

THIS DISTRIBUTION AGREEMENT is made on

2015

BETWEEN:

ULIMATE SHUTTER PTY LTD

ACN 054 550 417

Of 62-66 Pacific Drive Keysborough VIC 3173

(*"the Supplier"*)

AND:

[*Name and ACN*]

[*Address*] Of

(*"the Distributor"*)

RECITALS:

- A. The Supplier manufactures custom-made roller shutters and wishes to market and sell them on a wholesale basis throughout Australia.
- B. The Distributor operates an established business that sells and installs various brands of roller shutters.
- C. The Supplier wishes to appoint the Distributor to act as distributor in the Territory defined in Schedule 1 (*"the Territory"*).
- D. The Supplier and the Distributor enter into this agreement subject to the terms and conditions hereafter provided.

THE PARTIES AGREE AS FOLLOWS:

1. GRANT EXCLUSIVE RIGHTS

- (a) The Supplier grants to the Distributor the exclusive right during this agreement to sell within the Territory those Products specified in Schedule 2 (*"the Product"*) and the Distributor accepts such appointment.
- (b) The Supplier will not itself sell (other than to the Distributor), distribute or permit any other person to distribute, supply or sell any of the Product within the Territory except by agreement with the Distributor.

2. PERIOD

This Agreement continues from the date of execution and thereafter from year to year subject to the termination provisions contained herein.

3. SUPPLY OF PRODUCTS

The Supplier will sell the Product to the Distributor at prices to be determined from time to time by the Supplier. The Supplier shall provide the Distributor with 45 days' notice of any change in the price at which the Supplier will sell the Product to the Distributor.

4. SET UP

- (a) The Distributor shall pay the market price set out in Schedule 3 for the Items set out in Schedule 4.
- (b) The parties acknowledge that the Items are necessary for the Distributor to perform its obligations under this agreement.

5. SALES TARGETS

- (a) The Distributor will use its best endeavours to meet the minimum performance levels set out in Schedule 5 in each year following the date of execution of this agreement.
- (b) Should the Distributor fail to achieve the minimum performance levels in any one year, the Supplier may elect to terminate this agreement by providing the Distributor with 30 days' written notice.
- (c) The Supplier will from time to time review the sales achieved by the Distributor, and may amend the minimum performance levels of the Distributor in its sole discretion. The Supplier may use any sales, performance, activity, criteria or statistics it considers necessary for the review, including the sales performance of other distributors.
- (d) In order to support the Distributor in achieving the minimum performance standards, the Supplier shall:
 - i. pass on relevant sales enquiries from its customer website ("Website"). The Website shall be actively promoted by the Supplier around Australia, with a particular focus around the Territory and other areas serviced by its distributors. The Website shall clearly display the Distributor's name and contact details;
 - ii. subject to clause 7(e) and upon request by the Distributor, provide assistance in the form of templates and guidance if the Distributor wishes itself to engage in marketing the Product within the Territory;
 - iii. provide training sessions for the benefit of the Distributor and its employees from time-to-time on techniques for generating leads and improving sales. The timing and frequency of such sessions shall be at the discretion of the Supplier.

6. DELIVERY AND RISK

- (a) The Product will be delivered by the Supplier to the Distributor or from time to time to the Distributor's customers if so directed by the Distributor, in accordance with this agreement or on such other terms as the parties agree upon at the time of each order.
- (b) Subject to clause 16, title to the Product will pass to the Distributor upon full payment for products. Risk of loss, theft and damage shall pass to the Distributor upon delivery of the Product.

7. DUTIES OF DISTRIBUTORS

The Distributor must:

- (a) **Reputation of the Product:** co-operate in every way possible with the Supplier to establish and maintain the reputation of the Product and the Supplier. This includes but is not limited to complying with any directions issued by the Supplier regarding the manner of sales presentations to potential customers and the proper installation process in relation to the Product;
- (b) **Storage, Handling and Transport:** provide and maintain adequate premises, facilities, equipment and do all other things necessary to ensure that the Product remains in good condition and is stored, handled, transported and installed in accordance with industry standards as to safety, health, cleanliness and efficiency;
- (c) **Observe Legal Requirements:** observe all legal requirements in relation to the conduct of its business of distribution of the Product in the Territory and in relation to the carrying out of its obligations under this agreement including, but not limited to, obtaining and maintaining all necessary permits, consents, licences and registrations and paying all relevant taxes and duties;
- (d) **Defective Products:** immediately notify the Supplier in writing if it becomes aware of any defect in any of the Product;
- (e) **Advertising and Marketing:** appropriately advertise and promote the Product in the Territory if it chooses to do so but only after obtaining the Supplier's approval of the content of such marketing or advertising;
- (f) **Complaints or Claims:** promptly inform the Supplier of all material complaints or claims in respect of the Product;
- (g) **Liability:** not admit liability on behalf of the Supplier regarding any complaint or claim in respect of any of the Product without the prior written consent of the Supplier;
- (h) **Complaint Resolution:** not resolve or settle any complaint or claim in respect of any of the Product which may result in the Supplier incurring any liability (whether to a customer, distributor or any other person) without the Supplier's prior written consent and except in accordance with the Supplier's written directions;
- (i) **Not to take Orders for Sale outside the Territory:** either directly or through an agent or intermediary not sell any of the Product outside of the Territory or knowingly having reason to believe that they would be so re-sold, sell the Product to any person within the Territory with a view to re-sale outside the Territory;
- (j) **To Indicate Capacity in which Acting:** in all correspondence and other dealings relating directly or indirectly to the sale of the Product clearly so indicate that it is acting as an independent authorised distributor of the Supplier;
- (k) **Not to Incur Liability on Behalf of the Supplier:** not incur any liability on behalf of the Supplier or in any way pledge or purport to pledge the

Supplier's credit or accept any order or make any contract binding upon the Supplier without the Supplier first approving the terms in writing in conjunction with the Supplier;

- (l) **Safeguard Property Rights:** in conjunction with the Supplier use every effort to safeguard the property rights and interests of the Supplier concerning this distributorship and assist the Supplier at the request of and at the cost of the Supplier in taking all steps to defend the rights of the Supplier other than by the institution of legal proceedings;
- (m) **Not to Assign:** not assign, transfer, charge or in any manner make over or purport to assign, transfer, charge or deal with any part of this agreement or its rights under this agreement without the consent in writing of the Supplier;
- (n) **Conditions of Purchase and Re-Sale:** not make any promise, representation, warranty or guarantee with reference to the Product except such as is consistent with those expressly authorised by the Supplier in writing;
- (o) **Not to Tamper with Markings etc:** not alter, obscure, remove, conceal or otherwise interfere with any marking or labels or other indication of the source of origin of the goods which may be placed by the Supplier on the Product, provided the Distributor may affix a label to the Product detailing their particulars as distributor in the Territory if the Supplier has given its approval for the affixing of that label;
- (p) **Attend meetings:** to attend all meetings of the Supplier's distributors, being approximately six (6) per year, whether in person or via such other forms of telecommunication/electronic means as may be agreed with the Supplier from time to time;
- (q) **Insurance:** to effect all insurances that a prudent business proprietor would effect including but not limited to maintaining at all times an appropriate level of public liability insurance;
- (r) **Records and reports:** to maintain records of its marketing, sales and installation service activities under this agreement for a period of three (3) years after termination of this agreement. Upon the Supplier's request, the Distributor shall provide the Supplier with such reports as the Supplier may require regarding such activities;
- (s) **Suitable employees:** to ensure that any of its employees who are responsible for the marketing, sales, technical support or installation of the Product have the proper skill, training and experience to enable them to provide such services in a competent and professional manner and to ensure that the Distributor is able to properly discharge its obligations under this agreement.

8. SUPPLIER'S OBLIGATION

The Supplier:

- (a) shall use all reasonable endeavours to arrange the supply of Products to the Distributor in accordance with the terms of the agreement and maintain an adequate levels of materials to allow it to fill orders made by the Distributor in a timely manner;
- (b) shall use its best endeavours to safeguard the sole and exclusive rights granted to the Distributor in the Territory including the taking of such steps as may be available to it to prevent the infringement of those rights by other distributors of the Supplier and to prevent the infringement of its patent, trade marks, emblems, designs and other similar or commercial monopoly rights within the Territory;
- (c) shall not sell any of the Product to any person within the Territory other than the Distributor nor to any person outside the Territory with a view to the resale of the Product within the Territory;
- (d) shall provide at a reasonable cost to the Distributor such samples of the Product to enable the Distributor to more effectively sell the Product in the Territory as the Distributor may reasonably request;
- (e) hereby provides the Distributor with a specific licence to use the trade name/s, logos and other marks (“Marks”) set out in Schedule 6 whether in connection with the Distributor’s own trademarks or otherwise, on its website and in all marketing and promotional material authorised by the Supplier for all proper purposes in the performance of the Distributor’s duties under this agreement. The Distributor’s use of such Marks shall be in accordance with the Supplier’s policies in effect from time to time, including but not limited to, trademark usage and advertising policies. The Distributor shall have no claim or right in such Marks;
- (f) shall provide the Distributor with access to a website (“dashboard”) that will provide the Distributor with information deemed reasonably necessary by the Supplier for the Distributor to operate properly as a distributor of the Product. By way of example, the dashboard shall include information regarding taking measurements and the installation of the Product.

