

DATED

SELECTIVE DISTRIBUTORSHIP AGREEMENT

between

CRANSWICK PET & AQUATICS LTD

T/A

TROPICAL MARINE CENTRE

(TMC)

and



(DISTRIBUTOR)

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THIS AGREEMENT is dated

2013

PARTIES

- (1) Cranswick Pet & Aquatics Ltd t/a Tropical Marine Centre, (TMC) incorporated and registered in England and Wales with company number 6804160 whose registered office is at

Tropical Marine Centre, Solesbridge Lane, Chorleywood, Hertfordshire, WD3 5SX and whose fax number and e-mail address for the purposes of this agreement are as follows:

Tel: +44 1923 284151

Fax: +44 1923 286003

Email: sales@tropicalmarinecentre.co.uk

- (2) _____ (Distributor)
incorporated and registered in England and Wales with company number

_____ whose registered office is at the following address

_____ or is a trading business which has an existing TMC account no: _____
in the name of _____

with retail /wholesale premises operating at the following address:

with a Pet Trade License no. _____ issued by:

and whose official website address or URL is given as:

and/or whose online internet sales are made through this website or URL (if different from that given above)

and whose name, telephone number, fax number and e-mail address which will be used in connection with any correspondence relating to this agreement, are as follows:

Name:

Tel:

Fax:

Email:

BACKGROUND

- (A) TMC supplies and distributes the Products in the EU through TMC's Network (as further defined below).
- (B) TMC wishes to appoint the Distributor within TMC's Network as an Authorised Distributor for the promotion and sale of the Products within the Territory (all as defined below), and the Distributor wishes to promote and sell the Products within the Territory on the terms of this agreement.
- (C) Authorised Retailers (as defined below) who are appointed with Tier 1 - **First Class Reef to Retail** status will be entitled to receive enhanced support and benefits from TMC in return for meeting the additional criteria and benefits set out in the agreement itself and Schedule 6 Section B.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

New Account Form: the standard form that all potential Authorised Distributors must complete in order to apply to become an Authorised Retailer and/or an Authorised Wholesaler.

Authorised Distributor: a distributor that is a member of TMC's Network authorised to operate at the wholesale and/or the retail level of trade, depending on the terms of its agreement with TMC.

Authorised Retailer: an Authorised Distributor who has entered into an agreement with TMC to operate at the retail level of trade for the promotion and sale of Products.

Authorised Retailer (Tier 1 - First Class Reef to Retail): an Authorised Distributor who has entered into an agreement with TMC to operate at the retail level of trade for the promotion and sale of Products and who meets the obligations set out in the agreement and **all** of the criteria in the Authorised Retailer Criteria.

Authorised Retailer (Tier 2 - Product Partner): an Authorised Distributor who has entered into an agreement with TMC to operate at the retail level of trade for the promotion and sale of Products and who meets the obligations set out in the agreement and **the relevant** criteria in the Authorised Retailer Criteria.

Authorised Retailer Criteria: the criteria for the appointment of Authorised Retailers set out in the New Account Form and Schedule 6.

Authorised Wholesaler: an Authorised Distributor who has entered into an agreement with TMC to operate at the wholesale level of trade.

Authorised Wholesaler Criteria: the criteria for the appointment of Authorised Wholesalers set out in the New Account Form and Schedule 5.

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

Commencement Date: 2013.

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

Products: the products (i) listed in Schedule 1 and (ii) any other products which TMC may permit the Distributor, by express notice in writing, to distribute in the Territory.

Selective Distribution System: a distribution system where the supplier undertakes to sell the contract goods, whether directly or indirectly, only to distributors selected on the basis of specified criteria and where these distributors undertake not to sell such goods or services to unauthorised distributors within the territory reserved by the supplier to operate that system.

TMC's Network: the Selective Distribution System established by TMC for the distribution of the Products within the EU.

Term: the term of this agreement, as determined in accordance with clause 12.

Territory: the United Kingdom.

Trade Marks: the trade mark registrations and applications listed in 0 and any further trademarks that TMC 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 reference to a statute, statutory provision or any subordinated legislation made under a statute is a reference to such statute, provision or subordinated legislation as amended or re-enacted from time to time, whether before or after the date of this agreement and in the case of a reference to a statute is also to all subordinate legislation made under that statute whether before or after the date of this agreement.

1.4 A reference to **writing** or **written** includes faxes and e-mails.

1.5 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.

1.6 Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. APPOINTMENT

2.1 TMC appoints the Distributor as an Authorised Distributor with specific authority to act as an **Authorised Retailer (Tier 2 - Product Partner)** within TMC's Network and hereby grants the Distributor (pursuant to such appointment) a licence to market, distribute and sell the Products under the Trade Marks in the Territory on the terms of this agreement.

