Distribution agreement: merchant side

Dated: [date]

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This agreement is dated: [date]

It is made between: [the Merchant name]

Of [address] ("the Merchant")

And [Distributor's name]

Of [address] ("the Distributor")

These are the agreed terms:

1. Definitions

Thasa	definitions	annly	unlace	tha	context	 	 _	 _	 _	_	_	
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"Confidential Information"

means all information about the parties to this agreement, including any information which may give a commercially competitive advantage to any other person. It does not include information that it is reasonably necessary to disclose to a customer or other person

information about staff and their personal contact information,

data or information relating to product plans, marketing strategies, finance, operations, customer relationships, customer profiles, sales estimates, business plans, and internal performance

......

"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, ■ ■ ■ ■ ■ ■ ■ , ■ ■ "Customer" means a customer of the Distributor ["Incoterm" means latest version of pre-defined commercial rules of international trade published by ■ ■ ■ "Intellectual Property" means intellectual property owned by us, of every sort, whether or not registered or registrable in any country, including intellectual property of kinds coming into existence after today; and including, among others, patents, trade marks, unregistered marks, designs, copyrights, **= = = , = = = = = , = = = , =** . . . - , , "Product" means any product offered for sale from time to . . "Territory" means the [country/ state/ county]. "Price" / "Prices" means the prices at which the Merchant sells the Products to the Distributor, --------1.

2. Interpretation

In this agreement unless the context otherwise requires:

2.1.	a reference to one gender shall include any or all genders and a reference to the singular may be interpreted • • • • • • • • • • • • • • • • • • •
2.2.	a reference to a person includes a human individual, a corporate entity and any organisation
2.3.	in connection with any benefit given by this agreement, a reference to a party includes ••••••••••••••••••••••••••••••••••••
2.4.	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
2.5.	a reference to a paragraph or schedule is to a paragraph or schedule to this agreement unless the context •••••••••••••••••••••••••••••••••••
2.6.	the headings to the paragraphs and schedules (if any) to this agreement are inserted ••••••••••••••••••••••••••••••••••••
2.7.	any agreement by any party not to do or omit to do something includes an obligation not to allow some •••••;
2.8.	[except where stated otherwise], any obligation of any person arising from this ••••••••••••••••••••••••••••••••••••
2.9.	a reference to the knowledge, information, belief or awareness of any person shall be deemed to include the knowledge, information,
2.10.	the words "without limitation" shall be deemed to follow any use of the words " \blacksquare
2.11.	A reference to an act or regulation includes new law of substantially the same

2.12.	in any indemnity, a reference to costs or expenses shall be construed as including the estimated cost of management time of the indemnified $\blacksquare \blacksquare \blacksquare \blacksquare$, [$\blacksquare \blacksquare \blacksquare$
2.13.	all money sums mentioned in this agreement are calculated net of VAT, which
2.14.	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
Rela	tionship of parties
3.1.	Each of the parties warrants that it has the authority to enter into this agreement [
3.2.	Nothing in this agreement shall create a partnership, franchise or agency or other relationship between any of the parties,
3.3.	Neither party shall have, nor represent that it has, any authority to make any commitment on the I I I I I I I I I I I I I I I I I I
Enti	re agreement
4.1.	This agreement contains the entire agreement between the parties and supersedes all
4.2.	Each party acknowledges that, in entering into this agreement, it does not rely on any representation, warranty, information
4.3.	As an exception to the last previous sub paragraphs, the parties do rely
	[Enter list of other docs and dates = = = = = = = = = = =]

3.

4.

5. Appointment of Distributor

6.