9. TERMINATION

- (a) It is an Event of Termination if:
 - i. Subject to clause 5(b), there is a material failure by the Distributor to perform or observe any undertakings or obligations in this agreement and the Distributor does not remedy the failure within thirty (30) days or a longer period determined by the Supplier, after receipt by the Distributor of a notice from the Supplier specifying the failure; or
 - ii. either party becomes insolvent, being placed in or entering into liquidation, or if a receiver, receiver and manager, official manager or like administrator is appointed in respect of that party, or if such party proposes to make a composition or arrangement with its creditors or any of them or if such party has its business closed down by executive or judicial authorities; or
 - iii. the Distributor ceases or threatens to cease to carry on business.

- (b) If an Event of Termination occurs, the party affected may (without affecting the accrued rights and obligations of the parties as at the date of termination) terminate this agreement effective immediately upon written notice to the other party.
- (c) Notwithstanding clause 9(b), this agreement may be terminated without cause by either party upon sixty (60) days' written notice to the other party.

10. CONFIDENTIALITY

- (a) Confidential Information means all proprietary information disclosed by the Supplier to the Distributor by whatever means and includes without limitation, all information, methods, processes, techniques, documents, programs and any other items made or conceived by the Supplier in relation to the Product, information on the dashboard, trade secrets, technical, business or financial or operational information or plans, the terms of this agreement and/or any item marked as "confidential".
- (b) The Distributor shall protect the Confidential Information from unauthorised dissemination and use the same degree of care that it uses to protect its own information. The Distributor shall not disclose to third parties the Supplier's Confidential Information without the Supplier's prior written consent and shall not use the Supplier's Confidential Information for purposes other than those necessary to directly further the purposes of this agreement.
- (c) Each employee or agent of the Distributor, performing duties hereunder, shall be made aware of this clause and the Distributor shall ensure that they are bound to the same level of confidentiality set out herein.
- (d) The Distributor acknowledges that this agreement does not transfer any interest in any intellectual property to it, but merely grants a licence to it to use the intellectual property provided by the Supplier for the purpose of carrying out the objects of this agreement and during its currency but not otherwise. The obligations of confidentiality under this agreement do not extend to information that is within the public knowledge other than through a breach of the agreement by it.

11. EFFECT OF TERMINATION

- (a) Upon termination of this agreement, the Distributor shall cease to be an authorised distributor of the Product and all rights and licences granted to the Distributor under this agreement shall cease.
- (b) The Distributor shall immediately:
 - i. Cease all use and distribution of the Product;
 - ii. Destroy or return to the Supplier all Confidential Information as directed by the Supplier;
 - iii. Discontinue the use of any Mark;
 - iv. Cease to promote, solicit or procure orders for the Product.

12. CONTINUING TERMS AND CONDITIONS

Upon termination:

- (a) the Distributor will assign to the Supplier any orders it has agreed to fulfil but is unable to fulfil and any orders it receives after termination and the Supplier may wherever practicable, but without obligation to do so, honour such orders;
- (b) termination of this agreement shall not relieve the parties from their obligations in respect of breaches that occurred prior to termination, nor any obligations connected with all transactions relating to the Product entered into between the Supplier and Distributor prior to termination and in connection with any Products held by the Distributor;
- (c) any orders placed by the Distributor with the Supplier for the Product which do not relate to a current purchase order are automatically cancelled, unless otherwise agreed in writing by the Supplier;
- (d) on request by the Supplier, the Distributor agrees to provide the Supplier with the names and contact details of any current or potential customers that the Distributor has reason to believe may be interested in purchasing the Product and will also provide the Supplier with a complete list of the names and contact details of all customers of the Product serviced by it since the commencement of this agreement.

