

DRAFT FOR DISCUSSION PURPOSES ONLY

DISTRIBUTION AGREEMENT

Between

[_____]

and

[_____]

DISTRIBUTION AGREEMENT

The undersigned:

1. [_____], a private company with limited liability incorporated under [_____] law, established and having its corporate seat at [_____] and with office at [_____], Country, hereinafter to be referred to as the "**Company**", for the purposes hereof legally represented by its managing director [_____];

and

2. [_____]**B.V.**, a private company with limited liability incorporated under established under Dutch law, established and having its corporate seat at [_____], at [_____], The Netherlands, hereinafter to be referred to as the "**Distributor**", for the purposes hereof legally represented by its (indirect) managing director Mr.[_____];

the undersigned sub 1 and sub 2 will hereinafter also individually referred to as the "**Party**" and together as the "**Parties**";

Whereas:

- (i) the Company is active inter alia in the sales, marketing, and distribution in [_____]for the [_____]industry;
- (ii) the Distributor is active inter alia in sales, marketing, trade and distribution of certain products and components;
- (iii) The Distributor is willing to receive from the Company, which is willing to grant the Distributor, exclusive distribution rights to distribute the Products in the Territory, during the term of this Agreement, all subject to the definitions, terms and conditions specified in this Agreement;

Have agreed as follows:

1 Definitions

DRAFT FOR DISCUSSION PURPOSES ONLY

Terms and expressions used in this Agreement shall, unless specifically stated otherwise, have the following meaning:

- "Product"** means the product described on Exhibit A to this Agreement and any other products which shall become subject to this Agreement pursuant to article 11 hereof;
- "Tax"** means any tax, excise, retribution or duty, other than VAT, imposed in any jurisdiction on the import, export, sale and/or distribution of Product;
- "Territory"** means the territory in which the Company or any other appointed distributor does not sell or deliver the Product, i.e. [_____];
- "VAT"** means any tax, excise or duty imposed in any jurisdiction on the sale or supply of Product.

2 Distribution rights

- 2.1 The Company hereby appoints the Distributor as the Distributor of the Products for the Territory. Distributor hereby accepts said appointment and agrees not to solicit orders in a direct way outside the Territory. The Distributor shall re-sell Products in its own name and for its own account and risk in the Territory.
- 2.2 During the term of this Agreement, Distributor shall have an exclusive right to sell the Products purchased under this Agreement to customers established within the Territory. Meaning that during the term of this Agreement, the Company shall only sell the Products and/or support the users of the Products established within the Territory through and via Distributor. The Company shall also not appoint another distributor within the Territory and shall not sell and deliver Products by herself.
- 2.3 The Distributor is allowed to use sub-distributors or sales agents in the Territory. In the event Distributor appoints an agent and/or sales representatives to act on its behalf hereunder, any compensation to such agents and/or sales representatives shall be Distributor's sole responsibility. Distributor shall also bear the sole responsibility for any action or representation made by these agents and/or sales representatives on its behalf and they shall be bound by the same obligations as Distributor under the present

DRAFT FOR DISCUSSION PURPOSES ONLY

Agreement. Distributor will procure that said agents and/or sales representatives will comply with this Agreement.

3 Relations between the Parties

Subject to the terms and conditions of this Agreement, Distributor is authorized to sell the Products purchased from the Company in such manner, at such prices and upon such terms, as Distributor shall determine at its own discretion. Distributor is and shall act as an independent contractor and nothing in the Agreement shall create or be deemed to create a partnership or relationship of principal/agent, employer/employee or joint-venture between the Parties. Distributor is not authorized to assume or create any obligation or responsibility, including, but not limited to, obligations based on warranties or guarantees or other contractual obligations, on behalf or in the name of the Company.

4 Obligations of the Company

The Company agrees to sell to the Distributor at the prices set out in Exhibit A hereto, those quantities of the Product in respect of which written orders are placed by the Distributor at the office of the Company or at such other place as from time to time may be mutually agreed upon by the Parties hereto.

5 Obligations of the Distributor

The Distributor shall nor in any way alter the nature, quality or composition of the Product and shall not make any false or misleading representations in respect of the Product. The Distributor is allowed to store and transport the Product in a manner at its sole discretion.

