

TFK DISTRIBUTION AGREEMENT - PART B

1. APPOINTMENT

1.1 TFK hereby appoints the Distributor, and the Distributor accepts the appointment, under the terms of this Agreement.

2. SCOPE OF APPOINTMENT

2.1 During the Appointment:

- (a) (Distribution of Products) TFK grants the Distributor the licence as detailed in the Reference Schedule, the exclusivity of which is set out in the Reference Schedule, to purchase the Products for resale within the Territory, subject to the terms and conditions of this Agreement; and
- (b) (Intellectual Property) TFK grants to the Distributor the Licence.

2.2 The Distributor will be entitled to determine in its sole discretion what Products it wishes to maintain in its Stock.

2.3 Upon execution of this Agreement, the Distributor undertakes to immediately place a Purchase Order for the Initial Stock.

2.4 The Distributor undertakes and warrants to TFK that it will:

- (a) distribute the Products to customers only within the Territory;
- (b) in connection with the use of the Appointment, not make any representation, warranty or guarantee regarding the Appointment or the Rights, except (i) where required by applicable law, or (ii) where expressly approved in writing by TFK; and
- (c) use the Rights only on or in connection with the Distribution Operation as per this Agreement and not use, sell, market, distribute or make available any other alternate product which is substantially similar to, or nearly resembles, the Products and the Rights as may be likely to cause deception or confusion.

3. SUPPLY

3.1 During the Appointment, the Products will be ordered by the Distributor through the issue of Purchase Orders to TFK against the prices set out in the Price List.

3.2 Within ten (10) Business Days of receipt of a Purchase Order, TFK will:

- (a) confirm receipt of the Purchase Order;
- (b) liaise directly with the Distributor regarding delivery time slots to the Delivery Point and freight costs for the Ordered Stock; and
- (c) generate an Invoice for the Purchase Order.

3.3 Upon receipt of the Products, the Distributor shall inspect the same and notify TFK of any defects or shortages within fifteen (15) Business Days from the date of receipt of the Products, failing which the Distributor will not have any remedy in respect of such defective or short-shipped Products, except to the extent that such defects could not reasonably have been discovered upon inspection.

3.4 The prices listed in the Price List are subject to revision by TFK to cover costs related to the manufacture and supply of the Products, as well as changes in market conditions, fluctuations in supplier pricing, currency variations, or other factors beyond TFK's reasonable control. TFK will provide not less than sixty (60) days' prior written notice before any revised prices become effective. Revised prices shall apply only to Purchase Orders placed after the effective date of the revision.

3.5 All orders are subject to Product availability and TFK's ability to supply. TFK does not guarantee that it will be able to fulfil all of the Distributor's orders but will use reasonable endeavours to do so.

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3.6 The Distributor will pay the Invoices raised by TFK for the Purchase Orders on the terms set out in clause

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3.7 TFK retains the right to withhold the supply of the Products in the event of suspected non-compliance with law or breach of quality control provisions in this Agreement, provided that TFK gives the Distributor written notice of the suspected non-compliance and affords the Distributor a reasonable opportunity to respond.

4. PAYMENTS

4.1 The parties acknowledge and agree that they will provide each other with a Nominated Bank Account upon the Commencement Date and will immediately notify the other party if that Nominated Bank Account is varied.

4.2 All payments under this Agreement will be made into the respective Nominated Bank Accounts and the paying party will provide a wire transfer receipt (or the like) for any payment made.

4.3 Each party agrees that it will not, on any grounds of alleged breach of the other party's obligations, withhold payment of any amount due, except where expressly permitted by this Agreement.

4.4 Where there is a Dispute regarding the amount payable to TFK in respect of an Invoice, the parties shall use their best endeavours to resolve the Dispute promptly and fairly and otherwise in accordance with clause 14 (Dispute Resolution).

4.5 The Distributor acknowledges and agrees that:

(a) fifty percent (50%) of the total cost of the Ordered Stock must be paid by the Distributor to TFK upon placement (and acceptance by TFK) of a Purchase Order; and

(b) the remaining fifty percent (50%) of the total cost (being the balance of the total cost of the Purchase Order for the Ordered Stock, and any additional costs as included in the Invoice issued by TFK) must be secured by the Distributor through an unconditional bank guarantee or a confirmed irrevocable letter of credit in favour of TFK prior to dispatch and shall be payable immediately upon presentation of shipping documents. Dispatch shall not occur before such security or payment is received by TFK.

