

Sales Representative Wholesale Distributor Agreement

WHEREAS, Fortune Products Inc. (FPI) is the owner, developer and manufacturer of certain proprietary products which may be modified without notice from time to time, and some services (The "Products and Services");

WHEREAS, Wholesale distributor or Sales Representative (collectively (REP)) is engaged in the business of representing, reselling and supporting the Product and desires to offer to its customers such Products as manufactured, distributed and provided by FPI;

WHEREAS, Fortune Products Inc. (FPI) is the owner, developer and manufacturer of certain proprietary products which may be modified without notice from time to time, and some services (The "Products and Services");

WHEREAS, Wholesale distributor or Sales Representative (collectively (REP)) is engaged in the business of representing, reselling and supporting the Product and desires to offer to its customers such Products as manufactured, distributed and provided by FPI;

WHEREAS, FPI desires to engaged REP to act as its representative to offer Products to customers of REP, under the terms and conditions set forth herein; and,

WHEREAS, REP must abide by FPI's Internet Minimum Advertised Price (IMAP) Policy; and,

WHEREAS, REP desires to accept such appointment upon such terms and conditions.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. APPOINTMENT

FPI hereby appoints REP as its representative to offer, sell and distribute the Products listed during the term of this Agreement and subject to its terms and conditions.

2. REP'S DUTIES

In order to maintain its status as, and the benefits of, a representative, hereunder, during the term of this agreement, REP shall:

- a) Use its best efforts to promote sales of the Product in an effective manner and to maintain and promote the goodwill of FPI and its Products;
- b) Maintain a sales force and staff sufficient to perform all of its duties hereunder;
- c) Maintain at its place of business an inventory of sales literature and collateral materials sufficient to effectively promote and sell the Product.
- d) Promote the Product(s) through activities such as direct sales calls, direct mail, participation in local or regional trade shows, or similar activities;
- e) Furnish FPI with such periodic financial, operational and other reports, including without limitations, reports concerning REP's sales, inventory and market conditions, as FPI may reasonably request;
- f) Promptly advise FPI of any change in REP's ownership, management or financial condition;
- g) Not sell, or offer to sell, any Product or Service outside of the assigned territory or industry without prior, express written consent of FPI;
- h) Not sell, or offer to sell a non-FPI supplied product that has an appearance, or packaged appearance that the product is associated with FPI. Such an appearance of association of the non-FPI supplied product will be determined if the product could confuse a retailer and/or consumer as to the source of the non-FPI supplied product.

3. FPI DUTIES

During the term hereof, but only if REP fulfills its obligations hereunder, as set forth in Section 2, above, including specifically but without limitation Section 2(a) above, FPI shall make FPI marketing literature and approved sales aids available to REP.

4. RESERVED RIGHTS

FPI may take any of the following actions, without limitation, at any time and from time to time, in its sole and absolute discretion, without incurring any liability to REP or otherwise affecting the terms of this agreement.

- a) Modify, discontinue and/or introduce new Product(s) or Service(s), such changes to be made by addendum to FPI Price List;
- b) Appoint agents of additional Representatives, in any territory and any industry;
- c) Reduce, limit and/or cancel any order sold by REP because of shortages in material(s) or manpower, other circumstances beyond FPI's reasonable control and/or acts of God; and,
- d) Establish and/or adjust pricing for its current Product(s) which FPI may introduce, with thirty (30) days prior notice to REP of such a change.

5. TERMS OF SALE

- a) FPI shall have sole and exclusive rights to negotiate the final terms and conditions of sale, as set forth in its consumer agreements and sales invoices. Notwithstanding anything to the contrary contained herein, in the event of any conflict between the terms of this Agreement and those set forth on FPI's sales invoice, the terms and conditions contained on the sales invoice shall apply.
- b) Subject to the terms hereof, REP shall be entitled to offer to customers the Product from FPI's then current price levels or after applying such discounts as may be agreed at the time of quotation by FPI.
- c) Delivery shall be F.O.B. FPI operations center unless otherwise agreed. If any conditions arise which prevent compliance with delivery schedules, FPI shall not be liable to REP for any loss or damage due to delay, failure to provide notice of delay or failure in delivery of any Product. FPI will use reasonable effort to notify REP of any delays in schedule delivery dates or inability to deliver the Product. In the event of a resource shortage, FPI shall have the right to allocate its available resources among its customers in a way that FPI considers reasonable, in its sole discretion.
- d) REP shall obtain from potential customers written authorized Purchase Orders to FPI for the Product to be purchased. Purchase Orders must specify a Product name, version, quantity, delivery date and price, as applicable. Any such Purchase Order shall be subject to this Agreement. REP may use the customer's standard Purchase Order form to place orders under this Agreement, and any order must be accepted by FPI before it is considered valid.