5.1.	exclusi	erchant now appoints the Distributor as its [exclusive / non-ve] distributor in the Territory for the sale of the Products, and stributor now				
5.2.	market	ct to this agreement, the Distributor is free to promote and the Products in any				
Obli	gatio	ns of the Distributor				
The D	Distributo	or agrees that it will ••••••:				
6.1.	use all	reasonable efforts to distribute the Products;				
6.2.	mainta	in full and accurate records of:				
	6.2.1	stock in hand;				
	6.2.2	sales to Customers over last previous six years;				
	6.2.3	the personal name, corporate name, physical address and email address of every Customer and send the				
	6.2.4	if different, the location to which each ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■				
6.3.		in systems and procedure whereby all used Products returned stomers are not cleaned or refurbished and re-sold ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■				
6.4.	use only advertising and promotional material for the Products which					
6.5.	comply with all relevant governmental rules and regulations relating to the sale •••••;					
6.6.	make no representations or warranties with respect to the Products other than those					

	6.7.		through its employees, training and sales meetings and events uired by the Merchant so as to ••••;				
	6.8.	= -	e to the Merchant a monthly forecast of sales				
	6.9.	buy at	least the amount of Products specified in the forecast for the first				
	6.10.	mainta	in a stock level of at least ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ .				
	6.11.		oply the Products to any other person in the Territory as ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■				
	6.12.		oply the Products to any person in the Territory ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■				
	6.13.	•	point any other person as a distributor or agent for the Products Territory .				
	But the Distributor shall not be liable to the Merchant if some person sells Products within						
7.	Obligations of the Merchant						
	7.1.	The M	erchant warrants that:				
		7.1.1	he has the unrestricted authority to grant the rights and licenses				
		7.1.2	he has all the intellectual property rights that are necessary to market, \blacksquare				
	7.2.	The M	erchant				
		7.2.1	provide marketing direction and guidance to the Distributor;				
		7.2.2	maintain comprehensive general liability insurance, including product				
			•••;				

			■■■;
		7.2.4	provide to the Distributor
		7.2.5	maintain warranty and post-warranty

8.	Con	nplian	ce and regulation
	8.1.	The Me	erchant agrees to assist and cooperate
		••••	
	8.2.	potenti	purposes in connection with regulatory approval and display to al Customers, the Merchant will sell
			[25 %]
	8.3.		stributor shall obtain [at its own expense],
		••••	
	8.4.	Each p ■ ■ .	earty = = = = = = = = = = = = = = = = = = =
9.	Pro	ducts	recall
	9.1.		of the parties has the right to recall products or contact buyers warning message
			. .
	9.2.	As far	as possible a party suggesting a recall shall
	9.2.	As far	as possible a party suggesting a recall shall

7.2.3 name the Distributor and its $\blacksquare \blacksquare \blacksquare$

	, ,
9.3.	The cost of the recall, including sales refunds
9.4.	The Distributor shall send to the Merchant copies, in the language in which they were generated, of all reports, data and correspondence with
Min	imum sale requirements
The N	Merchant shall be entitled to terminate this agreement if
Year	Total value
20xx	
20xx 20xx	
OR	
	num sale requirements for •••••••••••••••••••••••••••••••••••
Dist	tributor's marketing obligations
11.1.	The Distributor agrees
	11 1 1 coll ony other
	11.1.1 sell any other = = = = = = = = = = = = = = = = = = =

10.

11.

	11.1.2	be involved in any way in ***********************************
	11.1.3	sell the Products outside the Territory or
11.2.		stributor is solely responsible for compliance with
11.3.	with ■ I	stributor is solely responsible for payment of all costs associated
11.4.	The Dis	stributor will:
	11.4.1	procure that its marketing team attend the offices of the Merchant from time to time
];
	11.4.2	spend not less than R [0000] • • • • • • • • • • • • • • • •
	11.4.3	Provide an after sales service • • • • • • • • • • • • • • • • • • •
11.5.	The Dis	stributor will use its best endeavours to:
	11.5.1	promote and sell the Products throughout the Territory;
	11.5.2	maintain adequate stocks • • • • • • • • • • • • • • • • • • •
	11.5.3	comply were all legal requirements

12. Distributor's liaison and reports

The Distributor will provide to the Merchant:

	12.1.	monthly, a report in whatever
	12.2.	six monthly, an updated • • • • • • • • • • • • • • • • • • •
	12.3.	whenever a change = = = = = , = = = = = = = = = = = = =
	12.4.	six monthly, a copy of all
	12.5.	as often as may be appropriate, details of any as often as may be appropriate, details of any as a second and a second a second and a second and a second and a second and a second a s
13.	The	Price
	13.1.	The Price of the Products shall be
	OR	
	13.2.	The Merchant will sell the same same same same same same same sam
	AND	
	13.3.	Once agreed, the Price for the •••••••••••••••••••••••••••••••••••
	OR	
	13.4.	The Merchant may increase the Prices at any time upon giving [12] weeks' • • • • • • • • • • • • • • • • • • •
	13.5.	The Prices are exclusive of value

14.	. Orders and acceptance					
	14.1.	The Merchant reserves the right to reject any order or to cancel any order ••••, ••••, •••••				
		••••••				
	14.2.	If it rejects an order, or cancels				
	14.3.	Nothing said or done by the Merchant is an acceptance of an order				
	OR					
	14.4.	Nothing said or done by the Merchant				
15.	Deli	very				
	15.1.	Prices are "ex works"				
	15.2.	If the Distributor asks the Merchant to arrange transport and insurance and the Merchant does				
	15.3.	The Merchant will use its best endeavours to supply the				
	15.4.	The Merchant may from time to time change any				

	•.
15.5.	Each order from ••••••••••
15.6.	Upon receipt of each order from the Distributor the Merchant will inform the Distributor

16. Transportation

[There	[There are many ways and alternative deals possible.					
■ ■ ■].	■ ■ ■ , ■					
16.1.	The foll	owing Incoterms				
	16.1.1	EXW [named = = = , = = = = = =] = = = ® 2020 .				
	16.1.2	FCA [named • • • • , • • • • • • • • • •] • • • •				
	16.1.3	CPT [named ■ ■ ■ ■ , ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■				
	16.1.4	CIP [named • • • • , • • • • • • • • • •] • • • •				
	16.1.5	DPU [named • • • • , • • • • • • • • •] • • • • ® 2020 .				
	16.1.6	DAP [named • • • • , • • • • • • • • • •] • • • •				
	16.1.7	DDP [named • • • • , • • • • • • • • • •] • • • •				
	16.1.8	FAS [named • • • • , • • • • • • • • •] • • • • ® 2020 .				

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		16.1.9 FOB [named *** *** *** *** *** *** *** *** *** *
		16.1.10 CFR [named • • • • , • • • • • • • • • •] • • • •
		16.1.11 CIF [named = = = , = = = = = =] = = = ® 2020
	16.2.	All rights, obligations,
	16.3.	Unless otherwise agreed in this agreement so far
Optio	on 1	
Optio		
17.	Pay	ment terms
	17.1.	The Distributor shall pay for each batch of Products not less than [28 =
	OR	
		The Distributor shall pay • • • • • • • • • • • • • • • • • • •
	17.3.	If the Distributor fails to pay for $\blacksquare \blacksquare \blacksquare$
		17.3.1 suspend all further = = = = = = = = = = = = = = = = = = =
		17.3.2 sell any Products
	OR	
	17.4.	Payment of the Price shall • • • • • • • • • • • • • • • • • •
	17.5.	All sums due under this agreement:

	17.5.1	shall be made in full, without any set-
		•••••••
	17.5.2	shall be paid by the due date, failing which the Merchant may charge the
]%
	47.50	Developments will be used by the Distributor in Daniel by disent
	17.5.3	Payments will be made by the Distributor in Rand by direct
].
	17.5.4	shall be paid • • • • • • • • • • • • • • • • • • •
OR		
	17.5.5	[specify method of payment and due date]
17.6.	On requ	uest, the Merchant will supply
17.7.		pplicable law requires any tax or charge to be deducted before
17.8.	Any sur	m due under this agreement not expressed in Rand shall be u
	••••	
17.9.	Banking	g charges by the receiving bank on payments to the Merchant
	••••	
	••••	
17.10.	The par	rties shall collaborate

