

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

- (b) any claim that any Product or the manufacture, use, sale or other disposal of any Product within the Territory, whether or not under the Trade Marks, infringes the rights of any third party.
- 11.9 In respect of any matter that falls within clause 11.8(a):
 - (a) TMC shall in its absolute discretion, decide what action to take in respect of the matter (if any);
 - (b) TMC shall conduct and have sole control over any consequent action that it deems necessary; and
 - (c) TMC shall pay all costs in relation to that action and shall be entitled to all damages and other sums that may be paid or awarded as a result of that action.
- 11.10 In respect of any matter that falls within clause 11.8(b):
 - (a) TMC and the Distributor shall agree:
 - (i) what steps to take to prevent or terminate the infringement; and
 - (ii) the proportions in which they shall share the cost of those steps and any damages and other sums that may be awarded to or against them; and
 - (b) failing agreement between the parties, either party may take any action as it considers necessary or appropriate, at its own expense, to defend the claim and shall be entitled to and responsible for all damages and other sums that may be recovered or awarded against it as a result of that action.
- 11.11 Each party shall, at the request and expense of the other, provide any reasonable assistance to the other (including the use of its name in, or being joined as a party to, proceedings) with any action to be taken by the other party under this clause 11, provided that that party is given such indemnity as it may reasonably require against any losses, costs and expenses it may incur as a result of or in connection with providing such assistance.
- 11.12 TMC alone is responsible for the registration and maintenance of any marks or designs that relate to the Products. The Distributor shall not obtain or try to obtain or register for itself anywhere in the world any trademarks or trade names the same as or similar to the Trade Marks.
- 11.13 The Distributor shall not use the Trade Marks as part of the name under which Distributor conducts its business, or any connected business, or under which it sells or services any products (except the Products), or in any other way, except as expressly permitted hereunder.
- 11.14 The Distributor shall not sub-license, assign, transfer, charge, or otherwise encumber the right to use, reference, or designate the Trade Marks to any other party, except as otherwise expressly permitted under this agreement.
- 11.15 Upon termination of this agreement for any reason, the Distributor will immediately stop using all or any part of the Trade Marks.

12. DURATION AND TERMINATION

- 12.1 This agreement begins on the Commencement Date and, subject to clause 12.2, shall continue for an initial term of two Years and indefinitely after that until terminated by either party giving at least 3 months' prior written notice to expire on or after the expiry date of the initial term.
- 12.2 Without affecting any other rights that it may be entitled to, either party may give notice in writing to the other terminating this agreement immediately if:
- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
 - (b) the other party commits a breach of any material term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 days of being notified in writing to do so;
 - (c) the other party repeatedly breaches any of the terms of this agreement in such 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;
 - (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;
 - (h) a floating charge-holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
 - (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

- (j) the other party, being an individual, is the subject of a bankruptcy petition or order; or
 - (k) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - (l) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
 - (m) the other party, being an individual, dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation;
 - (n) there is a change of Control of the other party; or
 - (o) the other party purports to assign its rights or obligations under this agreement (except in accordance with clause 17).
- 12.3 TMC may give notice in writing to the Distributor terminating this agreement immediately if at any time the Distributor fails to comply with any of the quality standards and criteria in Schedule 4, the Authorised Retailer Criteria and/or the Authorised Wholesaler Criteria, provided that (where such breach is remediable) TMC shall have given to the Distributor notice of such failure and the Distributor shall have failed to remedy the breach complained of within 30 days of the receipt of such.

13. EFFECTS OF TERMINATION

- 13.1 Termination of this agreement for any reason shall not affect any rights or liabilities accrued at the date of termination.
- 13.2 On termination:
- (a) TMC shall have the option to buy from the Distributor any stocks of the Products at such prices as TMC reasonably considers to be their current market value and which shall not be more than the net price paid by the Distributor for them. To exercise the option, TMC must give notice to the Distributor within 30 days of termination, stating the quantities of Products it wishes to buy. The Distributor shall deliver such Products to TMC within 14 days of receiving TMC's notice, and TMC shall pay for the Products in full within 30 days of their delivery. The Distributor shall be responsible for the costs of packaging, insurance and carriage of the Products;
 - (b) if TMC chooses not to exercise its option to buy back the Products under clause 13.2(a), or purchases only part of the Distributor's stocks of Products, the Distributor shall dispose of its remaining stocks of Products as directed by TMC within 6 months following termination of this agreement;
 - (c) if TMC chooses to buy back the Products under clause 13.2(a), or when the 6 month period under clause 13.2(b) expires, the Distributor shall at TMC's option promptly destroy or return all samples, technical pamphlets, catalogues, advertising materials,

