



## OCTAVIUS HUNT LTD DISTRIBUTOR TERMS AND CONDITIONS ("Terms")

### 1 Definitions and Interpretation

In these Terms the following definitions and rules of interpretation apply:

Appointment Letter	the letter signed by the Parties which sets out the key details of the distribution arrangement and which incorporates these Terms
Business Day	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business
Collection Point	means the location as specified in the Appointment Letter where the Distributor will take delivery of the Products
Commencement Date	the date the Contract commences as specified in the Appointment Letter
Contract	these Terms and the Appointment Letter
Control	the ability to direct the affairs of another person, whether by virtue of the ownership of shares, contract or otherwise
Distributor	the party identified as such in the Appointment Letter
Force Majeure Event	events beyond the control of the Parties including flood, fire, earthquake, and other elements such as war, combat actions, prohibited acts or actions by the state bodies
Group	in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company
Products	the products of the type and specification manufactured and packed under the Octavius Hunt IPR and listed in the Appointment Letter and any other products developed by Octavius Hunt and which Octavius Hunt may permit the Distributor, by express notice in writing, to distribute in the Territory
Octavius Hunt IPR	the trade mark registrations and applications listed in the Appointment Letter and any further intellectual

property owned or licensed to Octavius Hunt that Octavius Hunt may, by express notice in writing, permit or procure permission for the Distributor to use in the Territory in respect of the Products

Term	the term of the Contract, as determined in accordance with clause 3.1
Territory	the countries or areas (as applicable) specified in the Appointment Letter
Year	the period of 12 months from the Commencement Date and each consecutive period of 12 months thereafter during the Term

- 1.1 Headings shall not affect the interpretation of the Contract.
- 1.2 Any Schedules annexed to the Appointment Letter form part of the Contract.
- 1.3 Words in the singular shall include the plural and vice versa.
- 1.4 A reference to any party shall include that party's personal representatives, successors or permitted assigns.
- 1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.6 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.7 Any obligation not to do something includes an obligation not to allow that thing to be done.

## **2 Appointment**

- 2.1 Octavius Hunt appoints the Distributor to distribute the Products within the Territory on the terms as set out in the Contract.
- 2.2 The Distributor shall not:
  - 2.2.1 actively distribute or export the Products in areas outside the Territory where these areas are reserved to other distributors or reserved for Octavius Hunt (both as notified by Octavius Hunt from time to time); or
  - 2.2.2 represent itself as an agent of Octavius Hunt for any purpose; or
  - 2.2.3 pledge Octavius Hunt's credit; or
  - 2.2.4 give any condition or warranty on Octavius Hunt's behalf; or

- 2.2.5 make any representation on Octavius Hunt's behalf;
  - 2.2.6 commit Octavius Hunt to any contracts; or
  - 2.2.7 otherwise incur any liability for or on behalf of Octavius Hunt.
- 2.3 The Distributor shall not, without Octavius Hunt's prior written consent, make any promises or guarantees about the Products beyond those contained in any promotional material supplied by Octavius Hunt.

### **3 Term of the Contract**

- 3.1 This Contract shall take effect on the Commencement Date and, subject to clause 15.1 shall continue in force for an initial term of two (2) Years and indefinitely after that until terminated by either party giving at least six months' prior written notice to expire on or after the expiry date of the initial term.

### **4 Distributor's undertakings**

- 4.1 The Distributor undertakes and agrees with Octavius Hunt that at all times during the Term it will:
- 4.1.1 use best endeavours to promote the distribution and sale of the Products in the Territory;
  - 4.1.2 employ a sufficient number of suitably qualified personnel to ensure the proper fulfilment of the Distributor's obligations under the Contract;
  - 4.1.3 submit written reports at regular intervals to Octavius Hunt, showing details of sales, service stock, outstanding customer orders and orders placed by the Distributor with Octavius Hunt that are still outstanding, and any other information relating to the performance of its obligations under the Contract that Octavius Hunt may reasonably require from time to time;
  - 4.1.4 maintain on its own account an inventory of the Products at levels which are appropriate and adequate for the Distributor to meet all customer delivery requirements for the Products throughout the Territory;
  - 4.1.5 keep full and proper books of account and records showing clearly all enquiries, quotations, transactions and proceedings relating to the Products;
  - 4.1.6 allow Octavius Hunt, on reasonable notice, access to its accounts and records relating to the Products for inspection;
  - 4.1.7 keep all stocks of the Products which it holds in conditions appropriate for their storage, and provide appropriate security for the Products, all at its own cost;
  - 4.1.8 insure at its own cost with a reputable insurance company all stocks of the Products as are held by it against all risks which would normally be insured against by a prudent businessman to at least their full replacement value and produce to Octavius Hunt on demand full particulars of that insurance and the receipt for the then current premium;