4.6 If the Distributor defaults on any payment due under this Agreement:

(a) all outstanding invoices shall become immediately payable and due;

(b) TFK may, at its sole discretion and without liability, suspend further performance under this Agreement until all overdue payments are settled in full; and

(c) any overdue amount shall accrue interest at a rate of 8% per annum above the Reserve Bank of Australia's cash rate from time to time, calculated daily from the due date until full payment is received by TFK.

4.7 Notwithstanding clause 4.5, TFK may at its absolute and sole discretion decline a Purchase Order; however, TFK agrees to refund the amount paid in accordance with clause 4.5(a) within fourteen (14) Business Days of the decision to decline. The parties agree that the refund of the amount paid in accordance with clause 4.5(a) is the Distributor's sole remedy in respect of a declined Purchase Order.

4.8 The Distributor shall act as the importer of record for the Products into the Territory. Accordingly, the Distributor:

(a) shall be responsible for complying with all applicable customs laws and regulations in the Territory;

(b) shall pay all import duties, tariffs and Taxes applicable in the Territory; and

(c) shall apply for and obtain any necessary regulatory approvals and ensure compliance with regulations required for the Products to be sold by the Distributor within the Territory.

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5. DELIVERY

5.1 Once the Ordered Stock has been manufactured and a Purchase Order has been completed, TFK will notify the Distributor in writing that the Ordered Stock is ready for dispatch.

5.2 Unless otherwise agreed in writing, delivery of the Ordered Stock shall be on terms (Incoterms® 2020) set out in the Invoices issued to the Distributor. The applicable Incoterm shall govern the allocation of costs for freight, insurance and export/import clearance as between the parties.

5.3 In the event that the Distributor requests any change to the delivery procedure ordinarily employed, all additional costs and risks arising therefrom shall be borne exclusively by the Distributor.

5.4 The Distributor shall be responsible for all import duties, Taxes, handling and non-standard packing and shipping costs applicable in the Territory. TFK shall be responsible for all export duties, Taxes and costs applicable in Australia.

5.5 Risk in the Ordered Stock shall pass to the Distributor in accordance with the applicable Incoterm specified in clause 5.2.

5.6 Unencumbered title in the Ordered Stock will pass from TFK to the Distributor upon the later of:

- (a) delivery in accordance with the applicable Incoterm; and
- (b) receipt by TFK of full payment of the corresponding Invoice for the Ordered Stock.

6. QUALITY CONTROL

6.1 TFK warrants that the Products at the time of dispatch from Australia will conform to the specifications set out in the Reference Schedule and will comply with all applicable Australian laws and export requirements.

6.2 The Distributor is responsible for ensuring that the Products, their labelling, packaging and marketing materials comply with all applicable laws and regulations of the Territory, including (where applicable) the EU General Product Safety Regulation (EU) 2023/988 and any sector-specific directives.

6.3 The Distributor shall obtain and maintain at its own cost all permits, licences, registrations and approvals required for the importation, storage, marketing and sale of the Products in the Territory.

6.4 Each party shall promptly notify the other of any product recall, safety alert, regulatory investigation or consumer complaint relating to the Products.

7. INTELLECTUAL PROPERTY

7.1 All Rights in and relating to the Products, trade marks, logos and packaging remain the exclusive property of TFK.

7.2 TFK grants the Distributor a non-exclusive, non-transferable, royalty-free licence to use TFK's trade marks and branding solely for the purpose of marketing and distributing the Products in the Territory during the Appointment.

7.3 The Distributor shall not alter the Products, their packaging, or any trade marks, labels or branding without the prior written consent of TFK.

7.4 The Distributor shall promptly notify TFK of any actual or suspected infringement of TFK's Rights in the Territory.

7.5 Any Developments made by or on behalf of the Distributor in connection with the Products or the Rights during the Appointment shall vest in TFK upon creation and the Distributor hereby assigns (and shall procure the assignment of) all intellectual property rights in such Developments to TFK.

