
Date _____, 2017

DISTRIBUTION AGREEMENT

between

Xuzhou Smart New Power Technology Co., Ltd

and

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THIS AGREEMENT is dated [DATE]

PARTIES

- (1) **Xuzhou Smart New Power Technology Co., Ltd**, incorporated and registered in China with company number [NUMBER] whose registered office is at Xuzhoucity, 221006 (**Supplier**).
- (2) , incorporated and registered in PERU with company number [NUMBER] whose registered office is at (**Distributor**).

BACKGROUND

The Supplier wishes to appoint the Distributor as its exclusive distributor for the promotion and sale of the Products within the Territory (as defined below), and the Distributor wishes to promote and sell the Products within the Territory on the terms of this agreement.

AGREED TERMS

1 DEFINITIONS AND INTERPRETATION

The definitions and rules of interpretation in this clause apply in this agreement [and the Background].

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in ____ when banks are open for business.

Commencement Date: [DATE].

Control: the ability to direct the affairs of another person, whether by virtue of the ownership of shares, contract or otherwise.

Force Majeure Event: has the meaning given in clause 18

Minimum Quantity: the quantities of the Products specified in Schedule 3 for each Year, or such other quantities as may be agreed in writing between the parties in relation to each Year.

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Products: the products of the type and specification manufactured and packed under the Trade Marks and listed in Schedule 1 [and any other products developed by the Supplier and which the Supplier may permit the Distributor, by express notice in writing, to distribute in the Territory].

Term: the term of this agreement, as determined in accordance with clause 15.

Territory: The Republic of _____.

Trade Marks: the trade mark registrations and applications listed in Schedule 2 [and any further trade marks that the Supplier may, by express notice in writing, permit or procure permission for the Distributor to use in the Territory in respect of the Products].

Year: the period of 12 months from the Commencement Date and each consecutive period of 12 months thereafter during the Term.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality)
- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to any party shall include that party's personal representatives, successors or permitted assigns.

- 1.9 A reference to a statute or statutory provision is a reference to it it is in force as at the date of this agreement.
- 1.10 A reference to writing or written includes fax and email .
- 1.11 Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to what most nearly approximates to the English legal term in that jurisdiction.
- 1.12 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.13 References to clauses and Schedules are to the clauses and Schedules of this agreement.
- 1.14 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

2 APPOINTMENT

- 2.1 The Supplier appoints the Distributor as its exclusive distributor to import, market and distribute the Products described in Schedule 1 in the Territory, on the terms of this agreement.
- 2.2 The Distributor shall purchase the Products only from the Supplier, and shall not, during the Term of the Agreement, distribute or manufacture any goods which compete with the Products.
- 2.3 The Distributor shall actively approaching or soliciting customers, including, but not limited to, the following actions:visits, direct mail, advertising in media, on the internet or other promotions;online advertisements and other efforts
- 2.4 The Distributor shall not:

- 2.4.1 represent itself as an agent of the Supplier for any purpose; or
 - 2.4.2 pledge the Supplier's credit; or
 - 2.4.3 give any condition or warranty on the Supplier's behalf; or
 - 2.4.4 make any representation on the Supplier's behalf;
 - 2.4.5 commit the Supplier to any contracts; or
 - 2.4.6 otherwise incur any liability for or on behalf of the Supplier.
- 2.5 The Distributor shall not, without the Supplier's prior written consent, make any promises or guarantees about the Products beyond those contained in the promotional material supplied by the Supplier.

3 DISTRIBUTOR'S UNDERTAKINGS

- 3.1 The Distributor undertakes and agrees with the Supplier that at all times during the Term it will:
- 3.1.1 use its best endeavours to promote the distribution and sale of the Products in the Territory;
 - 3.1.2 employ a sufficient number of suitably qualified personnel to ensure the proper fulfilment of the Distributor's obligations under this agreement;
 - 3.1.3 make in each year a minimum volume of sales of the Products, submitting written reports at regular intervals to the Supplier, showing details of sales;
 - 3.1.4 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;
 - 3.1.5 keep full and proper books of account and records showing clearly all enquiries, quotations, transactions and proceedings relating to the Products;