specifications and other materials, documents or papers that relate to TMC's business that the Distributor may have in its possession or under its control (other than correspondence between the parties); and

- (d) TMC shall be under no liability to pay any compensation to the Distributor for loss arising purely as a result of such termination, whether compensation for loss of profits or goodwill, or otherwise.

13.3 Subject to clause 13.2, all other rights and licences of the Distributor under this agreement shall terminate on the termination date.

13.4 TMC 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 TMC. TMC shall have no liability to the Distributor in respect of such cancelled orders.

14. CONFIDENTIALITY

14.1 Each party undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as provided by clause 14.2.

14.2 Each party may disclose the other party's confidential information:

- (a) 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. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 14; and
- (b) as may be required by law, court order or any governmental or regulatory authority.

14.3 No party shall use any other party's confidential information for any purpose other than to perform its obligations under this agreement.

15. ENTIRE AGREEMENT

15.1 This agreement (and any document referred to in it) constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

15.2 Each party acknowledges that, in entering into this agreement (and any document referred to in it), it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this agreement. Each party agrees that its only liability in respect of those representations and warranties that are set out in this agreement (whether made innocently or negligently) shall be for breach of contract.

15.3 Nothing in this clause shall limit or exclude any liability for fraud.

16. VARIATION

Subject to clause 4.3, no amendment or variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17. ASSIGNMENT AND OTHER DEALINGS PROHIBITED

17.1 This agreement is personal to the parties and no party shall, without the prior written consent of the other party, assign, transfer, mortgage, charge or deal in any other manner with this agreement or any of its rights and obligations under or arising out of this agreement (or any document referred to in it), or purport to do any of the same. No party shall subcontract or delegate in any manner any or all of its obligations under this agreement to any third party or agent.

17.2 Each party that has rights under this agreement is acting on its own behalf and not for the benefit of another person.

18. FREEDOM TO CONTRACT

Each party represents that it has the right, power and authority to enter into this agreement and that it has taken all action necessary to enable it to exercise its rights and perform its obligations under this agreement.

19. 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.

20. SEVERANCE

20.1 If any provision of this agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this agreement, and the validity and enforceability of the other provisions of this agreement shall not be affected.

20.2 If a provision of this agreement (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

21. NOTICES

21.1 Any notice or other communication given to a party in connection with this agreement shall be in writing, and shall be sent (a) by hand (b) by pre-paid first class post or recorded delivery (c) by reputable commercial courier, or (d) by fax or e-mail. All notices and communications shall be addressed to that party at its registered office, save that notices or other communications

sent by fax or e-mail shall be sent to the fax or e-mail addresses indicated at the beginning of this agreement. Each party shall notify the other in writing of any changes to these addresses and numbers using one or more of the procedures specified in this clause.

- 21.2 A notice or other communication shall be deemed to have been received:
- (a) if delivered by hand, on the first Business Day after it has been left at the relevant address indicated at the beginning of this agreement, provided that the party relying on the notice can produce evidence of such delivery;
 - (b) if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting;
 - (c) if sent by commercial courier, on the first Business Day after the date shown on the courier's delivery receipt (signed on behalf of the recipient);
 - (d) if sent by fax or e-mail, one Business Day after transmission; but in any event;
 - (e) if acknowledged in writing, whether expressly or impliedly, at the time that such acknowledgment is received.
- 21.3 This clause shall not apply to the service of any proceedings or other documents in any legal action, arbitration, mediation, or other proceedings arising out of or connected with a dispute between the parties.

22. THIRD PARTY RIGHTS

- 22.1 A person who is not a party to this agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 22.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any person that is not a party to this agreement.