7.6 The Distributor shall not, and shall ensure that its sub-licensees, resellers and customers do not, directly or indirectly:

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- (a) reverse engineer, decompile, disassemble or otherwise attempt to derive the source code, design or underlying structure of any Product or its firmware, embedded software or electronic components;
- (b) extract, copy or attempt to access any firmware or software contained in any Product by any means;
- (c) copy, replicate or clone any printed circuit board layout, schematic or hardware design of any Product by any means; or
- (d) manufacture or procure any product substantially derived from the design, functionality or architecture of any Product.

These prohibitions apply regardless of purpose, except to the extent prohibited by law in the Territory.

7.7 The Distributor shall immediately notify TFK in writing of any actual or suspected breach of clause 7.6 and shall provide TFK with all reasonable assistance in any investigation or proceedings arising from such breach.

7.8 The Distributor acknowledges that any breach of clause 7.6 would cause irreparable harm to TFK and that TFK shall be entitled to seek injunctive or other equitable relief in addition to any other remedies available under this Agreement or at law.

8. INSURANCE

8.1 The Distributor agrees to effect and maintain during the Appointment the following insurance policies in respect of the Distributor's liabilities arising out of or incidental to undertaking its obligations under this Agreement:

- (a) public liability insurance (reasonably agreed between the parties);
- (b) product liability insurance (reasonably agreed between the parties);
- (c) transit and warehouse insurance covering the full replacement value of any Stock held by the Distributor; and
- (d) such other insurance as may be required by law in the Territory.

8.2 Each policy required under clause 8.1 shall:

- (a) be effected with a reputable insurer;
- (b) note TFK's interest as an additional insured or loss payee (as applicable); and
- (c) not be cancelled, allowed to lapse, or materially varied without thirty (30) days' prior written notice to TFK.

8.3 The Distributor shall provide TFK with certificates of currency for all required policies within fourteen (14) days of the Commencement Date and thereafter upon each renewal or upon TFK's reasonable request.

9. CONFIDENTIALITY

9.1 Each party shall keep confidential all Confidential Information received from the other party and shall not disclose it to any third party without the prior written consent of the disclosing party, except:

- (a) as required by law, regulation or order of a court or regulatory authority;
- (b) to the receiving party's professional advisers, officers, employees or agents who have a need to know and who are bound by obligations of confidentiality no less onerous than those in this clause; or
- (c) where the information is already in the public domain other than as a result of a breach of this clause.

9.2 The obligations under this clause 9 survive termination of this Agreement for a period of three (3) years.

10. INDEMNITIES

10.1 The Distributor indemnifies TFK against all Liabilities which TFK suffers and Claims made by any third party against TFK in relation to, by reason of, or in connection with:

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- (a) a breach of, or inaccuracy in, any of the Distributor's warranties, Responsibilities or representations in this Agreement, or any failure by the Distributor or any sub-licensee to fulfil its duties or Responsibilities under this Agreement or any sub-licence agreement;
- (b) the Distributor's breach of laws and regulatory compliance in the Territory, including failure to procure or maintain certifications, import licences and local regulatory approvals; or
- (c) any modifications to the Products made by or on behalf of the Distributor without TFK's written consent.

10.2 TFK indemnifies the Distributor against all Liabilities which the Distributor suffers and Claims made by any third party against the Distributor in relation to, by reason of, or in connection with:

- (a) a breach of, or inaccuracy in, any of TFK's warranties or Responsibilities in this Agreement; or
- (b) any defect in the Products attributable to TFK's manufacturing process, provided that the Products have not been modified by or on behalf of the Distributor.

10.3 Each party's liability to indemnify the other under this clause 10 is reduced to the extent that the claiming party's own acts or omissions contributed to the Loss or Claim.

11. LIMITATIONS OF LIABILITY

11.1 To the full extent permitted by law, except as expressly provided to the contrary in this Agreement, TFK expressly excludes all:

- (a) warranties, conditions and representations, whether express or implied, relating to the Ordered Stock, including without limitation any warranties or representations relating to performance, quality or fitness for any use other than as specified in any product literature or other publication issued to the Distributor by TFK; and
- (b) liability for any indirect, consequential, special or incidental loss or damage, loss of profits, interest, business revenue or savings, loss of investment in development or loss of contracts, whether arising in contract, tort, statute or otherwise, save that this exclusion shall not apply to a party's liability under its indemnity obligations in clause 10.