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- 3.1.6 allow the Supplier, on reasonable notice, access to its accounts and records relating to the Products for inspection;
- 3.1.7 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;
- 3.1.8 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 the Supplier on demand full particulars of that insurance and the receipt for the then current premium;
- 3.1.9 provide to customers an after-sale repair and maintenance service in respect of the Products [in accordance with the terms of the service and maintenance manual provided by the Supplier] during the Term and for [six] months after termination, however terminated;
- 3.1.10 inform the Supplier 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 this agreement; and
- 3.1.11 to use its best endeavours to ensure that the Products are imported into the Territory with a minimum of delay and to attend to and complete in a proper and efficient manner all necessary documents and formalities in connection with such import;
- 3.1.12 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;

- 3.1.13 to pay or ensure payment on the due date to the Supplier of all sums due to the Supplier for sales of the Products;
- 3.1.14 to allow the authorised representatives of the Supplier to have access to the premises of the Distributor at all reasonable times for the purpose of inspecting the aforesaid books and records;
- 3.1.15 to send at its own expense to the premises of the Supplier or make available at the Distributor's premises at a time or times convenient to the Supplier competent employees for instruction by the Supplier in the use, installation, sale, maintenance, repair and application of the Products. If those employees leave the employment of the Distributor, or it appears that any of them will be unavailable to the Distributor for assisting it in performing its duties under this agreement for more than one month then the Distributor shall send or make available to the Supplier at its own expense one or more other competent employees for instruction; and

4 SUPPLY OF PRODUCTS

- 4.1 At the start of each year, starting from second year, the Distributor shall notify the Supplier in writing of its forecast of the quantities of each type of Product that it expects to buy from the Supplier for delivery during the ensuing 12 month period beginning on the first day of the month following the latest date for issue of that forecast. In case of modification of the forecast, a new communication shall be immediately notified from Distributor to the Supplier.
- 4.2 The Supplier undertakes to use its best endeavours to meet all orders for the Products forwarded to it by the Distributor in accordance with the Supplier's terms of delivery [to the extent the orders do not exceed the forecast for each type of Product given under clause 4.1]. The Distributor shall buy the Products for its own account for resale under this agreement.

4.3 In each Year the Distributor shall place orders with the Supplier for the Minimum Quantity for that Year as set out in Schedule 3.

4.3.1 In case the orders of year N. 1 do not reach the Minimum Quantity established in Schedule 3, the Minimum Quantity of Year N. 2 will be increased by the difference between the effective orders and the quantity foreseen in year N. 1

4.3.2 In case the orders of year N. 2 do not reach the Minimum Quantity established in Schedule 3, the Minimum Quantity of Year N. 3 will be increased by the difference between the effective orders and the quantity foreseen in year N. 2

4.3.3 In case the orders of year N. 3 do not reach the Minimum Quantity established in Schedule 3, the Supplier will have the right to terminate the Agreement, as described in Clause 15.

4.4 On giving 6 months' notice in writing to the Distributor, the Supplier may vary Schedule 1 as it thinks fit to exclude one or more of the Products from this agreement if the production of such Products is permanently discontinued for any reason.

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

5 SUPPLIER'S UNDERTAKINGS

5.1 The Supplier agrees that at all times during the Term it shall:

5.1.1 supply the Products only to the Distributor for resale in the Territory and not supply the Products to any customers in the Territory; restrict other distributors to which it sells the Products from making active sales of the type described in clause 2.3 to customers in the Territory;

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- 5.1.2 provide any information and support that may reasonably be requested by the Distributor to enable it to discharge its duties under this agreement properly and efficiently;
- 5.1.3 approve or reject any promotional information or material submitted by the Distributor within 30 days of receipt;
- 5.1.4 supply any spare parts requested by the Distributor that are required to enable it to fulfil its repair and service obligations under this agreement, subject to availability.
- 5.1.5 make reasonable commercial efforts to supply the Products to the Distributor for resale in the Territory in accordance with Distributor's forecast requirements;
- 5.1.6 to provide the Distributor with information on the advertising and promotion used by the Supplier and at the cost of the Supplier supply such quantities of promotional and advertising material as the Distributor shall reasonably request from time to time;
- 5.1.7 to inform the Distributor within one month of receipt of the Distributor's advertising and promotional programme whether it accepts the programme and the extent, if any, to which it will contribute to the costs of that programme;
- 5.1.8 to provide full training for the employees sent by the Distributor in accordance with clause 3.1.15; and
- 5.1.9 to make available to the Distributor such field sales support as the Supplier may deem necessary.