- 4.1.9 inform Octavius Hunt immediately of any changes in ownership or Control of the Distributor, and of any change in its organisation or method of doing business that might be expected to affect the performance of the Distributor's duties in the Contract;
- 4.1.10 to use its best endeavours to develop, advertise, promote and sell the Products in the Territory and to expand the sale of the Products to all potential purchasers by all reasonable and proper means and not to do anything which may hinder or interfere with such sales;
- 4.1.11 to pay or ensure payment on the due date to Octavius Hunt of all sums due to Octavius Hunt for sales of the Products; and
- 4.1.12 to allow the authorised representatives of Octavius Hunt or their duly appointed agents to have access to the premises of the Distributor at all reasonable times for the purpose of inspecting the aforesaid books and records.

## **5 Products and Packaging**

- 5.1 Octavius Hunt shall deliver the Products to the Distributor suitably packed and labelled, ready for sale.
- 5.2 Octavius Hunt grants to the Distributor a non-exclusive non-transferable licence to use the Octavius Hunt IPR in the Territory in the promotion, advertisement and sale of the Products, for the Term. The Distributor acknowledges and agrees that all rights in the Octavius Hunt IPR shall remain in Octavius Hunt.
- 5.3 Any changes to existing labels will be charged to the Distributor. The parties agree that the Products will be labelled as 'Manufactured by OCTAVIUS HUNT' and shall be marked as being distributed by the Distributor.
- 5.4 The Distributor shall not, without the prior written consent of Octavius Hunt, alter or make any addition to the labelling or packaging of the Products.
- 5.5 The Distributor shall market and sell the Products only under the Octavius Hunt IPR, and not in association with any other trade mark, brand or trade name.
- 5.6 Octavius Hunt makes no representation or warranty neither as to the validity or enforceability of the Octavius Hunt IPR nor as to whether they infringe any intellectual property rights of third parties in the Territory.
- 5.7 The Distributor shall not do, or omit to do, anything in its use of the Octavius Hunt IPR that could adversely affect its/their validity or reputation.
- 5.8 Each party shall promptly give notice in writing to the other if it becomes aware of:
  - 5.8.1 any infringement or suspected infringement of the Octavius Hunt IPR or any other intellectual property rights relating to the Products within the Territory; or
  - 5.8.2 any claim that any Product or the manufacture, use, sale or other disposal of any Product within the Territory, whether or not under the Octavius Hunt IPR, infringes the rights of any third party.

5.9 Octavius Hunt is responsible for the registration and maintenance of any marks or designs that relate to the Products. The Distributor shall not obtain or try to obtain or register for itself anywhere in the world any trade marks or trade names the same as or similar to the Octavius Hunt IPR unless Octavius Hunt gives its express written consent and in all cases such Octavius Hunt IPR shall be registered in the name of Octavius Hunt.

## **6 Supply of products**

6.1 On the Commencement Date and the each anniversary of the Commencement Date in each Year, the Distributor shall notify Octavius Hunt in writing of its forecast of the quantities of each type of Product that it expects to buy from Octavius Hunt for delivery during the ensuing twelve (12) month period beginning on the first day of the month following the latest date for issue of that forecast.

6.2 Octavius Hunt undertakes to use its reasonable endeavours to meet all orders for the Products forwarded to it by the Distributor in accordance with Octavius Hunt's terms of delivery. The Distributor shall buy the Products for its own account for resale under the Contract.

6.3 On giving advance notice in writing to the Distributor, Octavius Hunt may vary the Products as it thinks fit to exclude one or more of the Products from the Contract if the production of such Products is permanently discontinued for any reason.

6.4 Octavius Hunt may make changes to the specifications of the Products, provided the changes do not adversely affect the quality of the Products. Octavius Hunt shall give notice of any changes to Product specifications to the Distributor as soon as reasonably practicable.

6.5 Should the Distributor wish to market any additional product in the Territory from the Octavius Hunt Range, including products which may be added to the range in the future, these can be added to the Products list where mutually agreed by the Parties.

6.6 Octavius Hunt shall supply the Products on an Ex works basis from the Collection Point specified in the Appointment Letter (as such term is defined in INCOTERMS 2010). Delivery of the Products shall take place when, at the Distributors' cost and risk the Products are fully loaded onto the Distributor's or its representative's transport tanker or other vessel.