11.2 TFK's maximum aggregate liability (including the liability of its officers, directors and employees) on all Claims of any kind, whether based on contract, tort, warranty, indemnity or otherwise, arising from this Agreement shall not exceed a sum equivalent to the total invoiced value of the Products invoiced in the **twelve (12) months** immediately preceding the event giving rise to the Claim.

11.3 TFK's liability for breach of implied warranties in relation to the Ordered Stock which cannot be excluded by law is, at TFK's option, limited to:

- (a) replacement of the Ordered Stock or the supply of equivalent goods manufactured by TFK;
- (b) rectification of the Ordered Stock (if rectification is possible);
- (c) payment of the cost of replacing the Ordered Stock or of acquiring equivalent goods manufactured by TFK;
or
- (d) refund of any amounts paid by the Distributor in respect of the Ordered Stock.

11.4 In the event that TFK and the Distributor agree in writing that a product recall is necessary in the Territory, the costs of such product recall will be apportioned as follows:

- (a) TFK will provide, at its expense (including all associated freight costs), sufficient replacement product to one single location per sovereign country within the Territory affected, as nominated by the Distributor, to facilitate the replacement of any faulty Products;
- (b) the Distributor will provide, at its expense, all other things necessary to facilitate the product recall, including but not limited to labour costs, transport costs from the single location, management and promotional costs, or any other costs associated with a product recall; and

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(c) TFK and the Distributor agree to cooperate in the event of a product recall, to minimise damage to the brand and any inconvenience to customers.

11.5 No Guarantee. TFK provides no guarantees in respect of the Products where:

- (a) the defect arises from materials, designs or modifications supplied or requested by the Distributor or customer;
- (b) the defect arises from ordinary wear and tear, neglect or misuse by the customer, accident, lack of care, insufficient maintenance or improper use of the Product;
- (c) the defect arises from any act, matter or thing beyond the control of TFK;
- (d) the Distributor or customer has in any way modified or made an unauthorised repair to the Product; or
- (e) the Distributor or customer has not complied with any written or oral instructions concerning the operation and maintenance of the Product.

11.6 Non-Company Parts. Those parts and components which form part of the Product which are not manufactured by TFK shall be guaranteed by TFK only to the extent that they are guaranteed by the supplier or manufacturer of them. The period of such guarantee shall not exceed the warranty period specified in the Reference Schedule.

11.7 Nothing in this Agreement excludes or limits liability for death or personal injury caused by negligence, fraud, or any liability which cannot be excluded or limited by applicable law.

12. FORCE MAJEURE

12.1 Neither party shall be liable for any failure or delay in performing its obligations under this Agreement to the extent that such failure or delay is caused by a Force Majeure Event, provided that the affected party:

- (a) promptly notifies the other party in writing of the nature and expected duration of the Force Majeure Event;
- (b) takes all reasonable steps to mitigate the effect of the Force Majeure Event on the performance of its obligations; and
- (c) resumes performance of its obligations as soon as reasonably practicable after the Force Majeure Event ceases.

12.2 If a Force Majeure Event continues for more than one hundred and twenty (120) consecutive days, either party may terminate this Agreement by giving thirty (30) days' written notice to the other party.

13. TERM AND TERMINATION

13.1 This Agreement commences on the Commencement Date and continues for an initial term of one (1) year ("Initial Term"), unless terminated earlier in accordance with this clause.

13.2 Upon expiry of the Initial Term, this Agreement shall automatically renew for successive periods of one (1) year each, unless either party gives the other not less than ninety (90) days' written notice prior to the expiry of the then-current term.

13.3 Either party may terminate this Agreement by written notice if the other party:

- (a) commits a material breach and fails to remedy such breach within thirty (30) days of receiving written notice specifying the breach; or
- (b) suffers an Insolvency Event.

13.4 TFK may terminate this Agreement immediately by written notice if the Distributor: (a)

commits a material breach of clause 7 (Intellectual Property) or clause 9 (Confidentiality); or

(b) undergoes a Change in Control without TFK's prior written consent.

