A G E N C Y C O N T R A C T

The following contract is concluded between

the company \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, ("Principal")

and the commercial agent \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, ("Commercial Agent").

**1. Extent of representation**

*[alternative 1]*

1.1 The Principal entrusts the Commercial Agent with the sole representation of all articles that are produced in the present and in the future by the Principal:

for the territory \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ .

*[alternative 2]*

1.1 The Principal entrusts the Commercial Agent with the sole representation of the following articles:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

 for the territory, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Territory).

1.2 The sole representation covers all customers located in the Territory in the present and in the future. Should the Principal establish his own production or distribution facilities or subsidiaries in the Territory, he will submit these facilities and subsidiaries to the provisions of this agreement of exclusive agency.

**2. Duties and obligations of the Principal**

2.1 The Principal shall support the Commercial Agent in the performance of his activities to the best of his ability. In doing so he shall, in particular, make the entire required documentation, such as samples, price lists, order forms, conditions, general terms and conditions etc. available free of charge as well as supply all the necessary information without delay.

2.2 The Principal shall also announce any changes of the prices to the Commercial Agent at least \_\_\_\_\_\_\_\_ month(s) prior to the effective date.

2.3 In case the Principal does not accept an order supplied by the Commercial Agent, he shall be required to forward a written notification of rejection within 7 calendar days, otherwise the order shall be deemed as accepted.

2.4 The Principal shall also immediately notify the Commercial Agent if it becomes obvious that the Principal shall be able to fulfil the orders only to a considerably lesser extent than what might have been expected by the Commercial Agent due to the circumstances, most particularly the volume of business so far, or the information supplied by the Principal. In the case of non-provided notification or late notification by the Principal the Commercial Agent shall be, in any case, entitled to a commission for the solicited orders, even if they are not accepted by the Principal.

2.5 The Principal shall immediately inform (by sending a copy) the Commercial Agent about any correspondence with customers as well as confirmations of orders, invoices, deliveries, etc. Additionally the Principal shall inform the Commercial Agent about any correspondence with third parties to the extent such correspondence is related to the Territory.

2.6 The Principal shall immediately inform the Commercial Agent if a customer fails to meet an agreed credit term.

2.7 The place of fulfilment from the business activity is the company headquarters of the Commercial Agent.

**3. Duties and obligations of the Commercial Agent**

3.1 In the performance of his activities as agent the Commercial Agent shall be committed to attend to the Principal's interests with the care of a prudent businessman.

3.2 The Commercial Agent shall inform the Principal of any circumstances, coming to his knowledge, which might challenge the creditworthiness of a customer. In case the Principal claims any infringement of this duty, the burden of proof shall rest with the Principal. On no account, the Commercial Agent will be held liable for any case of default of payment of invoices or insolvency of the customer.

3.3 The Commercial Agent may avail himself of the services of appropriate persons for the performance of his duties.

**4. Established customers**

4.1 The Principal shall supply the Commercial Agent with a list of the names and the respective annual sales of all of the customers in the territory with whom business relations already exist (established customers) for the purpose of further business development. This list is considered as a part of this contract. Customers not mentioned in this list are not deemed established customers of the Principal.

4.2 If the Agent has substantially increased the sales of an established customer, this customer will be considered a new customer just like newly introduced customers. This shall apply no matter if the increased sales result from products that were being sold to the customer at the time of appointment of the Commercial Agent or from new products sold by the Commercial Agent at a later date.

**5. Exemption from liability**

5.1 The Principal represents and warrants to comply with all provisions of Consumer Legislation in force in the area covered by this agreement regulating characteristics, labelling and packaging of goods. He equally represents and warrants that the production and distribution of the products covered by the provisions of this agreement does not infringe upon third party’s licensed patent rights, rights related to designs, trademarks and copyrights.

5.2 The Principal will indemnify and hold harmless the Commercial Agent from and against any liability resulting from all possible infringements of licensed patent rights, rights related to the protection of designs and trademarks and copyrights. Should a third party lodge a claim against the Commercial Agent alleging these above-mentioned infringements, all necessary costs for legal advise, costs of the proceedings and all other necessary costs and expenses caused by or arising out of the defence against such a claim will be charged on the Principal. The Principal is obliged to hand over and to provide without delay and free of charge all documents and information necessary for the defence against all such claims. The same is to be applied if claims are lodged against the Commercial Agent alleging defects of products manufactured or distributed by the Principal (product liability).

**6. Reimbursement of expenses**

6.1 The Commercial Agent is entitled to the reimbursement of all expenses that he incurs by order of the Principal, such as postage, telegrams, long-distance calls, sample bags, etc.