6 PRICES AND PAYMENT

- 6.1 The prices to be paid by the Distributor to the Supplier for the Products are to be the Supplier's list prices as notified to the Distributor by the Supplier from time to time. The prices applicable as at the Commencement Date are set out in Schedule 4.
- 6.2 The Supplier shall give the Distributor 90 days' notice in writing of any rises in the prices for the Products.
- 6.3 The Distributor shall pay for any and all expenses, costs and charges incurred by it in the performance of its obligations under this agreement, unless the Supplier has expressly agreed in advance in writing to pay such expenses, costs and charges.
- 6.4 The Distributor shall pay the full amount invoiced to it by the Supplier in US Dollars within 15 days of the date of invoice.
- 6.5 Neither party may withhold payment of any amount due to the other because of any set-off, counter-claim, abatement, or other similar deduction.
- 6.6 As between the Supplier 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.

7 TAXES

The Distributor shall be responsible for the collection, remittance and payment of any or all taxes, charges, levies, assessments and other fees of any kind imposed by governmental or other authority in respect of the purchase, importation, sale, lease or other distribution of the Products.

8 ADVERTISING AND PROMOTION

- 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 the Supplier's prior written consent);
- 8.1.2 submit advertising and promotion programme to the Supplier for its approval;
- 8.1.3 display advertising materials and other signs provided by the Supplier;
- 8.1.4 observe all instructions given to it by the Supplier for promotion and advertisement of the Products; and
- 8.1.5 not make any written statement as to the quality or manufacture of the Products without the prior written approval of the Supplier.

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

8.3 The Supplier shall make reasonable commercial efforts to participate with the Distributor in fairs, exhibitions and similar events in the Territory, but shall be under no obligation to do so unless such participation is agreed by the parties in writing sufficiently in advance of each event to enable proper preparation by the parties.

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 this agreement, 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 the Principal 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 the Supplier that it has informed the Supplier 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 this agreement.

9.4.2 The Supplier, in turn, warrants to the Distributor that the Products comply with the Local Regulations in force at the date of this agreement.

9.4.3 The Distributor shall give the Supplier 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, the Supplier 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 **ANTI-BRIBERY COMPLIANCE**

10.1 The Distributor shall:

10.1.1 comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption in the Territory

10.1.2 have and shall maintain in place throughout the term of this agreement its own policies and procedures to ensure compliance with the Relevant Requirements and the Relevant Policies, and will enforce them where appropriate;

10.2 The Distributor shall ensure that all of its agents, subcontractors and other members of its Group who perform services or provide goods in connection with this agreement 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 10 (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 the Supplier for any breach by such persons of any of the Relevant Terms.

10.3 Breach of this clause 10 shall be deemed a material breach under clause 15.2.2.

11 **CONDITIONS OF SALE**

The Supplier's conditions of sale in force from time to time shall apply to all sales by the Supplier to the Distributor under this agreement. The conditions of sale that apply at the Commencement Date are set out in Schedule 5. If there is any inconsistency between those conditions of sale and the terms of this agreement, the latter shall prevail.

12 **TRADE MARKS**

The Supplier hereby grants to the Distributor the exclusive right, in the Territory, to use the Trade Marks in the promotion, advertisement and sale of the Products, subject to, and for the duration of, this agreement. The Distributor acknowledges and agrees that all rights in the Trade Marks shall remain in Supplier, and that Distributor has and will acquire no right in them by virtue of the discharge of its obligations under this agreement, except for the right to use the Trade Marks as expressly provided in this agreement.

13 **PRODUCT LIABILITY AND INSURANCE**

13.1 Subject to the Distributor fulfilling all the conditions in this clause 13, the Supplier shall indemnify the Distributor against any liability incurred by the Distributor in respect of damage to property, death or personal injury arising from any fault or defect in the materials or workmanship of the Products and any reasonable costs, claims, demands and expenses arising out of or in connection with that liability (Relevant Claim), except to the extent the liability arises as a result of the action or omission of the Distributor.

