

DISTRIBUTION AREA AND AGENCY AGREEMENT

between:

(INSERT NAME)

and

(DVG REMACLE T/A FINE LINE AGENCIES GROUP)

1. DEFINITIONS

In this agreement unless the context otherwise requires, the following words and expressions shall have the meanings assigned to them hereunder:

- 1.1 Commencement Date - shall mean the date of signing of this agreement by the last signing party hereto;
- 1.2 the Agent - shall mean **(DVG Remacle T/A Fine Line Agencies Group)**;
- 1.3 the Distributor - shall mean **(INSERT NAME)**
- 1.4 the Products - shall mean **(INSERT DETAILS OF THE PRODUCTS)** OR those products set out in the schedule attached hereto as Annex "A", and such other products as the Distributor decides, in its absolute discretion to make available to the Distributor from time to time by notice in writing;
- 1.5 the Territory - shall mean **(INSERT DESCRIPTION OF AREA)**;
- 1.6 Trademarks - shall mean collectively all and any trademarks, logos, get-ups and designs of which the Distributor shall now or in the future be the registered and/or unregistered owner and which are now or in the future used by the Distributor in connection with the products;

2. INTERPRETATION

- 2.1 words importing natural persons shall include a reference to bodies corporate and other legal personae and *vice versa*;

- 2.2 words importing the masculine shall include a reference to the feminine and other genders;
- 2.3 words importing the singular shall include a reference to the plural and *vice versa*;
- 2.4 annexes to this agreement shall be deemed to have been incorporated herein and shall form an integral part hereof;
- 2.5 a reference to a party in a document includes that party's successors and permitted assigns;
- 2.6 any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;
- 2.7 where the day on or by which anything is to be done is not a business day, it shall be done on or by the first business day thereafter;
- 2.8 when any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Thursday, Friday or Public Holiday, in which case, the last day shall be the next succeeding day which is not a Thursday, Friday or Public Holiday;
- 2.9 a reference to a document includes an amendment or supplement to, or replacement or notation of that document;
- 2.10 the captions appearing in this agreement are for reference purposes only and shall not affect the interpretation hereof;
- 2.11 if any provision is a definition (or under this heading "*Interpretation*" and/or any other heading in this agreement) and is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition (or such other clause) effect shall be given to it as if it were a substantive provision in the body of the agreement;
- 2.12 where figures are referred to in numerals and words, if there is any conflict between the two, the words shall prevail.

3. **APPOINTMENT**

The Distributor hereby appoints the Agent as its sole and exclusive agent to distribute, market, sell, and promote the Products within the Territory and the Agent hereby accepts such appointment.

4. **DURATION**

This agreement shall commence on the Commencement Date and shall endure for a continuous period of (**INSERT PERIOD**) thereafter subject to the right of the parties to renew this agreement by mutual written consent, *mutatis mutandis*, on the same terms and subject to the same conditions (including the right of renewal) for a further continuous period of (**INSERT PERIOD**), provided that confirmation of such renewal is reduced to writing and signed by each of the parties or their duly authorised representatives by not later than 3 (three) months prior to the expiry date of this agreement, failing which it shall expire on (**INSERT DATE**).

5. **OWNERSHIP**

Ownership in and to all intellectual property rights including the rights in and to the Trademarks shall at all times, before, during and after the termination of this agreement remain vested in the Distributor.

6. **PRICE**

- 6.1 The price of the Products shall be as set out in the official price lists published by the Distributor from time to time, a copy of which will be delivered to the Agent forthwith upon its publication.
- 6.2 Prices shall at all times be expressed to be payable in South African currency.

7. **ORDERING PROCEDURES**

The Agent will from time to time during the subsistence of this agreement, place orders with the Distributor for delivery to the Customer of the Products which orders shall:

- 7.1 be in writing, electronic order transmission or via fax
- 7.2 specify the number of the Products required;
- 7.3 indicate which of the Products are required;
- 7.4 be addressed to the (**INSERT AREA**) based representative of the Distributor or to such other address as the Distributor may, in writing, advise from time to time.

8. **DELIVERY**

- 8.1 All deliveries within _____ shall be free of charge. Deliveries other than in _____ shall be charged for at the rate of R-/km ex Distributor's premises..

9. **WARRANTIES**

The Distributor hereby warrants to the Agent that:

- 9.1 all the Products manufactured by it shall be of reasonable quality;
- 9.2 the Products will at all times comply with the legal requirements of the Republic of South Africa and/or any legal requirements within the Territory which are made known by the Agent to the Distributor;
- 9.3 the Products will be suitably packed for transportation.