6.7 Title to the Products shall pass to the Distributor when Octavius receives payment in full for the Products.

## **7 Prices and payment**

7.1 The prices to be paid by the Distributor to Octavius Hunt for the Products are to be Octavius Hunt's list prices. Subject to clause 7.2, the prices applicable as at the Commencement Date are set out in the Appointment Letter and shall be reviewed and amended by Octavius Hunt (acting in its sole discretion) at the end of each Year. New list prices will come into force on the first day of the next Year unless otherwise agreed between the Parties.

7.2 Octavius Hunt may amend its list prices at any time to reflect any additional costs it may occur in complying with clause 9.4.4.

7.3 The Distributor shall pay the full amount invoiced to it by Octavius Hunt in Sterling within 30 days of the date of invoice.

7.4 As between Octavius Hunt and the Distributor, the Distributor is solely responsible for the collection, remittance and payments of any or all taxes, charges, levies, assessments and other fees of any kind imposed by governmental or other authority in the Territory in respect of the purchase, sale, importation, lease or other distribution of the Products.

## **8 Marketing Policy**

8.1 The Distributor shall:

8.1.1 be responsible for advertising and promoting the Products in the Territory (but the Distributor shall not use any advertising materials or promotional literature without Octavius Hunt's prior written consent);

8.1.2 submit an annual advertising and promotion programme to Octavius Hunt for its approval;

8.1.3 arrange, at its own expense, and spend any amount which the Parties agree in the Appointment Letter on the implementation of the programme;

8.1.4 display advertising materials and other signs provided by Octavius Hunt;

8.1.5 observe all directions and instructions given to it by Octavius Hunt for promotion and advertisement of the Products; and

8.1.6 not make any written statement as to the quality or manufacture of the Products without the prior written approval of Octavius Hunt.

8.2 Octavius Hunt shall provide the Distributor with information on the advertising and promotion carried out by Octavius Hunt. Octavius Hunt shall supply any available promotional and advertising material that the Distributor reasonably requests at the cost of the Distributor.

8.3 The Distributor shall ensure that any website that it uses for the sale of the Products complies with the quality standards and criteria as Octavius Hunt may reasonably determine from time to time.

8.4 The Distributor may from time to time request samples of the Products from Octavius Hunt for testing, demonstration trials or other purposes. Where Octavius Hunt considers it appropriate in its reasonable commercial discretion it shall supply such samples to the Distributor in reasonable quantities at such charge as the Parties may agree. The Distributor will bear all delivery and associated costs unless otherwise agreed by the Parties.

8.5 Any samples supplied by Octavius Hunt pursuant to clause 8.4 do not form part of the Contract or have commercial force.

## **9 Compliance with laws and policies**

9.1 Each party shall at its own expense comply with all laws and regulations relating to its activities under the Contract, as they may change from time to time, and with any conditions binding on it in any applicable licences, registrations, permits and approvals.

9.2 **Import licences.** The Distributor shall be responsible for obtaining any necessary import licences or permits necessary for the entry of the Products into the Territory, or their delivery to the Distributor. The Distributor shall be responsible for any customs duties, clearance charges, taxes,

brokers' fees and other amounts payable in connection with the importation and delivery of the Products.

9.3 **Changes in marketing laws.** The Distributor shall give Octavius Hunt as much advance notice as possible of any prospective or actual changes in laws and regulations applicable to the marketing of the products in the Territory.

#### 9.4 **Local Regulations relating to Products**

9.4.1 The Distributor warrants to Octavius Hunt that it has informed Octavius Hunt of all laws and regulations affecting the manufacture, sale, packaging and labelling of Products which are in force within the Territory or any part of it (**Local Regulations**) at the date of the Contract.

9.4.2 Octavius Hunt, in turn, warrants to the Distributor that the Products comply with the Local Regulations in force at the date of the Contract.

9.4.3 The Distributor shall give Octavius Hunt as much advance notice as reasonably possible of any prospective changes in the Local Regulations.

9.4.4 On receipt of notification from the Distributor under clause 9.4.3, Octavius Hunt shall make reasonable commercial efforts to ensure that the Products comply with any change in the Local Regulations by the date of implementation of that change, or as soon as is reasonably possible afterwards.

### 10 **Conditions of sale**

10.1 Octavius Hunt's conditions of sale in force from time to time shall apply to all sales by Octavius Hunt to the Distributor under the Contract. If there is any inconsistency between those conditions of sale and the terms of the Contract, the latter shall prevail.