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17.11. Where credit has been agreed in writing between \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare
      _____30
      ..............................
   17.12. No right of set off shall arise.
Option 2
18. Payment on running credit account
   18.1. Payment is due to reach the
      ............
   ..............
      ------------
   18.3. The Merchant's accounting system will automatically charge interest ■
      ............
      .......[1]................
   18.4. If money remains overdue after one month, the rate charged will be
      [1.5]
      .............
      .....................................
Option 3
19. Payment by letter of credit
   19.1. Payment for the Products shall be in Rand.
   ............
      .....].............
   19.3. Each letter of credit must be confirmed, transferable, irrevocable,
      without recourse, = = = = = = = = = = = = [ = = = = = =
      ...........
      . . . . . . . . . 1.
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19.4.	The letter of credit shall be payable [30] • • • • • • • • • • • • • • • • • • •
19.5.	Each letter of credit shall remain open for at • • • 30 • • • • • • • • • • • • • • •
19.6.	The terms of the letter of credit may be specified , , , , , , , , , , , , , , , , , ,
19.7.	Where there is an error on the letter or credit, or for whatever reason the Merchant's
Rick	and retention of title
IVION	
	Ownership of the Products shall not pass to the Distributor until it has
20.1.	Ownership of the Products shall not pass to the Distributor until it has
20.1.	Ownership of the Products shall not pass to the Distributor until it has
20.1.	Ownership of the Products shall not pass to the Distributor until it has In spite of delivery having 20.2.1 the Distributor 20.2.2 no other sums

20.

20.5.	Despite any of the Products being owned by the Merchant,
20.6.	Any sale or dealing shall be a sale or use of
20.7.	Until property in the Products passes from the Merchant the entire proceeds of sale of the
20.8.	The Merchant is entitled to recover The Merchant is entitled to reco
20.9.	If the Merchant asks the
20.10.	If, when asked, the Distributor
20.11.	The Distributor must not pledge or in any way charge by way of
20.12.	The Distributor must keep the Products insured to
20.13.	If, when the Merchant asks, the Distributor fails to deliver to
20.14.	The Distributor will not move any Products

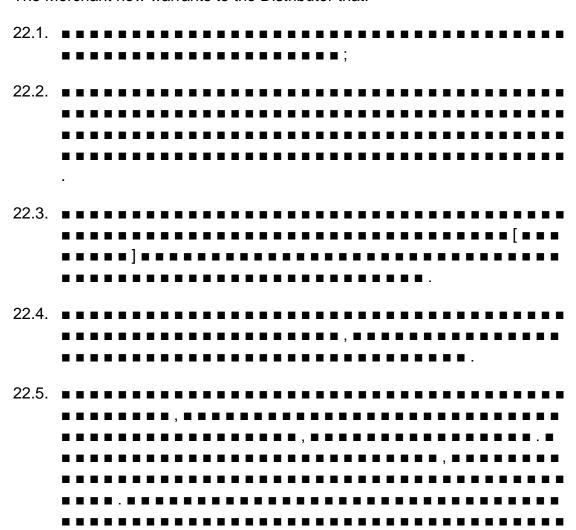
21. Products defective or not as ordered

21.1.	The Merchant shall
	:
	21.1.1 comply with their description on the order; and
	21.1.2 are of satisfactory •••••/••••
21.2.	Immediately upon taking delivery of any Products, the Distributor shall
21.3.	If the Distributor finds any defect in the quality or quantity of the Products, or a failure to comply with ••••••••••••••••••••••••••••••••••••
04.4	Kitha Dietrikuten eleine that the Declarate was
21.4.	If the Distributor claims that the Products were • • • • • • • • • • • • • • • • • •
21.5.	If the Merchant agrees with the shortage or defect, it will top
21.6.	The Merchant will repair
	21.6.1 [12] •••••• ;
	21.6.2 the defect results only from faulty design;
	21.6.3
21.7.	,

21.8.	 	 	 		 	 , ■ ■	 	
		 	 			 ••	 ■,■!	
	 	 	 	ı				

22. Warranty and Service Policy

The Merchant now warrants to the Distributor that:



23. Disclaimers and limitation of liability

23.1.