- 2.2 The Distributor shall not supply the Products to distributors, retailers, or other resellers who are not members of TMC's Network.
- 2.3 If the Distributor has been appointed by TMC as an Authorised Wholesaler only, the Distributor additionally agrees not to sell the Products to end-users.
- 2.4 If the Distributor has been appointed by TMC as an Authorised Retailer, nothing in this agreement shall be interpreted as restricting active or passive sales by the Distributor to end-users within the EU (including sales via the internet).
- 2.5 The location(s) of the Distributor for the sale and/or distribution of the Products is listed and described in the New Account Form. The Distributor shall not establish or maintain any new branch, sales outlet or distribution depot for the sale of the Products without the prior written consent of TMC and shall ensure that no other businesses that are not under the Control of the Distributor operate from the location(s).
- 2.6 The Distributor shall not:
- (a) act as, or represent itself as, an agent of TMC for any purpose;
 - (b) pledge TMC's credit;
 - (c) give any condition or warranty on TMC's behalf;
 - (d) make any representation on TMC's behalf;
 - (e) attempt to commit TMC to any sales contracts or any other legally binding agreement;
 - (f) modify or alter the Products or their packaging in anyway save as required by law; or
 - (g) do anything which will harm the reputation of TMC.
- 2.7 The Distributor shall not sell, distribute or otherwise make available the Products to distributors, resellers or end-users outside the EU.

3. DISTRIBUTOR'S REPRESENTATIONS AND UNDERTAKINGS

- 3.1 The Distributor represents and warrants that at the date of signature of this agreement it complies with and satisfies the Authorised Wholesaler Criteria (where the Distributor has been appointed an Authorised Wholesaler) and/or the Authorised Retailer Criteria (where the Distributor has been appointed an Authorised Retailer).
- 3.2 The Distributor undertakes during the Term to fulfil the obligations set out in the Authorised Wholesaler Criteria and/or the Authorised Retailer Criteria.
- 3.3 The Distributor undertakes to grant TMC or its representatives the right to access any and all premises of the Distributor to verify the Distributor's compliance with the Authorised Wholesaler Criteria and/or the Authorised Retailer Criteria. Such access shall be granted upon reasonable notice and take place at such hours as, in TMC's opinion, are relevant for the purpose of the verification.

- 3.4 The Distributor acknowledges that the Authorised Wholesaler Criteria and/or the Authorised Retailer Criteria may have to be adapted and changed from time to time and that TMC accordingly can change such criteria. Unless TMC has agreed to a longer implementation period in respect of any new or amended criteria, TMC shall notify the Distributor at least three months prior to implementation of any new or amended version of the Authorised Wholesaler Criteria and/or the Authorised Retailer Criteria. Following the notice period, the new version shall become binding and form an integral part of this agreement and shall replace the previous version(s) without any further formalities.
- 3.5 The Distributor undertakes the following general obligations:
- (a) to use its best endeavours to promote the distribution and sale of the Products in the Territory;
 - (b) to employ a sufficient number of suitably qualified and trained personnel to ensure the proper fulfilment of the Distributor's obligations under this agreement;
 - (c) where the Distributor is an Authorised Retailer, to make a minimum of £1000 per annum of sales of the Products through the location(s) agreed under clause 2.6, excluding online sales, mail order sales and other forms of selling by means that do not involve the conclusion of contracts for sales of the Products in physical sales outlets operated by the Distributor;
 - (d) where the Distributor is an Authorised Retailer (Tier 1 - First Class Reef to Retail), to submit written reports to TMC, showing details of stock, sales, outstanding customer orders and orders placed by the Distributor with TMC that are still outstanding, and any other information relating to the performance of its obligations under this agreement that TMC may reasonably require from time to time;
 - (e) to maintain, on its own account, an inventory of the Products at levels that are appropriate and adequate for the Distributor to meet all customer delivery requirements for the Products throughout the Territory and taking into account that TMC's delivery terms are a minimum of 7 days from the time of order. In particular, the Distributor shall not advertise product as "in stock" unless this is the case;
 - (f) to keep full and accurate books of account and records clearly showing all enquiries, quotations, transactions and proceedings relating to the Products and, in particular, these shall be suitable for the purposes of warranty work and recall;
 - (g) where the Distributor is an Authorised Retailer (Tier 1 - First Class Reef to Retail), to allow TMC, on reasonable notice, access to its accounts and records relating to the Products for inspection;
 - (h) to inform TMC immediately 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
 - (i) to refer to TMC all enquiries it receives for the Products for sale or ultimate delivery outside the EU.

4. PRODUCT ORDERS, VOLUMES, DISCONTINUANCE, AND CHANGES IN SPECIFICATION

- 4.1 Where the Distributor is an Authorised Retailer (Tier 1 - First Class Reef to Retail), no later than 30th March and 30th September in each Year, the Distributor shall notify TMC in writing of its forecast of the quantities of each type of Product that it expects to buy from TMC for delivery during the ensuing 6 month period beginning on the first day of the month following the latest date for issue of that forecast.
- 4.2 TMC undertakes to use its reasonable endeavours to meet all orders for the Products forwarded to it by the Distributor in accordance with TMC's terms of delivery and where relevant 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 On giving one months' notice in writing to the Distributor, TMC may vary Schedule 1 as it thinks fit to exclude one or more of the Products from this agreement if the supply of such Products is permanently discontinued for any reason. TMC may make changes to the specifications of the Products, provided the changes do not adversely affect the quality of the Products. TMC shall give notice of any changes to Product specifications to the Distributor as soon as reasonably practicable.