6. PAYMENTS AND COMMISSION

- a) FPI shall have the right to establish terms of payment with the customer.
- b) FPI shall have the right to establish commission's payable.
- c) The terms of payment and commissions payable may be changed from time to time with thirty day written notice at the sole discretion of FPI.
- d) Commissions earned before termination of this agreement will be credited to REP's account 30 days after the termination of this agreement absent a breach of the terms under sections 2g, 2h, 7 a-c, 8e and 10, wherein no commissions are due and payable.

7. INTELLECTUAL PROPERTY RIGHTS

- a) REP recognizes that the right to use the FPI trademarks, trade names, trade dress, logos and other intellectual property rights (the IPRs) hereunder is the sole right and privileges of FPI. REP gains no license or proprietary rights to such IPRs hereunder and shall not infringe upon, dilute or harm FPI's rights in its IPRs. REP shall not use any trademark, trade dress or trade name on any Products and Service(s) other than that expressly authorized by FPI in writing from time to time. REP shall not use the IPRs, including without limitation, the FPI trademarks, trade dress, trade names or logos in any manner (including advertising) without submitting such proposed use to FPI and obtaining prior written approval therefore from FPI.
- b) Upon termination of the Agreement, REP agrees to discontinue immediately all use of the IPRs, to destroy and to deliver to FPI, at FPI's election, all advertisements, brochures, displays, designs, posters, software, and other promotional material then in REP's possession and control.
- c) REP shall promptly inform FPI in writing of any infringement of any of the IPRs, or of any claim or allegation that the IPRs, including without limitation the FPI trademarks, trade dress, trade names, or logos, infringe upon the rights of any other person. REP shall have no right to maintain or defend any action on behalf of FPI regarding the IPRs.

8. TERMS AND TERMINATIONS

- a) This agreement shall become effective on the date first written above and remain effective until terminated, as provided below.
- b) FPI may terminate this Agreement at any time, with or without cause, upon thirty day (30) days prior written notice to REP and REP may terminate this Agreement at any time, with or without cause, upon thirty (30) days prior written notice to FPI.
- c) Either party may terminate this Agreement upon written notice to the other party, if such other party:
 - i) Becomes insolvent
 - ii) Admits its insolvency or its inability to pay its debts as they become due;
 - iii) Makes or proposes an assignment for the benefit of creditors;
 - iv) Convenes or purposes to convene a meeting of its creditors, or any class thereof, for purpose of effecting a moratorium upon, extension or other adjustments of, its obligations;
 - v) Commences or has filed against it any bankruptcy, reorganization, liquidation, or insolvency proceeding under any law in any country for the relief of debtors; or,
 - vi) Appoints any receiver, trustee, liquidator, or custodian to take possession of any substantial portion of the assets of such party.
- d) FPI may terminate this Agreement at any time upon thirty (30) days written notice if REP breaches any material provision of this Agreement and such breach remains uncured for a period of thirty (30) days following notice of such breach to REP.
- e) FPI has executed this Agreement in reliance upon the active, substantial and continued personal participation of REP's present management in REP's business and in activities that are in the interest of FPI. REP agrees that FPI may, therefore, terminate this Agreement immediately upon written to REP, in the event of any change in REP's ownership, management or control or when activities that are not in the interest of FPI are conducted by REP.
- f) Immediately upon termination of this Agreement, REP shall cease to represent itself as an authorized representative of FPI or its Products hereunder.
- g) FPI reserves the right, at its sole discretion and at all reasonable times to audit REP's activities with respect to the terms, conditions, provisions or any other aspect of the Agreement. Following such audit, if FPI determines REP is not in compliance or not providing the service required, FPI may, upon thirty (30) days written notice, such non-compliance would constitute a material breach of this Agreement.