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13.5 Upon termination or expiry of this Agreement:

- (a) all outstanding Invoices become immediately due and payable;
- (b) the Distributor shall immediately cease using TFK's trade marks, branding and Rights;
- (c) the Distributor may sell remaining Stock for a period of ninety (90) days at prices agreed with TFK, after which any unsold Stock shall be returned to TFK at the Distributor's cost or, at TFK's election, destroyed by the Distributor with written confirmation of destruction; and
- (d) each party shall promptly return or destroy all Confidential Information of the other party in its possession.

14. DISPUTE RESOLUTION

14.1 If a Dispute arises, a party must not commence court or arbitration proceedings (except proceedings seeking urgent interlocutory relief) unless it has first complied with this clause.

14.2 The party claiming a Dispute exists must give written notice to the other party specifying the nature of the Dispute ("Dispute Notice").

14.3 Within fourteen (14) days of receipt of a Dispute Notice, the senior management representatives of each party shall meet (in person or by videoconference) and use their best endeavours to resolve the Dispute.

14.4 If the Dispute is not resolved within thirty (30) days of the Dispute Notice, either party may refer the Dispute to mediation administered by the Australian Centre for International Commercial Arbitration (ACICA) in accordance with its mediation rules.

14.5 If the Dispute is not resolved within sixty (60) days of the Dispute Notice (or such longer period as the parties agree in writing), either party may refer the Dispute to arbitration administered by ACICA in accordance with the ACICA Arbitration Rules. The seat of the arbitration shall be Brisbane, Queensland. The language of the arbitration shall be English. The tribunal shall consist of a single arbitrator.

14.6 Nothing in this clause prevents a party from seeking urgent injunctive or interlocutory relief from a court of competent jurisdiction.

15. GOVERNING LAW AND JURISDICTION

15.1 This Agreement is governed by and construed in accordance with the laws of Queensland, Australia.

15.2 The United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded from this Agreement.

15.3 Subject to clause 14, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland, Australia. Each party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim that any proceedings have been brought in an inconvenient forum, if that venue falls within Queensland.

15.4 Nothing in this Agreement shall restrict TFK from seeking urgent injunctive or other equitable relief in any court of competent jurisdiction in addition to any other rights and remedies at law.

16. MISCELLANEOUS

16.1 No Representations. The parties acknowledge that no representations have been made by TFK in connection with the Products or Rights other than as set forth in this Agreement.

16.2 Costs. Each party is responsible for its own costs in respect of the preparation, execution and operation of this Agreement.

16.3 Severability. If anything in this Agreement is or is determined to be unenforceable, illegal, voidable or void in a jurisdiction, then that provision is to be read down, if possible, so as to be valid and enforceable, and otherwise shall be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

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16.4 Further Assurances. Each party will execute such documents and do all acts and things as are reasonably necessary to give full effect to this Agreement.

16.5 Electronic Execution. The parties agree that this Agreement may be executed electronically if both parties consent to that electronic execution. Execution by electronic signature is valid and binding.

16.6 Survival. The following clauses shall survive termination or expiry of this Agreement: clause 7 (Intellectual Property), clause 7.5 (Developments), clause 9 (Confidentiality), clause 10 (Indemnities), clause 11 (Limitations of Liability), and clause 14 (Dispute Resolution). The Distributor shall ensure compliance with the terms of this Agreement in the sale of any remaining Stock following termination. All payment obligations shall survive termination.

16.7 Entire Agreement. This Agreement, inclusive of the Background, these General Conditions, the Reference Schedule and the Schedules, constitutes the entire agreement between the parties relative to its subject matter and supersedes all prior understandings, agreements or representations.

16.8 Amendment. No amendment to this Agreement shall be effective unless made in writing and signed by both parties.

16.9 Waiver. A failure or delay by a party in exercising any right under this Agreement does not operate as a waiver of that right.