5. TMC'S REPRESENTATIONS AND UNDERTAKINGS

5.1 Where relevant, TMC undertakes to:

- (a) make reasonable commercial efforts to supply the Products to the Distributor for resale in the Territory in accordance with Distributor's forecast requirements;
- (b) 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; and
- (c) approve or reject any promotional information or material submitted by the Distributor within 28 days of receipt.

6. PRICES AND PAYMENT

- 6.1 Any and all expenses, costs and charges incurred by the Distributor in the performance of its obligations under this agreement shall be paid by the Distributor, unless TMC has expressly agreed in advance in writing to pay such expenses, costs and charges.
- 6.2 TMC shall calculate its prices to the Distributor with reference to a discount from its Trade price list. Where applicable TMC may also provide the Distributor with a further Suggested Resale Price List which will provide suggested ranges for resale prices as a discount from the Suggested Resale Price List. For the avoidance of doubt, nothing shall oblige the Distributor to sell at a recommended or suggested price and the Distributor is free to set its resale prices at its absolute discretion in such a case.

7. ADVERTISING AND PROMOTION

7.1 The Distributor shall:

- (a) be responsible for advertising and promoting the Products in the Territory (but the Distributor shall not use any advertising materials or promotional literature without TMC's prior written consent);
- (b) display advertising materials and other signs provided by TMC;
- (c) observe all directions and instructions given to it by TMC for the promotion and advertisement of the Products;
- (d) only use the images supplied by TMC for the advertising or promotion of the Products;
- (e) not make any written statement about the quality or manufacture of the Products without the prior written approval of TMC, whether such statements are in printed advertising materials, in correspondence, on a website, or otherwise; and
- (f) conform to the general house style and branding policies of TMC when producing any advertising or promotional material for approval by TMC.

7.2 The Distributor shall ensure that any website that it uses for the sale or promotion of the Products complies with the quality standards and criteria that are set out in Schedule 4. The Distributor acknowledges that these may have to be adapted and changed from time to time and that TMC accordingly can change such criteria. Unless TMC has agreed to a longer implementation period in respect of any new or amended criteria, TMC shall notify the Distributor at least three months prior to implementation of any new or amended version of the criteria. Following the notice period, the new version shall become binding and form an integral part of this agreement and shall replace the previous version(s) without any further formalities

8. COMPLIANCE WITH LAWS AND REGULATIONS

8.1 The Distributor shall obtain and maintain all necessary licences, consents and registrations for the resale of the Products.

8.2 The Distributor shall comply with all laws in the Territory relating to the sale and marketing of the Products in the Territory and in any area outside the Territory where it sells or markets the Products.

8.3 The Distributor shall be responsible for obtaining any necessary import licences or permits necessary for the sale of the Products into any area outside of the Territory.

9. ANTI-BRIBERY COMPLIANCE

9.1 Regardless of whether or not the Distributor is trading within the UK, the Distributor shall:

- (a) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010; and

- (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK.

10. CONDITIONS OF SALE

TMC's conditions of sale in force from time to time shall apply to all sales by TMC to the Distributor under this agreement. The conditions of sale that apply at the Commencement Date are set out in Schedule 3. If there is any inconsistency between those conditions of sale and the terms of this agreement, the latter shall prevail.

11. TRADE MARKS

11.1 TMC hereby grants to the Distributor the non-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 TMC, and that the 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.

11.2 All representations of the Trade Marks that the Distributor intends to use shall be submitted to TMC for written approval before use.

11.3 The Distributor shall comply with all rules for the use of the Trade Marks issued by TMC and shall not, without the prior written consent of TMC, alter or make any addition to the labelling or packaging of the Products displaying the Trade Marks. The Distributor shall not alter, deface or remove any reference to the Trade Marks, any reference to TMC or any other name displayed on the Products or their packaging or labelling.

11.4 TMC makes no representation or warranty as to the validity or enforceability of the Trade Marks nor as to whether they infringe any intellectual property rights of third parties in the Territory.

11.5 The Distributor shall not sub-license, transfer or otherwise deal with the rights of use of the Trade Marks granted under this agreement.

11.6 The Distributor shall not do, or omit to do, anything in its use of the Trade Marks that could adversely affect their validity or reputation.

11.7 The Distributor shall immediately enter into any further agreements with TMC, in a form satisfactory to TMC, necessary for the recording, registration or safeguarding of TMC's Trade Mark rights or the marketing of the Products under the Trade Marks.

11.8 Each party shall promptly give notice in writing to the other if it becomes aware of:

- (a) any infringement or suspected infringement of the Trade Marks or any other intellectual property rights relating to the Products within the Territory; or