23.2.			••••			. ■ ■ , ,				
23.3.								••••		••••
	23.3.1	••••	 	••••				• • • •	•••	••••
	23.3.2									
	23.3.3									
23.4.		•••								
	••••	••••	••••					• • • :		
	23.4.1	indirec	t or cons	sequent	tial loss	s; or				
	23.4.2	■,■■	••••							• • • •
23.5.							■ ■ ■)			
22.6			••••							
23.6.	•									
			10,000							
					■ ■ , ■		• • • •			••••
23.7.	• • • •	• • • •							•••	

24. Mutual Indemnities

24.1.												
	24.1.1										••••	•
	24.1.2	•••								•••	•••	
	24.1.3									• • •	•••	
	24.1.4				• • • •	 					•••	
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24.3.												
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	24.3.1											l
	24.3.2		•••									
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25. Assignment

25.1.

25.2.

26. Sale of business or change of Control

26.1.

26.2.

26.3.

26.4. The Distributor agrees that this provision is fair.

27. Confidential Information

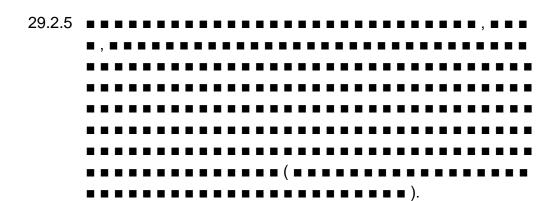
27.1.		•••••						
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	27.1.2					••••		 • • • •
	27.1.3							
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	27.1.4							
	27.1.5							
	27.1.6							
							,	
		•.	••••	••••		••••	••••	 ••••
27.2.	This pa	ragraph doe	es not ap	ply to d	isclosur	e:		
	27.2.1	made by o	rder of th	e court;	;			
	27.2.2							 • • • •
	27.2.3							



