

Sales Agency Contract

Between: **(Supplier)**

whose registered office is at:

(hereinafter called "the Principal")

and: **(Sales Agency)**

whose registered office is at:

(hereinafter called "the Agent")

it is agreed as follow:

Article 1 Territory and Products

- 1.1 The Principal appoints the Agent, who accepts, as his commercial agent to promote the sale of the products listed in Annex I, paragraph 1 (hereinafter called "the Products") in the territory defined in Annex I, paragraph 2 (hereinafter called "the Territory").

Article 2 Good faith and fair dealing

- 2.1 In carrying out their obligations under this agreement the parties will act in accordance with good faith and fair dealing.
- 2.2 The provisions of this agreement, as well as any statements made by the parties in connection with this agency relationship, shall be interpreted in good faith.

Article 3 Agent's functions

- 3.1 The Agent agrees to use his best endeavours to promote the sale of the Products in the Territory in accordance with the Principal's reasonable instructions and shall protect the Principal's interests with the diligence of a responsible businessman.
- 3.2 When negotiating with customers, the Agent shall offer Products strictly in accordance with the terms and conditions of the offers of sale that the Principal has communicated to him.

Article 4 Acceptance of orders by the Principal

The Principal shall inform the Agent without undue delay of his acceptance or rejection of the orders transmitted by the latter. The Principal may accept or reject any individual order transmitted by the Agent at his own discretion.

Article 5 Sub-agents

The Agent may engage sub-agents, provided he informs the Principal. The agent shall be responsible for the activities of his sub-agents.

Article 6 Financial responsibility

The Agent shall satisfy himself, with due diligence, of the solvency of customers whose orders he transmits to the Principal. He shall not transmit orders from customers concerning which he knows or ought to know that they are in a critical financial position, without informing the Principal in advance of such fact.

Article 7 Complaints by Customers

The Agent shall immediately inform the Principal of any observations or complaints received from customers in respect of the Products. The parties hereto shall deal promptly and properly with such complaints.

Article 8 Exclusivity

- 8.1 The Principal shall not, during the life of this contract, grant any other person or undertaking within the Territory the right to represent or sell the Products.
- 8.2 The Principal is, whenever necessary, entitled to deal directly, without the Agent's intervention (provided he informs the latter) with customers situated in the Territory but in respect of any sales arising therefrom, the Agent shall be entitled to the normal commission rate.

Article 9 Agent to be kept informed

- 9.1 The Principal shall provide the Agent with all necessary written information relating to the Products as well as with the information needed by the Agent for carrying out his obligations under the contract.
- 9.2 He shall furthermore inform the Agent without undue delay of his acceptance, refusal and/or non execution of any business transmitted by the Agent.
- 9.3 The Principal shall keep the Agent informed of any relevant communication with customers in the Territory.

Article 10 Agent's commission

- 10.1 The Agent is entitled to the commission of five percent (5%) on all the sales of the Products which are made during the period of this contract to customers established in the Territory regardless of point of delivery of the goods.
- 10.2 If the Agent, when dealing with customers established in the Territory, solicits orders resulting in contracts of sale with customers established outside the Territory, and if the Principal accepts such orders, the Agent shall be entitled to receive half of the normal commission rate.

Article 11 Method of calculating commission and payment

- 11.1 Commission shall be calculated on the net amount of the invoices, i.e. on the effective sales price clear of all tariffs or taxes (including V.A.T.) of any kind, provided that such additional charges, tariffs and taxes are separately stated in the invoice.
- 11.2 For the first order signed with a new customer, the Agent shall be paid of 50% of the commission within 30 days from order signature regardless of payment conditions negotiated with that customer. Balance of commission due on first order shall be paid according paragraph 11.3 below. Payment of commissions due on all following orders with that customer shall be paid as per paragraph 11.3 below.

- 11.3 The Agent shall acquire the right to commission after all payment by the customers of the invoiced price. In case of partial payment made in compliance with the sales contract, the Agent shall be entitled to a proportional advance payment. In case the Principal is insured against the risk of non payment by his customers, the Agent is entitled to the normal commission on the sums obtained by the Principal from the insurer.
- 11.4 The Agent shall submit to the Principal an invoice in respect of each order for which a commission is payable. The commission shall be paid by return.
- 11.5 The Agent is entitled to all information, and in particular to extracts from the Principal's books, in order to check the amount of the commission due to him. The Principal shall permit an independent auditor appointed for that purpose by the Agent to inspect the Principal's books for the purpose of checking the data relevant for the calculation of the Agent's commission. The costs of such inspection shall be borne by the Agent.
- 11.6 Should any governmental authorisation (e.g. due to exchange control regulations in the Principal's country) be necessary for the Principal to transfer abroad the commission (or of any other sum the Agent may be entitled to receive), then the payment shall be made after such authorisation has been given. The Principal shall take all necessary steps for obtaining the above authorisations.
- 11.7 Except as otherwise agreed, the commission shall be calculated in the currency of the sales contract in respect of which the commission is due.

Article 12 Unconcluded business

- 12.1 No commission shall be due in respect of offers or orders transmitted by the Agent and not accepted by the Principal.
- 12.2 If a contract made by the Principal as a result of orders transmitted by the Agent is not thereafter put into effect, the Agent shall be entitled to a normal commission unless non-performance of the contract is due to reasons for which the Principal is not responsible.