16.10 Assignment. Neither party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld.

DEFINITIONS

Definitions. In this Agreement the following capitalised terms shall be given the corresponding meaning, or the meaning provided in the Reference Schedule, unless the context requires otherwise:

Agreement	this agreement between TFK and the Distributor including the clauses of this document, its schedules, appendices and Reference Schedule and any other agreement or deed entered into between the parties in order to give effect to this agreement.
Appointment	that appointment to conduct the Distribution Operation in the Territory to the Target Demographic for the Term; and "Appoint" will have a corresponding meaning.
Brand	each of those Trade Marks, trade dress, trade nominations and other such names, marks, styles and symbols Developed or otherwise acquired by TFK, which are used as part of the Business, which, although subject to variation by TFK, are first set out in the Style Guide.
Business	each and every one of those business activities for the research, development, manufacturing, licensing and commercialisation of the Products and the Rights.
Business Day	a day (other than a Saturday, Sunday or public holiday) on which banks are open for general business in both Brisbane, Queensland, Australia and the principal commercial city of the Territory.
Change in Control	means any change in: (a) the person who has the possession, directly or indirectly, of the power to determine financial or operating policies of a contracting entity, control the governance of a contracting entity, or control the casting of more than one half of the maximum number of votes that may be cast at a general meeting of a contracting entity, regardless of whether the power is in writing or not, expressed or implied, formal or informal, or arises by means of trusts, agreements, arrangements, understandings, practices or otherwise; or (b) key person, including a change in the chief executive officer or chief operating officer.

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Claims	includes a notice, demand, action, cause of action, proceeding, litigation, arbitration, investigation, verdict, judgement, debt due, or Liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or under the provisions of any statute (except for those non-excludable provisions under the Australian Consumer Law), award, order or determination, whether involving a third party or a party to this Agreement, and whether or not known at the date of this Agreement.
Commencement Date	that date nominated in the Reference Schedule for the start of the Term.
Confidential Information	any of the following which is not in the public domain other than due to a breach by a party of this Agreement: (a) the composition and design of the Products; (b) any FAQ, wiki, portal or collection of information compiled for the Distributor to assist in the conduct of the Distribution Operation; (c) the nature and extent of the Rights or Developments; (d) Materials created in respect of the Development, use or proposed use of the Rights; (e) any information about the Business or the Distribution Operation including but not limited to the size of the business, supply chain, operations or design of this Agreement; (f) any information which by its very nature might reasonably be understood to have been Developed or disclosed in circumstances of confidence; (g) any information which has been specifically designated by TFK as confidential; (h) all databases, source codes, methodologies, manuals, artwork, advertising manuals, trade secrets and all financial, accounting, marketing and technical information, customer and supplier lists, know-how, technology, operating procedures and other information used by or relating to the Business; (i) all notes and reports incorporating or derived from information referred to above; and (j) all copies of the information, notes and reports referred to above.
Copyright	those rights of copyright under the Commonwealth Copyright Act 1968 (Cth) in respect of the Material and other rights of copyright throughout the world.
Delivery Point	the place of delivery nominated by the Distributor in a Purchase Order or as otherwise agreed between the parties in writing.
Design Rights	each and every one of those rights comprised in the definition of a registered design in the Designs Act 2003 (Cth) and granted in relation to Products created for the Business, or otherwise during the Appointment, together with all rights of registered design under the laws enforced in any other part of the world.
Developments	means any improvement, adaptation, translation or modification to the Rights or any invention, discovery, thing, method or approach that can be adapted to the Products or the Business which would make it cheaper, more effective, in any way easier to access, more useful or valuable, or in any way preferable as a commercial article, system or process in any part of the world, which is developed or acquired by or on behalf of TFK or the Distributor after the date of this Agreement; and "Develop" will have a corresponding meaning.
Dispute	a dispute arising out of or relating to this Agreement, including without limitation a dispute about the breach, termination, validity or subject matter of this Agreement, or a claim in equity or in tort relating to the performance or non-performance of this Agreement.
Distribution Operation	each and every one of those business activities for the Exploitation under the Appointment and distribution of the Products under the Appointment.