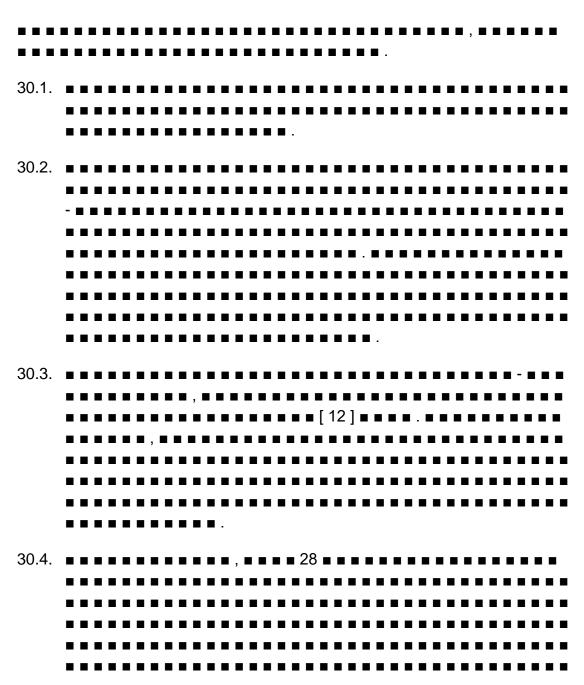
28. Intellectual Property

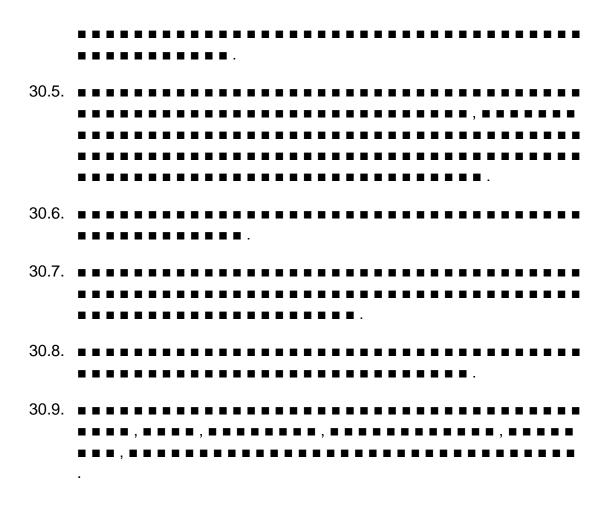
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28.4.														•	_				_	_					_	
20.4.																									- '	-
28.5.						•					•			_	.			•	•	_			•			
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28.6.																										
28.6.																										
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28.8.	• •	•	• • •	• •	. .												•	.		•		•	.	••	. .	•
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29.	Dura	ation a	and te	rmi	nati	ion											
	29.1.	••••	• • • •				••									•	
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	29.2.	This ag	reemen	t shal	ll con	itinue	unt	il ter	min	ate	d:						
		29.2.1	on [dat	e];													
	OR																
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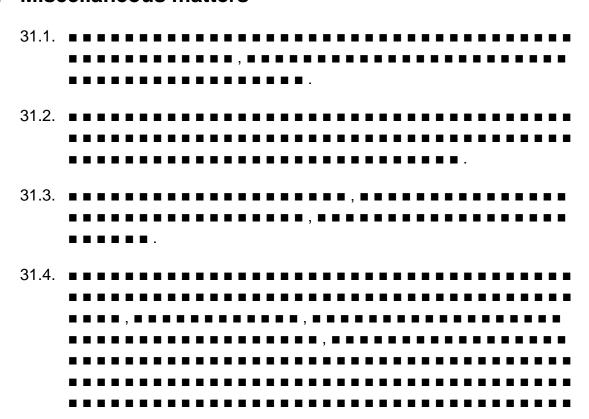


30. Upon termination





31. Miscellaneous matters



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31.5.																							
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31.6.								_		_		_	_		_		_	_			_		
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	It sha	ll be	dee	me	d to	ha	ve	be	en	de	live	rec	d:										
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					•••	•••	 ••••	
31.11. ■								
	,						 	
24.40								
31.12. ■								
•	 			 			 ■].	
31.13. ■	 			 			 	
•	,							
31.14. ■	 			 			 	
•	 			 		■ ■ .		
31.15. ■	 	■,■		 			 	
•	 			 			 • • • •	
				 			 • .	

Signed by / on behalf of the named parties by their representatives who personally accept liability for the proper authorization 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

Schedule 1 The Products and Prices [-----]

Schedule 2 Description of after sales service required

Schedule 3 Minimum sale requirements

Schedule 4	The sales training scheme
	:
Duration of training	
Brief details of the p	orogramme
Number of people;	
Who will train;	
Responsibility for h	ealth and safety;
	,

Who pays cost of travel and accommodation?

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Schedule 5 After sales service

Schedule 6 Batch Payment

Explanatory notes:

Distribution agreement: sale of goods, full version, merchant side

Paragraph specific notes

Notes numbering refers to paragraph numbers.

1. **Definitions**

We know nothing about your business, so we cannot provide you with defined terms which precisely describe what you sell. By all means use the search/replace function in your word processor to change them. The definitions of parties and products are a matter for your choice. The seller can be "Merchant", "Manufacturer", and so on; the Products can be "Products", or can be
But if you do change the defined word, make sure it applies to every use
You should first decide on the contents of the document, then return to check what definitions are needed and whether they really •••••••••••••••••••••••••••••••••••
Interpretation

2.

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.