- 13.2 The Distributor shall, as soon as it becomes aware of a matter which may result in a Relevant Claim:
- 13.2.1 give the Supplier written notice of the details of the matter;
 - 13.2.2 give the Supplier access to and allow copies to be taken of any materials, records or documents as the Supplier may require to take action under clause 13.2.3;
 - 13.2.3 allow the Supplier the exclusive conduct of any proceedings and take any action that the Supplier requires to defend or resist the matter, including using professional advisers nominated by the Supplier; and
 - 13.2.4 not admit liability or settle the matter without the Supplier's written consent.
- 13.3 During the Term, the Supplier shall maintain product liability insurance with a reputable insurer of no less than \$[AMOUNT] for any one occurrence and no less than \$[AMOUNT] in total in any one year for any and all liability (however arising) for a claim that the Products are faulty or defective. The Supplier shall provide a copy of the insurance policy [and proof of payment of the current premium] to the Distributor on request.
- 13.4 The Supplier shall renew the insurance for the term of this agreement and within fourteen days of each renewal shall produce to the Distributor the premium receipt for the renewal (or other evidence of the renewal satisfactory to the Distributor).
- 13.5 If the Supplier fails to effect a renewal the Distributor is entitled to effect the insurance and the Supplier shall on demand reimburse to the Distributor an amount equal to the premium for that insurance.
- 13.6 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).

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

13.8 The Distributor shall:

13.8.1 take such action, institute such proceedings and give such information and assistance as the Supplier may reasonably request to:

13.8.1.1 dispute, resist, appeal, compromise, defend, remedy or mitigate the matter; or

13.8.1.2 enforce against any person (other than the Supplier) the rights of the Distributor in relation to the matter; and

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

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

14 **LIMITATION OF LIABILITY**

14.1 Nothing in this agreement shall limit or exclude the Supplier's liability:

for any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability;

14.2 Subject to clause 14.1:

14.2.1 the Supplier shall under no circumstances whatever be liable to the Distributor, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:

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14.2.1.1 any loss of good will, profit, revenue, or anticipated savings; or

14.2.1.2 any loss that is an indirect or secondary consequence of any act or omission of the Supplier.

14.2.2 the Supplier's total liability for damage to property caused by the negligence of its employees in connection with this agreement shall be limited to **[\$2500 AMOUNT LINKED TO RELEVANT INSURANCE POLICY]** for any one event or series of connected events; and

14.2.3 the Supplier's total liability to the Distributor in respect of all other loss or damage arising under or in connection with this agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed **[\$5000 AMOUNT]** for the entire Term.

14.3 The liability of the Supplier arising out of or in connection with the supply of Products under this agreement shall be subject to the limitations of liability set out in the Supplier's conditions of sale in force from time to time. The conditions of sale that apply at the Commencement Date are set out in Schedule 7.

15 COMMENCEMENT, DURATION AND TERMINATION

15.1 This agreement shall take effect on the Commencement Date and, subject to clause 15.2, clause 15.4 and clause 18.5, shall continue in force for an initial term of 3(three)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.

15.2 Without affecting any other rights or remedies to which it may be entitled, either party may give notice in writing to the other terminating this agreement immediately if:

15.2.1 the other party fails to pay any undisputed amount due under this agreement on the due date for payment and remains in default for more than [14] days;

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- 15.2.2 the other party commits a material breach of any [material] term of this agreement and (if that breach is remediable) fails to remedy that breach within 30 days of that party being required in writing to do so;
- 15.2.3 the other party repeatedly breaches any of the terms of this agreement in a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- 15.2.4 an order is made or a resolution is passed for the winding up of the other party, or an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or such an administrator is appointed, or a receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle a court or a creditor to appoint a receiver or manager or which entitle a court to make a winding-up order, or the other party takes or suffers any similar or analogous action in consequence of debt, or an arrangement or composition is made by the other party with its creditors or an application to a court for protection from its creditors is made by the other party;
- 15.2.5 the other party, being an individual, is the subject of a bankruptcy petition or order, or dies, or, by reason of illness or incapacity (mental or physical), is incapable of managing his own affairs, or becomes a patient under any mental-health legislation;
- 15.2.6 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- 15.3 Subject to clause 4.3, the Supplier may terminate this agreement at the termination of the Term of three years, by notice in writing, if the Distributor fails to purchase the applicable Minimum Quantity in any Year, as described in clause 4.3.1, 4.3.2, and 4.3.3; prior to the Term of three years, if in any Year the Distributor fails to purchase the Minimum Quantity, it may carry forward any excess purchases over the Minimum Quantity made in

the previous Year to make up the difference between the actual quantity purchased and the Minimum Quantity.