10. **RETURN OF DEFECTIVE THE PRODUCTS**

If any Products shall in any manner whatsoever fail to meet the minimum requirements as laid down in terms of this agreement, or in any other manner be defective, the Agent and or Customer shall without prejudice to its rights be entitled to tender the return of such Products to the Distributor and Distributor shall be obliged, at its cost, to accept the return thereof, subject to the return taking place within 14 (fourteen) days of delivery thereof to the Agent or Distributor. If the Customer shall have made payment to the Distributor of the price of such

Products, then the Distributor shall forthwith refund to the Customer the amount so paid in respect thereof together with interest at the prime rate.

11. THE RIGHTS AND OBLIGATIONS OF AGENT

11.1 Notwithstanding anything to the contrary contained elsewhere in this agreement and without derogating from the provisions thereof, the Agent shall have the rights and shall discharge the obligations set out hereunder.

11.2 The Distributor shall:

11.2.1 not be entitled to sell the Products, or any of them, outside of the Territory and shall refer to the Distributor, free of consideration, all enquiries for the Products which emanate outside of the Territory;

11.2.2 notify the Distributor promptly of any complaint or claim made or brought against Distributor with respect to the Products;

11.2.3 make no representations regarding the Products other than those made by product descriptions;

11.2.4 not cede or assign or transfer the rights herein granted to any third party without the prior written consent of the Distributor;

11.2.5 not alter, remove or in any way tamper with the Trademarks;

11.2.6 cause to appear in any advertisement, publication, public presentation, packaging and external correspondence the appropriate designation being either R or TM as may be applicable after all Trademarks;

11.2.7 be entitled to sell the Products only at the recommended retail price directed by the Distributor from time to time.

12. RELATIONSHIP BETWEEN PARTIES

Nothing in this agreement shall constitute or be deemed to constitute a partnership between the parties hereto or constitute as an agent or representative of the Distributor for any other purpose whatsoever. The Agent shall be entitled to describe itself as an authorised agent for the Products.

13. TRADEMARKS

13.1 The Distributor hereby grants to the Agent the exclusive licence to use the Trademarks in the Territory.

13.2 The Trademarks shall be used only in connection with the promotion and sale of the Products. This licence and the right to use same will terminate when this agreement terminates.

14. TERMINATION

Either party shall be entitled to terminate this agreement without prejudice to any other rights which it may have at law or in terms hereof in the event of:

- 14.1 either party being placed into liquidation whether provisional or final or under judicial management;
- 14.2 either party having a judgement of any competent court entered against it and failing to satisfy such judgement or failing to make the necessary arrangements to have same set aside within 14 (fourteen) days of the judgement coming to the notice of the other party;
- 14.3 either party having a warrant of execution levied against any of its assets, either movable or immovable and such party failing within 14 (fourteen) days of the issue of such warrant to satisfy same or to have same set aside;
- 14.4 either party attempting to compromise with its creditors or committing any act of insolvency which in the ordinary course would entitle any creditor to bring an application for its winding up;
- 14.5 either party breaching any of the provisions of this agreement which breach shall not be capable of monetary compensation or if capable, the amount of such compensation shall not have been paid within 21 (twenty one) days of the amount thereof being determined.

15. **CONSEQUENCE OF EXPIRY OR TERMINATION**

Upon the expiry of this agreement or in the event of termination hereof howsoever arising, the Distributor shall:

- 15.1 at its cost, return to the Distributor all stock of the Products which it shall have on hand against which the Distributor shall pay to the Distributor the invoiced cost of such stock;
- 15.2 cease to distribute the Products to any party whomsoever;
- 15.3 at Distributors cost, deliver to the Distributor all promotional literature and other items furnished to the Agent by the Distributor. In this regard, the Agent shall not be obliged to deliver up to the Distributor any promotional literature and the like which the Agent shall have created.

16. **LICENCE WARRANTIES**

- 16.1 The Distributor hereby warrants unto and in favour of the Agent that it is able to licence the Agent in the use of the Trademarks as set forth in this agreement.
- 16.2 The Distributor accordingly hereby indemnifies and holds the Agent harmless against all and any liability, judgement and/or costs and expenses incurred in respect of any action instituted against the Agent in terms of which it is alleged that the use by the Agent of the Trademarks violates the proprietary rights of any third party; provided always that:
 - 16.2.1 The Distributor's total liability under the indemnity in respect of all actions, liabilities, costs, claims, demands, penalties, judgements and expenses shall be limited to R(**INSERT AMOUNT**) per incident or series of associated incidents;
 - 16.2.2 The Agent undertakes to:
 - 16.2.2.1 provide notice to the Distributor within 7 (seven) days of any circumstances arising which would be reasonably foreseeable by the Agent to result in a claim;

- 16.2.2.2 allow the Distributor to defend any proceedings deemed reasonably necessary by the Distributor in respect of any potential claim;
 - 16.2.2.3 allow the Distributor to reach any settlement the Distributor sees fit; and
 - 16.2.2.4 refrain from taking any action which might prejudice the Distributor's interests under this indemnity and take such action as is necessary to mitigate damages to the Distributor under this indemnity.
- 16.3 This indemnity shall only apply to the extent that the Agent acts and abides in accordance with the terms and conditions of this agreement and the Distributor shall expressly not be liable in the event of the Agent being substantially in breach of any of the terms and conditions contained herein.