6 Price and Payment

6.1 The Products shall be sold to Distributor at the prices set out in Exhibit B. The Company may once a year change the prices for the Products. The change, being an increase of the price, will first come into effect after having consulted the Distributor in writing taking into account a notice period of 6 months. The new price will remain into force for at least one (1) year.

6.2 Should, due to subsequent increases, the prices exceed an increase ofpercent (..%) compared to those prices effective at the beginning of the precedent or pre-precedent year and the price is unreasonable high compared to the prices of competitive products, then

DRAFT FOR DISCUSSION PURPOSES ONLY

the Distributor has the right to terminate this Agreement by sending a written notice, taking into account a notice period of three (3) months.

- 6.3 Orders sent by Distributor to the Company before the written notice announcing the change in price has become effective, will be delivered and invoiced for the former price applicable.
- 6.4 The Company will invoice all Products delivered in a particular month at the last day of that month. Invoice date will be the last of the month. Payment terms are net fortyfive (45) days. Payment is carried out by bank transfer to the account indicated by the Company.

7 Delivery

- 7.1 Delivery of the Products ordered shall be made from the Company to Distributor on the date mentioned in the purchase order under the conditions of CIF (incoterms 2010).
- 7.2 The Products will be for risk of Distributor from the moment that the Products are delivered to Distributor.
- 7.3 In the event the Company can not deliver the ordered Products in the agreed time the Company will indemnify Distributor for all damages caused to it due to the late delivery.
- 7.4 The sale and delivery of all Products to the Distributor under this Agreement shall be subject to the conditions of sale and terms of payment of the Distributor as attached as Exhibit C, unless the specific issue is provided by in this Agreement in which case the provision in this Agreement will prevail.

8 Intellectual Property Rights

The Distributor shall only sell the Products under the name, trade mark and trade name used by the Company in connection with the Product, unless a third party is entitled to a trade name or trade mark within the Territory. The Distributor shall refrain from any other use of the name, trade mark or trade name of the Company. The Distributor shall further refrain from using any other name, trade mark or trade name on the Products and the packages thereof. The Distributor shall not register or use trade names or trade marks or any other intellectual property rights for the Product without the written approval of the Company.

9 Labelling and Liability

- 9.1 The Company will procure that the packaging of the Product contain all warnings and instructions regarding the safe use, transportation and storage of the Product as may be adequate or, as the case may be, compulsory in the Territory. The Company procures that it is fully informed about any specific requirements in that respect and any changes thereof in the Territory.
- 9.2 The Distributor warrants that any and all warnings and instructions printed on, attached to or accompanying the Product will remain legible and shall not be changed, covered or removed, in whole or in part, or in any other way may illegible.

10 Warranties; Limitation: Replacement

- 10.1 The Company indemnifies the Distributor against all claims of third parties based on incorrect information concerning the Products provided by the Company and against all claims of third parties based on any intellectual property right concerning the Products.
- 10.2 The Company warrants the Distributor that the Product is produced and sold to Distributor according to all applicable laws, including safety laws, in the Territory, included but not limited to regulations and laws on packaging, and is admissible for the purpose of use mentioned in this Agreement. The Company warrants that it will sell and deliver the Products according to the description of the Product as mentioned in Exhibit A.
- 10.3 In case the Product does not meet the specifications mentioned in aforementioned paragraph, Distributor has to report this to the Company as soon as possible, but in any case within 3 (three) weeks it has become aware of the shortage. The Company will at choice of the Distributor replacement or repair the defective Product or any part thereof, at no charge to the Distributor. The Distributor is entitled at his choice to revoke the sales contract with regard to a certain delivered defective Products or to reduce the purchase price therefore appropriately.
- 10.4 The Distributor must notify the Company of defective Products before returning defective Products or parts thereof for replacement.
- 10.5 THE COMPANY SHALL ASSUME PRODUCT LIABILITY IN ACCORDANCE WITH APPLICABLE LAW FOR ALL ITS SUPPLIES OF THE PRODUCT TO THE EXTENT ANY FAILURE OF ANY PRODUCT IS NOT CAUSED BY THE DISTRIBUTOR.

DRAFT FOR DISCUSSION PURPOSES ONLY

10.6 For the term of this Agreement and any applicable statutory period thereafter (or if no statutory regulation exists, for a reasonable period) the Distributor agrees to and will secure by all reasonable measures, in particular by maintaining appropriate records, that the Products distributed by the Distributor can be recalled (entirely or partially) at any time and within a reasonable period in accordance with the applicable regulations in the Territory.