- 15.4 The Supplier may terminate this agreement immediately by notice in writing if the Distributor is in breach of any of its compliance obligations under clause 9 or clause 10.

16 CONSEQUENCES OF TERMINATION

- 16.1 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination of this agreement shall remain in full force and effect.]

- 16.2 Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination , including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination .

- 16.3 On termination:

16.3.1 the Supplier shall have the option to buy from the Distributor any stocks of the Products at the same price the Distributor paid for them. To exercise the option, the Supplier must give notice to the Distributor within [NUMBER] days of termination, stating the quantities of Products it wishes to buy. The Distributor shall deliver such Products to the Supplier within [NUMBER] days of receiving the Supplier's notice, and the Supplier shall pay for the Products in full within 30 days of their delivery. The Supplier shall be responsible for the costs of packaging, insurance and carriage of the Products;

16.3.2 if the Supplier chooses not to exercise its option to buy back the Products under clause 16.3.1, or purchases only part of the Distributor's stocks of Products, the Distributor may for a period of 12 months following termination of this agreement, sell and distribute any stocks of the Products that it may have in store or under its control at the time. At the end of this period the Distributor

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shall return all remaining stocks of the Products to the Supplier at the the same price the Distributor paid for them, or dispose of the stocks as the Supplier directs;

16.3.3 if the Supplier chooses to buy back the Products under clause 16.3.1, or when the 12 month period under clause 16.3.2 expires, the Distributor shall at the Supplier's option promptly destroy or return all samples, technical pamphlets, catalogues, advertising materials, specifications and other materials, documents or papers that relate to the Supplier's business that the Distributor may have in its possession or under its control (other than correspondence between the parties); and

16.3.4 the termination of this agreement shall not of itself make the Supplier liable to pay any compensation to the Distributor, including, compensation for loss of profits or goodwill.

16.4 Subject to clause 16.3, all other rights and licences of the Distributor under this agreement shall terminate on the termination date.

16.5 The Supplier may cancel any orders for Products placed by the Distributor before termination if delivery would fall due after termination, whether or not they have been accepted by the Supplier. The Supplier shall have no liability to the Distributor in respect of such cancelled orders.

17 CONFIDENTIALITY

17.1 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 this agreement 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.

- 17.2 Each party undertakes that it shall not at any time during this agreement and for a period of one year after termination of this agreement, disclose to any person any Confidential Information, except as provided by clause 17.3.
- 17.3 Each party may disclose the other party's confidential information:
- 17.3.1 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 this agreement (Recipient). Each party shall ensure that each Recipient complies with this clause 17; and
- 17.3.2 as may be required by law, court order or any governmental or regulatory authority.
- 17.4 The Receiving Party shall ensure that each Recipient is made aware of and complies with all the Receiving Party's obligations of confidentiality under this agreement as if the Recipient was a party to this agreement.
- 17.5 Clause 17.2, clause 17.3 do not apply to Confidential Information which:
- 17.5.1 is at the date of this agreement or at any time after the date of this agreement comes into the public domain other than through breach of this agreement by the Receiving Party or a Recipient;
- 17.5.2 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
- 17.5.3 subsequently comes lawfully into the possession of the Receiving Party from another.
- 17.6 No party shall use any other party's Confidential Information for any purpose other than to perform its obligations under this agreement.

17.7 Each party shall have in place industry-standard policies, procedures, training programmes and draft confidentiality agreements so as to ensure that its employees are able to identify and label Confidential Information and deal with it in accordance with the obligations imposed under this clause 17. Each party will upon reasonable written notice disclose to the other on a regular basis details of its policies, procedures and standard documents relating to confidentiality.