9. WARRANTY

FPI MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PRODUCT AND SERVICE, SOLD OR PROVIDED BY FPI, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

- a) FPI's liability with respects to any Product purchased by REP shall be limited solely to repair or replacement, at FPI option, of defective Product sold to REP and returned under such warranty. In particular, and without limitation the foregoing:
 - i) FPI shall in no circumstance be liable for any consequential damages; and,
 - ii) FPI shall have no warranty obligation with respect to any service that has been subject to abuse, misuse or is otherwise used or performed in a manner other than proscribed by any relevant handling procedures or documentation.
- b) REP agrees to warrant any Product sold to its customers only on terms and conditions identical to those provided by FPI hereunder.
- c) REP's exclusive remedy, and FPI's entire liability in contract, tort, or otherwise, shall be the repair or comparable replacement of any Product found to be defective. The liability of FPI to REP, whether on warranty, contract or otherwise, shall not exceed the cost of correcting the defect. In no case shall FPI's liability exceed the price of the FPI Product(s) or Service(s) involved. Upon correction of said condition, all such liability shall terminate. All exchanged Products shall become the property of FPI.

10. COMPLIANCE WITH LAW

REP shall comply with all treaties, law, status, rules and regulations governing or otherwise applicable to the export, import, or sale of the Products in their territory, including without limitation all such treaties, laws, statues, rules and regulations governing transfer, competition, restrictive practices and sales of the Product. REP shall not knowingly combine with, aid, or otherwise assist anyone in actions that would violate any such treaty, law, statue, rule or regulation.

11. FORCE MAJEURE

If either party's performance is prevented, hindered, or delayed by reason of any cause(s) beyond such party's reasonable control, including without limitations labor disputes war or civil disorder, governmental regulations or acts of God, such party shall be excused from performance to the extent that it is prevented, hindered, or delayed thereby during the continuance of such cause(s); and such party's obligation hereunder shall be suspended so long as the extent that such cause(s) prevent or delay its performance.

12. NOTICES

Any notice or other communication required or permitted hereunder shall be in writing and shall be sufficiently given if sent:

- a) by registered or certified mail, return requested, postage prepaid, and addressed to the other party at its business address; or
- b) by telex, cable, or similar electronic means. Notice by U. S. mail shall be deemed given and received on the fifth business day after mailing, whether or not received. Notice by telex, cable or similar means shall be deemed given and received on the second business day after being sent. Either party may change its address for notice purposes by prior, written notice to the other party.

13. WAIVER

FPI's failure to insist, in one or more instances, upon the performance of any term or terms of this Agreement shall not be construed as a waiver or relinquishment of FPI's right to such performance, and REP's obligations with respect thereto shall continue in full force and effect. FPI's previous consent or approval to any action by REP for which consent or approval is necessary shall not be deemed to render unnecessary the obtaining of such consent to or approval of any subsequent act of REP, whether or not similar to the act previously approved or consented to.

14. INDEMNITY AND WARRANTY

REP agrees to defend, indemnify, and hold FPI harmless from and against all claims, demands and other liabilities, including attorney's fees, asserted against FPI as a result of REP alleged acts or omissions as a result of its violations of this agreement or Products and Services rendered pursuant hereto by REP.

15. ASSIGNMENT

REP may not assign any of its rights or responsibilities hereunder to any other person without FPI's prior written consent, which may be withheld at FPI's sole discretion.

16. ENTIRE AGREEMENT

This Agreement constitute the entire agreement and understanding between the parties, is intended as a complete and exclusive statement of the terms of their agreement, and supersedes any prior or contemporaneous agreements or understanding between the parties relating to REP's purchase, sale and distribution of Products pursuant hereto. This Agreement may not be amended or supplemented without further written agreement signed by authorized representative of both parties.

17. ARBITRATION

Disputes arising out of or in any manner relating to this Agreement, which the parties do not resolve in good faith within five (5) days after either of the parties notifies the other of its desire to resolve such dispute, will be settled by arbitration. In such cases where amicable settlement cannot be reached, such disputes or differences shall be resolved by arbitration under the Commercial Arbitration Rules of the American Arbitration Association in Austin, Texas. The decision made in such arbitration shall be binding upon the parties.

18. SEVERABILITY

The invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity or enforceability of any of its provisions.

19. GENERAL

This Agreement is entered into the State of Texas, and its interpretation and construction and the remedies for its enforcement or breach are to be applied in accordance with the laws of the State of Texas. Venue for any action arising hereunder shall be had only in Austin, Texas.

Each party shall use its best efforts to prohibit the unintentional disclosure to any third party of any confidential information concerning the other party or concerning the Products and Services during the term of this Agreement. Furthermore, this obligation shall survive termination of this Agreement for a period of one (1) year.