6.2 Furthermore, it is agreed that the following costs shall also be reimbursed by the Principal:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ .

6.3 The Commercial Agent shall receive a fixed expense allowance of the amount of EURO \_\_\_\_\_\_\_\_\_ per month for further expenses incurred on behalf of the Principal.

**7. Commission**

7.1 The Commercial Agent shall receive from the Principal, for all direct and indirect business transactions, a commission of \_\_\_\_\_\_\_\_ %, in words \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ percent, plus the respectively valid turnover tax (value added tax) of the net amount of the order before the deduction of any possible discounts.

7.2 Entitlement to commission accrues as soon as a transaction solicited by the Commercial Agent becomes legally effective, at any rate, however, at the moment the Principal has effected the transaction or should have effected the same pursuant to provisions of the contract or at the moment the customer has effected the transaction by fulfilling his obligation.

**8. Calculation of the commission**

8.1 The Principal shall submit a statement of account listing entitlements to commission originating pursuant to the provisions of the aforesaid clause of this agreement to the Commercial Agent by the last day of the subsequent month at the latest. A due abstract of accounts (that includes customer’s name and address, date, object and amount of performance and invoice, price per unit and the total amount of price, actually charged price and payments received) and copies of the respective invoices have to be attached to the statement of account.

8.2 The amount of commission the Commercial Agent is entitled to as per statement of account is payable immediately. Any excess or short commissions shall be taken into consideration in the subsequent statement calculation. Rebates, prompt payments discounts and other price reductions granted after the conclusion of the transaction shall not be taken into consideration in the statement of account listing entitlements to commission. Place of performance shall be the registered office of the Commercial Agent.

8.3 Entitlement to commission does not accrue if and to the extent it is definite, that the contract between the customer and the Principal will not be executed, this not being due to circumstances for which the Principal is to be held responsible. However, in case of default of payment by the customer, the Principal has to prove by effectively issuing execution that he has taken all reasonable steps.

**9. Duration and termination of contract**

9.1 This agreement will come into force on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and shall remain in effect for an undetermined period of time.

9.2 It may be terminated by one of the two parties with 1 month’s notice in the first year of the contract; after the beginning of the second year with at least 2 months’ notice, after the beginning of the third year with at least 3 months’ notice, after the beginning of the fourth year with at least 4 months’ notice, after the beginning of the fifth year with at least 5 months’ notice and after the beginning of the sixth year as well as the following years with at least 6 months’ notice.

Termination of the contract has to be effected by registered letter.

9.3 Both parties have the right to immediately terminate the contract for important reasons according to
§ 22 HVertrG 1993.

**10. Right to compensation**

10.1 In the case of a termination by the Principal, or in the case of other reasons for such a right stipulated by the Austrian Law on Commercial Agents (HVertrG 1993), the Commercial Agent shall be entitled to a compensation of the amount of one annual commission (average amount of the five preceding years).

**11. Disputes arising from the contract**

11.1 All disputes arising out of this agreement or related to its violation, termination or nullity including the Validity of this clause can only be filed at the competent court at the seat or the office of the Commercial Agent.

11.2 If the Principal is not based in the EU, Iceland, Norway or Switzerland, notwithstanding 11.1, the following applies: All disputes arising out of this agreement or related to its violation, termination or nullity including the Validity of this clause shall be finally settled under the Rules of Arbitration and Consiliation of the International Arbitral Center of the Austrian Federal Economic Chamber (Wirtschaftskammer Österreich) in Vienna (Vienna Rules) by one arbitrators in accordance with these rules. The place of arbitration shall be Vienna. The language to be used in the arbitral proceedings shall be English.

11.3 This agreement shall be governed by and construed in accordance with the laws of the Republic of Austria. The application of the Austrian Private International Law (IPRG) or other rules on conflict of laws shall be excluded. The applicability of the UN Convention on the International Sale of Goods ("UNCISG", "Vienna Convention") is expressly excluded.

**12. Modifications and amendments**

12.1 This agreement may be amended or modified only by written instrument executed by both parties which expressly states that it intends to constitute an amendment to this agreement. This also applies to a waiver in form of a written agreement. Side agreements, if any, are set aside.

12.2 Invalidity of individual stipulations of this contract due to whatever reasons shall not affect the validity of the remaining stipulations of this contract. The invalid stipulation shall be replaced by a regulation coming as close as possible to the purpose of the contract and the interests of both parties.

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| Place, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Place, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  |
| Date, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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| Signature of the Commercial Agent | Signature of the Principal |