IN CASE THAT THE COMPANY REASONABLY DEEMS A RECALL OF PRODUCTS IN THE TERRITORY SOLD BY THE COMPANY TO THE DISTRIBUTOR NECESSARY, OR SHOULD ANY GOVERNMENTAL INSTITUTION ORDER A RECALL OF THE PRODUCT IN THE TERRITORY, THE DISTRIBUTOR AGREES TO AND WILL CARRY OUT SUCH RECALL IN ITS OWN RESPONSIBILITY, IN ACCORDANCE WITH THE INSTRUCTIONS OF THE COMPANY, AND AT THE COMPANY'S OWN COSTS. IN FULFILLMENT OF ANY SUCH RECALL OBLIGATION PROVIDED FOR HEREIN, THE DISTRIBUTOR AGREES TO HAVE ALL PRODUCTS WHICH ARE SUBJECT TO SUCH RECALL RETURNED TO THE DISTRIBUTOR, AND TO REIMBURSE TO THE CUSTOMERS FOR SUCH PRODUCTS WHICH ARE SUBJECT TO SUCH RECALL AND ARE RETURNED TO DISTRIBUTOR THE PRICES PAID BY THE CUSTOMER TO THE DISTRIBUTOR FOR SUCH RECALLED PRODUCTS UPON DIRECTION FROM THE COMPANY. THE COMPANY WILL BEAR THE COSTS OF THE PRICES TO BE PAID TO THE CUSTOMERS. THE DISTRIBUTOR WILL RETURN THE RECALLED PRODUCTS TO THE COMPANY AT THE COMPANY'S COSTS. THE COMPANY WILL REIMBURSE TO THE DISTRIBUTOR THE PRICES PAID BY THE DISTRIBUTOR TO THE COMPANY FOR THE RECALLED AND RETURNED PRODUCTS.

The Company agrees, after carrying out of any recall as provided for herein, that the Company will confirm in writing that the Distributor has completely and properly carried out any such recall.

The regulations regarding the recall of Products in this section remain applicable also beyond the term of this Agreement.

11 Additional Products

Additional products may be added or Products may be removed from the list of Products under this Agreement if and when the Parties as agree in writing.

12 Assignment

Neither party shall be entitled to assign or transfer any of its rights and obligations under this Agreement without the prior written consent of the other Party.

13 Duration

13.1 The Agreement is concluded for an indefinite period of time.

13.2 Either Party may terminate the Agreement in writing at any time during the terms of this Agreement, against the end of the calendar month, without stating any grounds, observing a notice period of 6 months.

13.3 Notice shall be made by registered mail.

14 Immediate Termination

14.1 Either party shall have the right to terminate this Agreement with immediate effect if:

- (i) the other Party is declared bankrupt or has been granted suspension of payment or if a petition requesting bankruptcy or suspension of payment is filed by or on behalf of the other Party;
- (ii) a liquidator, receiver, trustee or administrator is appointed for the other Party or its business;
- (iii) the other Party becomes insolvent or admits its inability to pay its debts as they fall due or commences negotiations with one or more of its creditors with the view to a general readjustment or rescheduling of all or part of its indebtedness;
- (iv) a substantial change in the ownership of the other Party or a merger or acquisition relating to the other Party's business activity occurs, which is in conflict with the interest of the terminating party;
- (v) the other Party is in breach of any other provision of this Agreement and fails to remedy such breach within fourteen (14) days after notice of such breach and the request for the remedy thereof has been received by the other Party;

14.2 The Distributor shall have the right to terminate this Agreement with immediate effect if:

- (i) the Company violates any of the obligations set out in Article 10 of this Agreement;

(ii) the Company breaches the confidentiality as provided for in Article 17 of this Agreement;

15 General Consequences of Termination

15.1 If notice of termination is given, the Company and the Distributor shall each have, during the applicable notice period, the same rights, obligations and privileges under this Agreement in the same manner and to the same extent as in case such notice had not been given.

15.2 After the termination of the Agreement the Distributor shall refrain from any use of the name, trade marks and trade name of the Company and similar names, trade marks and trade names. Wat word precies bedoelt; merknaam Hitachi en logo's willen we wel kunnen gebruiken.

16 Notices

16.1 Any notice or other communication under or in connection with the Agreement shall be in writing in the English language and shall be delivered personally or by registered mail, telex, telefax, or cable transmission to the respective addresses, telex or fax numbers as a party may have notified to the other party in accordance with this article.