Article 13 Term of the Contract

- 13.1 This contract enters into force on ____ / ____ / ____
- 13.2 This contract shall be automatically renewed for successive periods of one year, unless terminated by either party by notice given in writing by means of communication ensuring evidence and date of receipt (e.g. registered mail with return receipt, special courier), not less than four months before the date of expiry. If the contract has lasted for more than five years, the period of notice will be of six months.

Article 14 Unfinished business

- 14.1 All orders transmitted by the Agent or received by the Principal from customers established in the Territory but not delivered before the expiry or termination of this contract shall entitle the agent to normal commission.
- 14.2 All orders received after expiry or termination of this contract shall entitle the Agent to normal commission provided the enquiries were received before the expiry or termination of this agreement. The Agent must however inform the Principal in writing, before the expiry or termination of this agreement, of the pending enquiries, offers and negotiations which may give rise to commission under this paragraph.

Article 15 Earlier termination

- 15.1 Each party may terminate this contract with immediate effect, by notice given in writing by means of communication ensuring evidence of date of receipt (e.g. registered mail with return receipt, special courier), in case of substantial breach by the other party of the obligations arising from the contract, or in case of exceptional circumstances justifying the earlier termination.
- 15.2 Any failure by a party to carry out all or part of his obligations under the contract resulting in such detriment to the other party as to substantially deprive him of what he is entitled to expect under the contract, shall be considered as a substantial breach for the purpose of article 15.1, above. Circumstances in which it would be unreasonable to require the terminating party to continue to be bound by this contract shall be considered as exceptional circumstances for the purpose of article 15.1, above.
- 15.3 The parties hereby agree that the violation of the provisions under Articles 8 - 10.1 of the present contract is to be considered in principle, unless the contrary is proved, as a substantial breach of the contract. Moreover, any violation of the contractual obligations may be considered as a substantial breach, if such violation is repeated notwithstanding a request by the other party to fulfil the contract obligations.
- 15.4 Furthermore, the parties agree that the following situations shall be considered as exceptional circumstances that justify earlier termination by the other party: bankruptcy, moratorium, receivership liquidation or any kind of composition between the debtor and the creditors, or any circumstances that are likely to affect substantially one's party's ability to carry out his obligations under this contract.
- 15.5 If a party terminates the contract according to this article, but the judges ascertain that the reasons put forward by that party did not justify the earlier termination, the termination will be effective, but the other party will be entitled to damages for the unjustified earlier termination. Such damages will be equal to the average commission for the period the contract would have lasted in case of normal termination, unless the damaged party proves that the actual damage is higher (or, respectively, the party having terminated the contract proves that the actual damage is lower). The above damages are in addition to the indemnity which may be due under article 16.

Article 16 Indemnity in case of termination

- 16.1 The Agent shall be entitled to an indemnity ("goodwill indemnity") if and to the extent that:
- a) he has brought the Principal new customers or has significantly increased the volume of business with existing customers and the Principal continues to derive substantial benefits from the business with such customers, and
 - b) the payment of this indemnity is equitable having regard to all the circumstances and, in particular, the commission lost by the Agent on the business transacted with such customers.
- 16.2 The amount of the indemnity shall be equivalent to an indemnity for one year calculated from the Agent's average annual remuneration over the preceding five years and, if the contract lasted for less than five years, the indemnity shall be calculated on the average for the period in question.
- 16.3 The Agent will lose the right to indemnity if he does not claim the indemnity in writing within one year from contract termination.
- 16.4 The Agent shall have no right to indemnity in the following cases:

- a) where the Principal has terminated the contract according to the conditions set out in article 15;
- b) where the Agent has terminated the contract, unless the termination is justified under article 15 or on grounds of age, infirmity or illness in consequence of which the Agent cannot reasonably be required to continue his activities;

16.5 The goodwill indemnity provided for under this article is in lieu of any compensation for loss or damage arising out of the contract expiration or termination (except damages for breach of contract)

Article 17 Applicable law

17.1 Any dispute arising out of or on connection with the present contract shall be finally settled in accordance with the French Laws at the Court House of Troyes, France.

17.2 The judges shall apply the provisions contained in this contract and the principles recognized in international trade as applicable to international agency contracts, with the exclusion - subject to article 17.3 hereunder - of national laws. Since the Agent is headquartered in the EEC, the mandatory provisions of the EEC Directive of 18 December 1986 shall also apply.

17.3 The judges shall in any case consider such mandatory provisions of the law of the country where the Agent is established which would be applicable even if the parties submit the agreement to a foreign law. The judges may take the above provisions into account to the extent they embody principles that are universally recognized and provided their application appears reasonable in the context of international trade and/or appear to be relevant for the enforcement of the judgment award.

Article 18 Inclusion under the present contract

The annexes attached to this contract form integral part of the agreement.

Article 19 Modifications - Nullity

19.1 No addition or modification to this contract shall be valid unless made in writing. However, a party may be precluded by his conduct from asserting the invalidity of additions or modifications not made in writing to the extent that the other party has relied on such conduct.

19.2 The nullity of a particular clause of this contract shall not entail the nullity of the whole agreement, unless such clause is to be considered as substantial, i.e. if the clause is of such importance that the parties (or the party to benefit of which such clause is made) would not have entered into the contract if it had known that the clause would not be valid.

Article 20 Authentic text

The English text of this contract is the only authentic text.

Made in _____ on _____

The Principal _____ The Agent _____

ANNEX I **PRODUCTS and TERRITORY**

(Article 1.1)

Paragraph 1 Products

All pieces of equipment required in the Territory and for which the Principal has a demonstrated competitive advantage.

Paragraph 2 Territory

Buyers disclosed to Principal via RFQs posted on Subcontract Solutions website.