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Duty	means any stamp, transaction or registration duty or similar charge imposed by any governmental agency and includes, but is not limited to, any interest, fine, penalty, charge or other amount imposed in respect of the above, but excludes any Tax; and "Duties" will have a corresponding meaning.
Exploitation	those best endeavours to do and not to omit to do those activities which directly or indirectly carry out or effect the promotion and sale of the Products within the Territory
	and in accordance with this Agreement; and "Exploit" will have a corresponding meaning.
Force Majeure Event	means a circumstance beyond the reasonable control of the parties which results in a party being unable to observe or perform on time an obligation under this Agreement. Such circumstances include, but are not limited to, acts of God, riots, interference by civil or military authorities, compliance with applicable laws or governmental orders, delays in transit, failures of communication facilities, failure of sources of raw materials, strikes, pandemics and natural disasters.
Future Rights	jointly and severally all those rights (statutory and otherwise) comprised in Technical Information and the definition of Patent Rights, Design Rights, Trade Mark Rights or Copyright and which may be granted or acquired in relation to Products or the Business and which are Developed in the future by or on behalf of TFK or the Distributor and in respect of all media either in existence now or in the future.
Initial Stock	that initial quantity of Products specified in the Reference Schedule which the Distributor is required to order upon execution of this Agreement in accordance with clause 2.3.
Insolvency Event	in relation to an entity: (a) a receiver, receiver and manager, administrator, provisional liquidator, trustee or similar official is appointed in respect of the entity or any of its assets; (b) the entity suspends payment of its debts generally; (c) the entity is or becomes unable to pay its debts as and when they become due or is otherwise insolvent within the meaning of the Corporations Act 2001 (Cth); (d) the entity enters into or resolves to enter into any arrangement or compromise with its creditors or any class of them; (e) an application or order is made for the winding up or dissolution of the entity or a resolution is passed for the same, otherwise than for the purpose of a solvent reconstruction; or (f) any analogous event under the laws of the Territory.
Invoices	each of those invoices raised from time to time by TFK for a Purchase Order.
Liabilities	include all liabilities (whether actual, contingent or prospective), losses, damages, costs and expenses (including legal costs and expenses) of whatever description.
Licence	means a limited, non-exclusive, non-transferable, revocable licence granted by TFK to the Distributor to Exploit the Rights in accordance with this Agreement.
Material	means all documents associated with the Products, the Business or the Rights including but not limited to data, client lists, supplier lists, formulae, recipes, notes, correspondence, drawings, diagrams, photographs, specifications and software.
Nominated Bank Account	each of those bank accounts provided by each party to the other for transactions pursuant to this Agreement.

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Notice	includes a notice, demand, consent, approval or communication under this Agreement and must be in writing, in English and signed by a person duly authorised by the sender. A Notice may be hand delivered, sent by pre-paid express post or sent by email to the recipient's address. A Notice takes effect when taken to be received (or at a later time specified in it), and is taken to be received: if hand delivered, on delivery; if sent by pre-paid express post, four (4) Business Days after the date of posting (or seven (7) Business Days if to or from a place outside Australia); or if sent by email, when received by the recipient's electronic information system. If delivery or receipt is not on a Business Day or is after 5:00pm on a Business Day, the Notice is taken to be received at 9:00am on the next Business Day.
Ordered Stock	each of those Products ordered through a Purchase Order during the Appointment.
Patent Rights	means each and every one of those rights comprised in the definition of "patent" or "letters patent" in the Patents Act 1990 (Cth) (or similar laws throughout the world) in respect of the Products or the Business.
Personal Information	has the meaning given by the Privacy Act 1988 (Cth).
Price List	that price list nominated in the Reference Schedule which sets out the purchase price of Products from TFK.
Products	that range of product created by TFK and nominated in the Reference Schedule or as varied from time to time by TFK, which may be purchased, held in Stock and offered for sale by the Distributor during the Appointment; and "Product" will have a corresponding meaning.
Purchase Orders	each of those purchase orders submitted by the Distributor to TFK in accordance with this Agreement.
Reference Schedule	that Reference Schedule of this Agreement as set out at the start of this Agreement.
Responsibilities	those obligations undertaken by the respective party as set out in the Schedules.
Rights	jointly and severally the Future Rights, Patent Rights, Copyright, Design Rights, Trade Mark Rights, the Technical Information, any Developments and all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights.
Stock	Products purchased to be held in storage by the Distributor for sale to customers as part of the Distribution Operation.
Style Guide	that brand style guide provided by TFK to the Distributor which may be varied from time to time by TFK.
Target Demographic	means that identifiable market, industry, area, section or group where the Distributor is Appointed to conduct the Distribution Operation as set out in the Reference Schedule.