17. NON COMPETITION

For so long as this agreement shall subsist, the Agent shall not either directly or indirectly distribute any Products in competition with the Products or in any other manner act as a commercial agent or representative for a company which carries on business in competition with the Products.

18. APPOINTMENT OF SUB-AGENTS

The Agent shall not appoint any sub-agent save with the prior written consent of the Distributor.

19. LIMITATION OF LIABILITY

The Distributor shall not be liable for any losses, whether direct, indirect or consequential should the Products not meet the specification required. The sole liability of the Distributor shall be replace defective Products.

20. THE AGENTS INDEMNITY

20.1 The Agent hereby indemnifies and holds the Distributor harmless for any loss, damage or expense incurred arising out of any claim or actual defect or negligence of the Agent pursuant to this agreement.

20.2 The Agent hereby indemnifies the Distributor against a breach of any warranty given in favour of the Distributor.

21. BREACH

21.1 Should any party breach any of its obligations in terms hereof and persist in such breach for a period of 7 (seven) days after written notice will have been received from the other party, then the aggrieved party shall be entitled without prejudice to any rights which it may have in terms hereof or at law, to:

21.1.1 specific performance and damages; or

21.1.2 cancel this agreement and claim damages.

21.2 Any amount falling due for payment by any party in terms of this agreement and remaining unpaid after due date, shall bear interest thereon at the prime rate between the due date for payment thereof and the date of payment thereof.

22. ADDRESSES AND NOTICES

22.1 For the purpose of this agreement, including the giving of notices in terms hereof and the serving of legal process, the parties choose *domicilium citandi et executandi* ("*domicilium*") as follows:

22.1.1 the Distributor at: (INSERT ADDRESS)

22.1.2 the Agent at: Office: 18 Park Road, Yzerfontein 7351
Postal: PO Box 571, Yzerfontein 7351
Tel 022 451-2080, Fax 0880224512080
Email finelineagencies@telkomsa.net
Web: <http://www.finelineagencies.co.za>

22.2 A party may at any time change its *domicilium* by notice in writing. Provided that the new *domicilium* consists of, or includes, a physical address at which process can be served.

22.3 Any notice given in connection with this agreement may be delivered by hand; or be sent by prepaid registered post; or be sent by prepaid telegram or cablegram; or be sent by telex or telefax if the *domicilium* includes a telex or telefax number, to the *domicilium* chosen by the party concerned. Any notice or process delivered on any party in connection with any matter or subject arising out of this agreement or any notice shall be deemed to have been delivered if handed to any responsible person at the *domicilium* chosen by any party and it shall not be necessary to hand such process or notice to any party personally.

22.4 A notice given as set out above shall be presumed to have been duly delivered:

22.4.1 on the date of delivery if delivered by hand, telex or telefax;

22.4.2 on the 4th (fourth) day from the date of posting including the date of posting if posted by pre-paid registered post from within the Republic of South Africa; and

22.4.3 on the 14th (fourteenth) day from the date of posting including the date of posting if posted from outside the Republic of South Africa.

23. SEVERABILITY

If any term or provision or part thereof (in this clause called "the offending provision") contained in this agreement shall for any reason whatsoever be declared or become unenforceable, invalid, or illegal including but without derogating from the generality of the

aforegoing, a decision by any court, an Act of Parliament or any statutory or other by-laws or regulations or any other requirements having the force of law, the other terms and provisions of this agreement shall remain in full force and effect as if this agreement had been executed without the offending provision appearing therein.

24. **ENTIRE AGREEMENT**

This agreement constitutes the entire agreement between the parties with regard to the matters dealt with herein and no representations, terms, conditions or warranties express or implied not contained in this agreement shall be binding on the parties.

25. **VARIATION AND CANCELLATION**

No agreement varying, adding to, deleting from or cancelling this agreement, shall be effective unless reduced to writing and signed by or on behalf of the parties. It is recorded that there exists no collateral and/or other agreements and that this is the sole agreement entered into by and between the parties.

26. **INDULGENCES**

No indulgence granted by a party shall constitute a waiver of any of that party's rights under this agreement; accordingly, that party shall not be precluded as a consequence of having granted such indulgence, from exercising any rights against the other which may have arisen in the past or which may arise in the future.

27. **COSTS**

The Distributor will bear costs incidental to the negotiation, preparation and drawing up of this agreement.

THUS DONE AND SIGNED BY THE RESPECTIVE PARTIES AS FOLLOWS:

For: **(INSERT COMPANY NAME OF THE DISTRIBUTOR)**
Director, duly authorised

Date:

Place:

For: **FINE LINE AGENCIES GROUP**
Owner, duly authorised

Date:

Place:

SCHEDULE OF THE PRODUCTS