragraph numbers.

1. Definitions

Please read the general notes sent along with [redacted].

For “Confidential Information”, we have provided a very full menu of items. Depending on your business, [redacted].

Changing terms for more suitable words: your business is unique. We may not have been able to provide you with defined terms which are precisely suitable to your requirement. By all means use the search/replace function in your word [redacted]:

We use	You decide to change to
Super Network	Your name or abbreviated name
Service	Name of your service
Product	Goods/Software/Unit/Box, etc

But if you do change the defined word, **make sure it applies to every use** [redacted] **.**

You should first decide on the contents of the document, then return to check what definitions are needed and whether they really [redacted] .

2. Interpretation

Leave these items in place unless there is a good reason to edit or remove. Each of these items has been carefully considered in the context of this agreement and has been included for a purpose. [redacted] .

3. Relationship of parties

Confirms authority of an organisation to make the deal. If you are dealing with a company and do not know who has authority to [redacted] , [redacted] .

4. Entire agreement

This paragraph prevents a party from later saying it was relying on some other document or web site or what was said. If other documents are to be relied on, let them be listed [redacted] , [redacted] .

This is a simple statement for the avoidance of doubt. Of course other documents may indeed create the relationships mentioned. For example, most directors will be employees. It is important [redacted] , [redacted] .

5. Warranties by Merchant

These warranties plant various responsibilities clearly with the merchant. If you are the [redacted] , [redacted] .

6. Appointment of Super Network

This is a summary of the agreement. We have placed [redacted] .

7. Representative liaison

We recommend the notification each to the other, of a contact point. That would probably happen in any event. Placing it in the [redacted] . [redacted] , [redacted] .

You could use this paragraph usefully to add [redacted].

8. Consignment Stock management

We have provided both a specific procedure. Edit as you require. The responsibility for stock management has been passed to [redacted], [redacted], [redacted].

9. Delivery to Super Network

There is an infinite number of possible arrangements. We have provided a very full procedure with many options, so that you can easily reduce or edit to your precise requirement. [redacted].

10. Transportation

Select one. Delete the rest. If you are selling abroad, we recommend using an Incoterm because they will commit both sides to an accepted and firm set of rules. If you are selling only in New Zealand, of course delivery arrangements will be far more simple. If you use an Incoterm, make sure you delete all the alternative Incoterms and check your obligations at https://iccwbo.org/resources-for-business/incoterms-rules/incoterms-2020/

11. The Price

The merchant's ability to change prices and specification are likely to be one of the areas of greatest concern to you. [redacted].

12. Purchase procedure: deductions and invoicing

This and the following paragraph are best treated as alternatives. This strongly protects the distributor. The next favours the [redacted].

13. Terms of payment by Super Network for Products

See note on last paragraph.

14. Fees for Super Network services

The distributor will provide services, either regularly or ■ ■ ■ ■ . ■ ■ ■ ■

[redacted].

We have provided [redacted]. [redacted].

23. Insurance

The purpose of this provision is to protect you [redacted]. [redacted], [redacted].

24. Mutual indemnities

We have provided rather far more [redacted]. [redacted].

25. Disclaimers and limitation of liability

This paragraph should be read with the previous one on indemnities. It is drawn largely to protect the merchant from a claim arising from a customer of the [redacted]. [redacted], [redacted], [redacted], [redacted]. [redacted], [redacted]. [redacted], [redacted], [redacted], [redacted] ([redacted]) [redacted].

26. Compliance and regulation

This provision is usually most important [redacted]. [redacted].

27. Confidential Information

This is a basic provision. We assume [redacted]. [redacted].

28. Intellectual Property

This is [redacted].

29. Assignment

Give careful thought to this. It is not an alternative to a “Change of [redacted]” [redacted]. [redacted]. [redacted].

Consider the circumstances on both sides which may [redacted]. [redacted]. [redacted].

We give you these options:

29.1. Neither party may assign the contract

Action: use first option and delete second

29.2. Both parties may assign.

Action: delete all

29.3. Both [redacted]

Action: leave as is.

29.4. You may assign but not other party.

Action: edit [redacted].

29.5. A party may [redacted].

Action: use second alternative and delete first.

30. Sale of business or change of Control

The last paragraph on “assignment” does [redacted]. [redacted], [redacted].

In practice however, the personal element may be important to you or you may [redacted], [redacted]. [redacted], [redacted], [redacted], [redacted].

Of course, it also [redacted].

31. Duration and termination

It is always good practice to provide for termination [redacted]. [redacted], [redacted]. [redacted], [redacted].

32. Upon termination

This is the time when the parties may [redacted]. [redacted], [redacted], [redacted].

33. Miscellaneous matters

A number of points which solicitors [redacted]! [redacted], [redacted].

End of notes