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Tax	means any present or future tax, levy, charge, impost, fee, deduction, goods and services tax, compulsory loan or withholding of whatever kind and whether direct or indirect, which is assessed, levied, imposed or collected by any governmental agency, including income tax, capital gains tax, land tax, sales tax, payroll tax, fringe benefits tax, withholding tax, value added tax (VAT) and municipal rates (and any interest, fine, penalty, charge, fee or other amount imposed on or in respect of any of the above) but excludes any Duty.
Technical Information	all information, advice and know-how of a proprietary nature in relation to the Products or the Business, which is confidential to TFK prior to, after or during the Term.
Term	that period of time from the Commencement Date until termination in accordance with clause 13 or expiry in accordance with the Reference Schedule.
Territory	that territory, jurisdiction or boundary where the Distributor is Appointed to conduct the Distribution Operation as set out in the Reference Schedule.
Trade Mark Rights	each and every one of those rights in: (a) the Brand; (b) each and every trade mark registered by TFK; (c) each and every business name or trading name registered or capable of being registered in relation to the Products or the Business pursuant to the Business Names Registration Act 2011 (Cth) or similar laws throughout the world; and (d) the brand or trade nominations of TFK and such other names, marks, styles and symbols Developed or acquired by TFK or the Distributor, which might describe the Products or the Business and are capable of registration or protection under the Trade Marks Act 1995 (Cth), the Corporations Act 2001 (Cth), the Business Names Registration Act 2011 (Cth) or other laws throughout the world.

INTERPRETATION

In this Agreement, unless the contrary intention appears: (a) the text of this Agreement is written in the English language and any difficulties or uncertainties in interpretation arising shall be resolved solely by reference to the English language;

- (b) headings are for ease of reference only and do not affect the meaning of this Agreement;
- (c) the singular includes the plural and vice versa and words importing a gender include other genders;
- (d) words used in this Agreement and defined in the definitions schedule will have the meaning set out therein, and other grammatical forms of defined words or expressions have corresponding meanings;
- (e) a reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of, or schedule or annexure to, this Agreement and a reference to this Agreement includes any schedules and annexures;
- (f) a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (g) a reference to a right includes a benefit, remedy, authority, discretion and power;
- (h) a reference to a party includes its executors, administrators, successors and permitted assigns and, if more than one, includes those persons jointly and each of them severally;
- (i) words and expressions importing natural persons include partnerships, bodies corporate, associations (whether incorporated or not), firms, joint ventures, trusts, authorities, governments and governmental, semi-governmental and local authorities and agencies;
- (j) words and expressions defined in the Corporations Act 2001 (Cth) as at the date of this Agreement have the meanings given to them in that Act at that date;
- (k) any provision stating that a party "must" do or "must not" do something should be read as an agreement by that party to do or not do the matter or thing referred to;
- (l) no provision shall be construed against a party merely because that party was responsible for drafting it;

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- (m) each clause is not, except where expressly provided, limited in meaning or effect by any other clause;
- (n) a reference to writing includes typewriting, printing, lithography, photography and any other method of representing or reproducing words, figures or symbols in a permanent and visible form;
- (o) any agreement, covenant, obligation, representation, undertaking, indemnity, guarantee or warranty entered into by a party for or with another person binds them jointly and severally; and
- (p) references to “includes” or “including” are illustrative only and shall not be construed to limit the effect of the clause or this Agreement to the examples given.

16.11 Website Policies and Electronic Publications

The Distributor acknowledges and agrees that TFK may from time to time publish or update policies, technical documentation, installation manuals, operational procedures, warranty processes, branding requirements, software terms, compliance notices, safety notices, technical bulletins and distributor requirements on its official websites or electronic portals.

The Distributor agrees to comply with all such documents, policies and requirements as updated from time to time, provided that such updates are reasonably related to the Products, the Distribution Operation or compliance obligations under this Agreement.

The Distributor acknowledges that publication of such documents on TFK’s official website or distributor portal shall constitute sufficient notice unless otherwise required by law.