18 **FORCE MAJEURE**

18.1 Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:

18.1.1 acts of God, flood, storm, drought, earthquake or other natural disaster;

18.1.2 epidemic or pandemic;

18.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

18.1.4 nuclear, chemical or biological contamination or sonic boom;

18.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;

18.1.6 collapse of buildings, breakdown of plant or machinery, fire, explosion or accident

18.1.7 non-performance by suppliers or subcontractors (other than by companies in the same Group as the party seeking to rely on this clause)]; and

18.1.8 interruption or failure of utility service.

18.2 Provided it has complied with clause 18.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event

(Affected Party), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

18.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

18.4 The Affected Party shall:

18.4.1 as soon as reasonably practicable after the start of the Force Majeure Event[but no later than 30 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement;

18.4.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations; and

18.4.3 as soon as reasonably possible after the end of the Force Majeure Event, notify the other party that the Force Majeure Event has ended and resume performance of its obligations under this agreement.

18.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 6months, the party not affected by the Force Majeure Event may terminate this agreement by giving 90 days written notice to the Affected Party.

19 ENTIRE AGREEMENT

19.1 This agreement 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.

19.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.

20 VARIATION

Subject to clause 4.4, no amendment or variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

21 ASSIGNMENT AND OTHER DEALINGS

Assignment and other dealings prohibited with exceptions

21.1 Neither party shall assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the other party [(such consent not to be unreasonably withheld or delayed)].

21.2 Either party may, after having given prior written notice to the other party, assign or subcontract any or all of its rights and obligations under this agreement to a member of its Group [for so long as that company remains a member of the assignor's Group].

21.3 A party assigning any or all of its rights under this agreement may disclose to a proposed assignee any information in its possession that relates to this agreement or its subject matter, the negotiations relating to it and the other party which it is [reasonably] necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this clause 21.3 shall be made until notice of the identity of the proposed assignee has been given to the other party.]

21.4 Either party may subcontract or delegate in any manner any or all of its obligations under this agreement to any third party[, provided that it gives [prior] written notice of such subcontract or delegation to the other party].

22 **FREEDOM TO CONTRACT**

The parties declare that they each have the right, power and authority and have taken all action necessary to execute and deliver and to exercise their rights and perform their obligations under this agreement.

23 **WAIVER**

No failure or delay by a party to exercise any right or remedy provided under this agreement 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.

24 **SEVERANCE**

24.1 If any provision or part-provision of this agreement 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 this agreement.

24.2 If [one party gives notice to the other of the possibility that] any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

25 **NOTICES**

25.1 Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be considered for any legal effect if it is:

- 25.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 25.1.2 sent by fax to its main fax number; or
- 25.1.3 Sent by email to the most recent email address notified or used by the other party]/.

25.2 Any notice or communication shall be addressed as follows:

26 THIRD PARTY RIGHTS

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

27 NO PARTNERSHIP OR AGENCY

27.1 Nothing in this agreement 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.

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

28 ANNOUNCEMENTS

No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant

securities exchange), any court or other authority of competent jurisdiction.

29 CONFLICT

If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.

30 RIGHTS AND REMEDIES

[Except as expressly provided in this agreement, the OR The] rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

31 FURTHER ASSURANCE

[At its own expense, each OR Each] party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, [promptly] execute and deliver such documents and perform such acts as may [reasonably] be required for the purpose of giving full effect to this agreement.

32 SET-OFF

All amounts due under this agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

33 INTEREST

33.1 If a party fails to make any payment due to [the OR any] other party under this agreement by the due date for payment, then[, without limiting the other party's remedies under [TERMINATION CLAUSE],] the defaulting party shall pay interest on the overdue amount at the rate of [NUMBER5]% per annum above [FULL NAME OF BANK]'s base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount.

33.2 [In relation to payments disputed in good faith, interest under this clause is payable only after the dispute is resolved, on sums found or agreed to be due, from [the due date OR [NUMBER] days after the dispute is resolved] until payment.]

34 GOVERNING LAW

This agreement 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 PERU .

35 JURISDICTION

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

36 LANGUAGE

36.1 This agreement is drafted in the English language. If this agreement is translated into any other language, the English language text shall prevail.

36.2 Any notice given under or in connection with this agreement shall be in the English language.

This agreement has been entered into on the date stated at the beginning of it.