16.2 All notice or communication to the Company shall, as long as the Company has not given any other address to the Distributor, be sent to the following address:

GmbH
Attn. Mr.

16.3 Any and all notices or communications to the Distributor shall, as long as the Distributor has not given any address to the Company, be sent to the following address:

B.V.
Attn. Mr.

The Netherlands

17 Confidentiality and good faith

17.1 Confidential information is information remarked by a Party as confidential information but also includes information of which a Party should have known that it concerns confidential information. The content of this Agreement as well as the Distributors know how on sales in the Territory (customers, contact persons etc) is also confidential information. Each Party agrees that during the term and after termination of this Agreement, all disclosures of information to the Company or Distributor as the case may be, its agents and employees shall be held in strict confidence by such receiving Party, its agents and employees. Such receiving Party shall disclose confidential information only to those of its agents and employees to whom it is necessary in order properly to carry out their duties as limited by the terms and conditions hereof. During and after the term of this Agreement, the receiving Party shall not use confidential information except for the purposes of exercising its rights and carrying out its duties hereunder. Distributor may only share confidential information with its agents or sales representatives to assist in the compliance with this Agreement.

17.2 In case a Party fails to meet its obligations as described in paragraph 17.1, it forfeits, without prior notice of non performance or without the obligation of taking into account any other formality, a penalty to the other Party of twenty five thousand euro (€ 25.000,-) per violation of her obligation of confidentiality. The other Party also remains the right to claim indemnification of damages caused to it by the disclosure of the information.

Notwithstanding anything contained in this Agreement to the contrary, neither Party shall be liable for a disclosure of the other Party's confidential information if the information so disclosed:

- (i) was in the public domain at the time it was disclosed by the disclosing Party to the receiving Party; or
- (ii) was lawfully known to or contained in the records of the receiving Party from a source other than the disclosing Party at the time of disclosure by the disclosing Party to the receiving Party and can be so demonstrated; or
- (iii) becomes known to the receiving Party from a source other than the disclosing Party without breach of this Agreement by the receiving Party and can be so demonstrated; or
- (iv) was disclosed pursuant to court order or as otherwise compelled by law.

18 Waivers

It is agreed that failure of either Party at any time to enforce any provision of this Agreement shall in no way affect the right to require performance of such provision thereafter. The waiver of breach of any provision of this Agreement shall not mean a waiver of any succeeding breach of such provision or waiver of the provision itself.

19 Information

The Distributor will advise the Company in writing about any changes in such law or regulations that might affect this Agreement.

20 Entire Agreement

20.1 The Agreement with the Exhibits attached thereto constitutes the entire agreement between the parties on the subject of the Agreement, and the Agreement with the Exhibits attached thereto supersedes and cancels any previous agreements between the Parties on the subject of the Agreement, such cancellation being made without waiver of any right or liabilities accrued prior to such effective date by either party under such Agreements.

20.2 The Agreement and the Exhibits can only be amended or supplemented by means of a written document signed by both parties.

21 Invalidity of any Provision

If any provision of the Agreement and/or the Exhibits attached thereto becomes invalid, illegal or unenforceable in any respect under any law, the parties shall consult with each other in good faith, in order to replace any such provision as aforesaid by a mutually acceptable provision which is valid, legal and enforceable and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

22 Applicable Law and Jurisdiction

22.1 The Agreement and all agreements resulting there from shall be governed exclusively by the laws of the Netherlands, to the exclusion, however, of the United Nations Convention on Contracts for the International Sale of Goods of 1980 (CISG).

DRAFT FOR DISCUSSION PURPOSES ONLY

22.2 Any and all disputes arising from or in connection with the Agreement or further Agreements resulting there from, shall be brought exclusively before the competent court of [_____], the Netherlands.

Duly signed in twofold _____ at _____ on _____, 20[____]

[NAME] date
director

[NAME] date
director

DRAFT FOR DISCUSSION PURPOSES ONLY

EXHIBIT A

Description of the Products

DRAFT FOR DISCUSSION PURPOSES ONLY

EXHIBIT B

Prices

Wat moet hier precies voor informatie komen?

DRAFT FOR DISCUSSION PURPOSES ONLY

EXHIBIT C

Terms and Conditions

Wat moet hier precies voor informatie komen?