13. ORDERS AND PAYMENT

- (a) All orders for the Product shall be submitted by the Distributor in writing to the Supplier (“Purchase Orders”). Purchase Orders shall contain the following:
 - i. Each item of Product ordered by model or item number;
 - ii. Applicable measurements;
 - iii. Quantity requested;
 - iv. Unit price;
 - v. Payment arrangements;
 - vi. Delivery date, a date after the Supplier receives the Purchase Order upon which the order is to be delivered (“Specified Delivery Date”).
- (b) The Company shall within seven (7) days of receipt of the Purchase Order from the Distributor, communicate in writing (email being an acceptable form of writing) its acceptance or rejection of the said Purchase Order. Any orders not confirmed or rejected within the said seven (7) days shall be deemed to have been accepted.
- (c) The Distributor has the right to cancel any Purchase Order without liability to the Supplier upon written consent of the Supplier.
- (d) The Supplier shall deliver the Products in accordance with the instructions provided in the Purchase Order. The [Supplier/Distributor] is to pay the delivery fees.
- (e) The Supplier shall make commercially reasonable efforts to meet the estimated delivery date and/or delivery date specified in the Purchase Order, but shall not be liable for failure to deliver or for any delay or effort in delivery of the Product. In case the Supplier cannot meet the estimated delivery date and/or the delivery date specified in the Purchase Order, the Supplier shall promptly notify the Distributor and discuss in good faith the appropriate delivery date.

- (f) Unless stipulated otherwise, a deposit of [10%] of the total price of an ordered Product is to be paid to the Supplier in on placement of an order.
- (g) The balance of the order is to be paid for by the Distributor [*within 30 days of delivery of the Products OR / in full prior to the delivery of the Product*] to the Distributor.
- (h) The Distributor shall pay all moneys due to the Supplier as and when due pursuant to this agreement, and shall pay on demand by Supplier interest at the default interest rate on any moneys not received by Distributor on or before the due date, being [10%] per annum compounding monthly.
- (i) All payments shall be made via interbank transfer to the Supplier's account at a bank designated by the Supplier.
- (j) The Supplier shall provide the Distributor with a tax invoice in relation to all taxable supplies made to the Distributor, and who shall pay to Supplier the applicable goods and services tax in addition to the cost of the supply. All supplies hereunder are exclusive of GST which is payable by the Distributor in addition to the cost of the supply.

14. RELATIONSHIP OF PARTIES

- (a) Nothing in this agreement constitutes a partnership or a joint venture between the Supplier and the Distributor nor authorises a party to act or hold itself out as an agent or representative of the other part except to the extent needed to give effect to this agreement; or assume or create any obligations on behalf of the other party or constitutes the relationship between the Supplier and Distributor as that of employer and employee.
- (b) Each of the parties will use its best endeavours to maximise sales of the Product in the Territory during the term of this agreement and do everything reasonably practicable to assist the other party in fulfilling its role and functions under this agreement.

15. NOTICES

Any notice, demand, direction, permission, control, authorisation or other communication (each a "notice") required or permitted whether expressly, or by necessary implication, to be given under this agreement is:

- (a) to be in writing addressed to the address of the intended recipient shown in this agreement or to such other address as has been most recently notified by the intended recipient to the party giving the notice.
- (b) to be signed by a person duly authorised by the sender;
- (c) be deemed to have been given and served:
 - (i) where delivered by hand or by courier at the time of delivery;
 - (ii) where sent by ordinary mail, fourteen (14) days after the day of posting;

- (iii) where dispatched by security post on the fourteenth day after the date on which the notice is accepted for posting by the relevant postal authorities;
- (iv) where dispatched by facsimile transmission, at the time recorded on the transmitting machine;
- (v) where dispatched by e-mail, when the sender's computer indicates that the message has been received and read and that it has not failed to be delivered;

but if such delivery or receipt is later than 5:00pm (local time) on a business day, the notice is deemed to have been given and served on the next business day.