### 11 **Conduct of Claims**

11.1 The Distributor shall, as soon as it becomes aware of any claim pursuant to clause 5.8.2 or a matter which may result in a claim for damage to property, death or personal injury arising from any fault or defect in the materials or workmanship of the Products:

11.1.1 give Octavius Hunt written notice of the details of the matter;

11.1.2 give Octavius Hunt access to and allow copies to be taken of any materials, records or documents as Octavius Hunt may require to take action under clause 11.1.3;

11.1.3 allow Octavius Hunt the exclusive conduct of any proceedings and take any action that Octavius Hunt requires to defend or resist the matter, including using professional advisers nominated by Octavius Hunt; and

11.1.4 not admit liability or settle the matter without Octavius Hunt's written consent.

### 12 **Insurance**

12.1 During the Term, Octavius Hunt shall maintain product liability insurance with a reputable insurer in such a sum as it shall in its reasonable discretion deem appropriate for a claim that the

Products are faulty or defective. Octavius Hunt shall provide a copy of the insurance policy to the Distributor on request.

### **13 Product Recall**

13.1 The Distributor undertakes to maintain appropriate, up-to-date and accurate records to enable the immediate recall of any Products or batches of Products from the retail or wholesale markets. These records shall include records of deliveries to customers (including batch numbers, delivery date, name and address of customer, telephone number, fax number and email address).

13.2 The Distributor shall, at Octavius Hunt's cost, give any assistance that Octavius Hunt shall reasonably require to recall, as a matter of urgency, Products from the retail or wholesale market.

13.3 The Distributor shall:

13.3.1 take such action, institute such proceedings and give such information and assistance as Octavius Hunt may reasonably request to:

(a) dispute, resist, appeal, compromise, defend, remedy or mitigate the matter; or

(b) enforce against any person (other than Octavius Hunt) the rights of the Distributor in relation to the matter; and

13.3.2 in connection with any proceedings related to the matter (other than against Octavius Hunt), use professional advisers nominated by Octavius Hunt and, if Octavius Hunt so requests, allow Octavius Hunt the exclusive conduct of the proceedings,

in each case on the basis that Octavius Hunt shall indemnify the Distributor for all reasonable costs incurred as a result of any request or nomination by Octavius Hunt.

### **14 Limitation of liability**

14.1 Nothing in the Contract shall limit or exclude Octavius Hunt's liability for any matter in respect of which it would be unlawful for Octavius Hunt to exclude or restrict liability.

14.2 Subject to clause 14.1, Octavius Hunt shall under no circumstances whatever be liable to the Distributor, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:

14.2.1 any loss of goodwill, profit, revenue, or anticipated savings; or

14.2.2 any loss that is an indirect or secondary consequence of any act or omission of Octavius Hunt.

14.3 In any Year, Octavius Hunt's liability to the Distributor in respect of loss or damage arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total sums paid by the Distributor to Octavius Hunt under the Contract in that Year.

14.4 The liability of Octavius Hunt arising out of or in connection with the supply of Products under the Contract shall be subject to the limitations of liability set out in Octavius Hunt's conditions of sale in force from time to time.



## 15 Termination

- 15.1 Without affecting any other rights or remedies to which it may be entitled, either Party may give notice in writing to the other terminating the Contract immediately if:
- 15.1.1 the other Party makes any voluntary arrangement with its creditors or becomes bankrupt or enters administration or goes into liquidation (otherwise than for the purposes of solvent amalgamation or reconstruction); or
  - 15.1.2 a security holder takes possession, or a receiver or administrative receiver is appointed, over all or any material part of the property or assets of the other Party; or
  - 15.1.3 anything analogous to any of the foregoing occurs to the other Party under the law of any jurisdiction; or
  - 15.1.4 the other Party ceases to carry on business; or
  - 15.1.5 the other Party commits a material breach of any of the provisions of the Contract and in the case of a breach capable of remedy, fails to remedy that breach within 30 days after being served with a written notice specifying the breach and requiring it to be remedied.

## 16 Consequences of Termination

- 16.1 Termination of the Contract, however arising, shall not affect any of the Parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 16.2 On termination, or shortly thereafter Octavius Hunt shall confirm to the Distributor what should happen to any stocks of the Products which the Distributor is holding.
- 16.3 The termination of the Contract shall not of itself make Octavius Hunt liable to pay any compensation to the Distributor, including, compensation for loss of profits or goodwill.
- 16.4 On termination, the Distributor will immediately stop using all or any part of the Octavius Hunt IPR unless, pursuant to clause 16.2, Octavius Hunt permits the Distributor a sell through period for any stocks of the Products which remain within its control and in which case the Distributor may continue to use the Octavius Hunt IPR for the relevant period as confirmed by Octavius Hunt.