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 \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare

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

This is a simple statement for the avoidance of doubt. Of course other documents may indeed create the relationships mentioned. For example, **Appointment of Distributor** We have placed this important provision in a separate paragraph to **E E E Obligations of the Distributor Obligations of the Merchant** These obligations are intentionally vague. Add and delete **E E E E E Compliance and regulation** This provision is usually most important when selling abroad. We have no idea what compliance or registration and control Products recall Delete if not required. Minimum sale requirements Most distribution agreements provide for minimum sales. This can be expressed in different ways. To avoid conflict later, we ----. Distributor's marketing obligations The essence of this paragraph is to make the distributor responsible for all of the cost of importation and for compliance with all local laws. If the distributor is in the same country as the merchant and much of this paragraph may be deleted or amended.

12. Distributor's liaison and reports

5.

6.

7.

8.

9.

10.

11.

This paragraph provides ideas for the ongoing liaison between the parties and the provision of sufficient reports to the merchant to inform him, first as to past activity by the distributor and secondly as to current and future market conditions. It is particularly important that the merchant has access to all of

In this and the following [paragraphs we have provided \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare
Payment terms
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 South Africa, of course delivery arrangements will be simpler. 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/
Transportation
There is an infinite number of possible arrangements.
Delivery
It is vital that the merchant is able to refuse an order. If some provision is not made here, the position is that an order given to the merchant will create a contract which of course it must
Orders and acceptance
Alternatively the distributor may feel it is appropriate to limit • • • • • • • • • • • • • • • • • • •
••••••
The merchant's ability to change prices and specification are likely to be one of the areas of greatest concern
The Price
We have provided a menu of possibilities.
event of any dispute as to the method of marketing

Payment on running credit account

18.

Distribution of the contraction	paragraph applies only if credit facilities have been granted to the outor. There is no need to write into your terms, your requirements for credit. First, you need absolute flexibility and second, it is not a actual matter but a concession by you. The only contractual part is the ing of interest. Most customers assume
The m ■ ■ ■	nention of "not a penalty" is necessary because a higher rate of ■ ■ ■ ■
•••	
Paym	ent by letter of credit
We ha	ave no further comment
Risk a	and retention of title
Many ■ ■ ■	books have been written on this subject so this note will do
•	The concept and use of a provision for retention of title is only of use when you are competing against some other party to establish ownership.
	•••.
•	If your goods are far away, the chance of success in asserting • • •
•	The only secure way to •••••••••••••••••••••••••••••••••••
•	Payment through an LC is universally acknowledged and ■ ■ ■ . ■ ■
•	If you must give credit the terms we have proposed will give you the strongest protection

21. Products defective or not as ordered

19.

20.

	Matte	ers for your judgement.
22.	Warr	anty and Service Policy
		are making promises here. As they are, they conflict to some extent with aragraph on your disclaimers.
		,
23.	Discl	aimers and limitation of liability
	Matte	ers for your judgement.
24.	Mutu	al indemnities
	We h	ave provided far more protection
25.	Assi	gnment
	Give	careful thought to this. It is not an alternative to a "Change of ■ ■ ■ ■ " ■
	Cons	ider the circumstances on both sides which may
	•••	
	We g	ive you these options:
	•	Neither party may assign the contract
		Action: use first option and delete second
	•	Both parties may assign.
		Action: delete all
	•	Both = = = = = = = = = = = = = = = = = = =
		Action: leave as is.
		Action, leave as is.

You may assign but not other party.

	• A party may • • • • • • • • • • • • • • • • • • •
	Action: use second alternative and delete first.
26.	Sale of business or change of Control
	The last paragraph on "assignment" does Output Outp
	In practice however, the personal element may be important to you or you may — — — — — — — — — — — — — — — — — — —
	Of course, it also
27.	Confidential Information
	Needs to
28.	Intellectual Property
	Every business has far more intellectual property than its managers generally assume. It
	Nonetheless, you could carefully to define those items of intellectual property which the distributor might need to use so as

29.	Duration and termination
	It is usual to terminate on notice, but if • • • • • • • • • • • • • • • • • •
30.	Upon termination
	This is the time when the parties may
	,
	•
31.	Miscellaneous matters
	A number of points which solicitors

End of notes