16. RETENTION OF TITLE AND SECURITY INTEREST

- (a) The Supplier retains legal and equitable title in any Product ("goods") supplied to the Distributor until payment in full for or in connection with the supply of the relevant Product has been received by Supplier. Until payment in full has been received, the following terms in this clause 16 apply.
- (b) Notwithstanding that title in the goods remains with the Supplier until payment has been made in full, the Distributor may sell such goods and use the goods in the ordinary course of its business. As between the Distributor and the purchaser of any item of goods, the Distributor sells as principal and not as agent of the Supplier. The proceeds of sale of each item of goods must be held by the Distributor in a separate fund on trust for Supplier and the Distributor is under a duty to account to the Supplier for such proceeds. The creation of, or any failure of, any such trust shall not in any way limit the Distributor's obligation to pay an amount to the Supplier for any supplied goods.
- (c) Until goods are sold, installed or used in the ordinary course of the Distributor's business, the Distributor must keep the goods safe and free from deterioration, destruction, loss or harm, clearly designate the goods as the property of the Supplier, store them in such a way they are clearly identified as the property of the Supplier and keep full and complete records, firstly, of the physical location of the goods and, secondly, the ownership of the goods by the Supplier.
- (d) The Supplier is irrevocably entitled at any time and from time to time before sale of any item of goods by the Distributor to inspect or to recover and retake possession of such goods and otherwise exercise in relation to the goods any of its rights whether those rights are as owner and/or unpaid seller or otherwise and whether those rights are conferred by common law, contract, statute or in any other way. In order to exercise such entitlement, the Distributor irrevocably authorises the Supplier and its agents to enter any of the Distributor's premises or vehicles or those of any third party. The Distributor agrees to obtain the consent of any such third party to such entry by the Supplier upon such third parties' premises or vehicles. The Supplier agrees to take all reasonable care in removing the goods from such premises or vehicles but, to the extent this liability may be disclaimed by law, are not liable for any damage or injury to such premises caused by the removal of the goods.
- (e) The retention of title arrangement described in sub-clauses 16(a)-(d) constitutes the grant of a purchase money security interest by the Distributor in favour of the Supplier

in respect of all present and after-acquired goods supplied to the Distributor by the Supplier.

- (f) The Distributor must immediately, if requested by the Supplier, sign any documents, provide all necessary information and do anything else required by the Supplier to ensure that Supplier's purchase money security interest is a perfected security interest.
- (g) The Distributor will not enter into any security agreement that permits any other person to have or to register any security interest in respect of the goods or any proceeds from the sale of the goods until the Supplier has perfected its purchase money security interest.
- (h) For any goods supplied that are not goods that are used predominantly for personal, domestic or household purposes, the parties agree to contract out of the application of sections 95, 118, 121(4), 130, 132(4), 135, 142 or 143 of the PPSA in relation to the goods.
- (i) The Distributor hereby waives any rights it may otherwise have to:
 - (i) receive any notices the Distributor would otherwise be entitled to receive under sections 95, 118, 121, 130, 132 or 135;
 - (ii) apply to a Court for an order concerning the removal of an accession under section 97;
 - (iii) object to a proposal to purchase or retain any collateral under sections 130 and 135;
 - (iv) receive a copy of a verification statement confirming registration of a financing statement, or a financing change statement, relating to any security interest the Supplier may have in goods supplied to the Distributor from time to time.
- (j) For the purposes of this clause "PPSA" means the *Personal Property Securities Act 2009*. The expressions "accession", "collateral", "financing statement", "financing change statement", "security agreement", "security interest", "perfected security interest" and "verification statement" have the meanings given to them under, or in the context of the PPSA. References to sections are to sections of the PPSA.

17. ENFORCEABILITY

Where a clause in this agreement is void, illegal or unenforceable it may be severed without affecting the enforceability of the other provisions of this Agreement.

18. VARIATION

A variation of any term of this agreement must be in writing and executed by the parties.

19. JURISDICTION

The parties submit to the non-exclusive jurisdiction of Victoria and this agreement is to be interpreted in accordance with the laws of that State.

20. ENTIRE AGREEMENT

- (a) This agreement replaces any prior agreement between the parties concerning the distributorship but does not affect any accrued and unperformed obligations of the parties that are not replaced by any stipulation of this contract.
- (b) The Distributor acknowledges to the Supplier that it has not relied on any oral or written representations made by or on behalf of the Supplier as a material inducement to enter into this agreement.

SCHEDULE 1

The Territory:

[to be inserted]

SCHEDULE 2

The Product:

[eg. Custom-made Slimline Roller Shutters]

SCHEDULE 3

Market Price: \$1990.00

SCHEDULE 4

The Items:

- Set-up support provided by the Supplier
- Professional display case
- Glossy hard cover photo album
- Brochures
- Presentation folders

SCHEDULE 5

Volume requirement:

- Conversion of 50% of the leads provided from the Website by the Supplier into sales
- Average sales of at least 22 slimline shutters per calendar month

SCHEDULE 6

Marks (trademarks, logos etc)

[eg **Slimline Shutter**]

EXECUTED AS A DEED.

EXECUTED by **ULIMATE SHUTTER PTY LTD**)
ACN 054 550 417)
in accordance with s.127 of the Corporations Act 2001)
in the presence)
of:

Director

Director/Secretary

EXECUTED by [*insert*])
ACN [*insert*])
in accordance with S.127 of the Corporations Act 2001)
in the presence of:)

Director

Director/Secretary