## 17 Anti-bribery compliance

- 17.1 The Distributor shall:
- 17.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption in the Territory and in England including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
  - 17.1.2 have, maintain and enforce throughout the Term its own policies and procedures to ensure compliance with the Relevant Requirements;

- 17.1.3 promptly report to Octavius Hunt any request or demand for any undue or suspicious financial or other advantage of any kind received by the Distributor in connection with the performance of the Contract;
- 17.1.4 within two months of Commencement Date and annually thereafter, certify to Octavius Hunt in writing signed by an officer of the Distributor, compliance with this clause 17 by the Distributor and all persons referred to under clause 17.2. The Distributor shall provide such supporting evidence of compliance as Octavius Hunt may reasonably request.
- 17.2 The Distributor shall ensure that all of its suppliers, agents, subcontractors and other members of its Group who perform services or provide goods in connection with the Contract do so only on the basis of a written contract which imposes on and secures from such persons terms equivalent to those imposed on the Distributor in this clause 17 (**Relevant Terms**). The Distributor shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Octavius Hunt for any breach by such persons of any of the Relevant Terms.

## **18 Confidentiality**

- 18.1 In this clause 17, Confidential Information means all information of a confidential nature disclosed (whether in writing, orally or by another means and whether directly or indirectly) by one party (**Disclosing Party**) to the other party (**Receiving Party**) whether before or after the date of the Contract including, without limitation, information relating to the products, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs of the Disclosing Party or a member of the Disclosing Party's Group and the existence of the Contract.
- 18.2 Each party undertakes that it shall not at any time during the Term of the Contract or for seven (7) years thereafter disclose to any person any Confidential Information, except as provided by clause 18.3.
- 18.3 Each party may disclose the other party's confidential information:
- 18.3.1 to those of its employees, officers, representatives or advisers who need to know such information for the purpose of carrying out the party's obligations under the Contract (Recipient). Each party shall ensure that each Recipient complies with this clause 18; and
- 18.3.2 as may be required by law, court order or any governmental or regulatory authority.
- 18.4 The Receiving Party shall ensure that each Recipient is made aware of and complies with all the Receiving Party's obligations of confidentiality under the Contract as if the Recipient was a party to the Contract.
- 18.5 Clause 18.2 and clause 18.3 do not apply to Confidential Information which:
- 18.5.1 is at the date of the Contract or at any time after the date of the Contract comes into the public domain other than through breach of the Contract by the Receiving Party or a Recipient;
- 18.5.2 can be shown by the Receiving Party to the Disclosing Party's reasonable satisfaction to have been known by the Receiving Party before disclosure by the Disclosing Party to the Receiving Party; or

18.5.3 subsequently comes lawfully into the possession of the Receiving Party from another.

18.6 No party shall use any other party's Confidential Information for any purpose other than to perform its obligations under the Contract.

## **19 Force majeure**

19.1 A party affected by any Force Majeure Event shall immediately give notice to the other party and take reasonable and prompt action to mitigate the effects of any such occurrence as quickly as possible.

19.2 If a Force Majeure Event continues for more than three (3) months, or it is reasonable for either party to assume on the happening of the Force Majeure Event that it will continue for more than three (3) months, the other party shall be entitled to terminate the Contract immediately by serving a written notice to that effect.

19.3 Neither party shall be liable for, or be deemed to be in breach of these Terms as a result of, any delay or failure to perform its obligations where caused by any Force Majeure Event.

## **20 Entire agreement**

20.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

## **21 Assignment**

21.1 Octavius Hunt may at any time assign, transfer, charge, subcontract any or all of its rights or obligations under the Contract but the Distributor may only do so with Octavius Hunt's prior written consent.

## **22 Waiver**

22.1 No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

## **23 Severance**

23.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

## **24 Notices**

24.1 Any notice or other communication required by these Terms shall be in writing (excluding email) and shall be hand-delivered or sent by prepaid first-class post, recorded delivery or by courier, at its registered office or its principal place of business (as applicable) and shall be deemed to have been duly received when left at the address referred to above or, if sent by pre-paid first-class

post or recorded delivery, at 9am on the second Business Day after posting, or, where relevant, at the time the courier's delivery receipt is signed.

**25 Third party rights**

25.1 Except as expressly provided in the Contract a person who is not a party to the Contract shall not have any rights whether statutory or otherwise to enforce any term of the Contract.

**26 No partnership or agency**

26.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

26.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**27 Set-off**

27.1 All amounts due under the Contract shall be paid by the Distributor to Octavius Hunt in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

**28 Governing law**

28.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

**29 Jurisdiction**

29.1 Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).