23. NO PARTNERSHIP OR AGENCY

Except as expressly provided, nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, nor authorise a party to make or enter into any commitments for or on behalf of the other party.

24. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement.

25. GOVERNING LAW AND JURISDICTION

- 25.1 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 English law.
- 25.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

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

Schedule 1 The Products

All Dry Goods products in the following ranges

TMC Aquarium range

aquaGro *including*

AquaGro Microhabitat tanks
AquaGro Microhabitat lighting
Nutrasoil
Nutrafeed
AquaGro CO2 Starter
AquaGro Hobby and Expert Sets
AquaGro CO2 Hobby and Glass ranges
AquaGro accessories
Grobeam LED lighting

aquaHabitats *including*

AquaHabitat Microhabitat tanks
AquaHabitat LED Lighting
H2Air Air Pumps
H2Therm Microheaters
H2Pure RO units
H2 Fill & Go Containers
H2 Accessories

Aquaray *including*

Aquabeam lighting Strips
Aquabeam Lighting Tiles
Aquaray MiniLED
Aquaray Flexi-Led
Aquaray Controllers
Aquaray MMS range
Aquaray I-Bar commercial lighting
Aquaray accessories

Gamma Foods *including*

Gamma Blister Frozen Food
Gamma Slice Frozen Food
Gamma NutraPlus Liquid Food
Gamma Dry Seaweed

Natureform *including*

Natureform Replica Live Rock
Natureform Aquarium backgrounds

Signature *including*

Signature tanks
Signature Systemised Tank Sets
Signature Cabinets
Signature Accessories

TMC Aquarium range (continued)

V² Products *including*

V² Skim skimmers
V² React Calcium Reactors
V² Bio React Pellet Reactor
V² Bio Fluid Sand Filters
V² ecton UV Sterilisers
V² Therm Digital Heaters
V² Pure RO units
V² O³zone Ozone generators
V² PowerBox External Filters
V² Power Aquarium pumps
V² PowerPad Selective Filter Pads
V² Control Controllers and monitors
V² Auto To Up Systems
V² Miscellaneous products

TMC Pond range

Pond Clear Advantage

6w -25w UV Pond Clarifiers

Pro Clear Advantage

30w Professional UV Pond Clarifier

Pro Clear Ultra

55w Professional UV Pond Clarifier

Pro Pond Advantage

110w Commercial UV Pond Clarifier

TM and Pond Clear UV Lamps

4w -55w Linear, PL and PLS UV Lamps

Pro Pond FBF Fluid Bed Filers

Schedule 2

The Trade Marks

Part 1. Trade mark registrations

Registration number	Country	Mark	Registration date	Class	Status
8115552	Europe	aquaGro	27/07/10	01 05 11	Granted
6189054	Europe	Aquaray	23/06/08	11	Granted
5674651	Europe	TMC	21/04/08	07 11 16 21 31	Granted

Part 2. Trade mark applications

Application number	Country	Mark	Registration date	Class	Status
11365244	Europe	Nature Perfect		01 11 21 31	Pending

Schedule 3

TMC's TERMS AND CONDITIONS OF SALE

1. Definitions

1.1 In these Conditions:-

“Seller” means Tropical Marine Centre, a trading division of Cranswick Pet and Aquatics Ltd and Tropical Marine Centre (2012) Ltd

“Buyer” means the buyer of Goods and/or services from Seller

“Conditions” means the terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between Seller and Buyer

“Livestock” means fish, invertebrates and rock

“Dry Goods” means all Goods sold by Seller other than Livestock

“Goods” means Livestock and/or Dry Goods

2. Basis of Sale

2.1 Except as otherwise expressly agreed in writing by Seller, these Conditions, as varied from time to time by Seller, shall apply to all contracts between Seller and Buyer for the sale of Goods and/or supply of services to the exclusion of any terms which Buyer may seek to impose. These Conditions shall have effect in place of any other conditions which may have been notified previously by Seller to Buyer.

3. Acceptance

3.1 No order submitted by Buyer shall be deemed to be accepted by Seller unless and until confirmed by acknowledgement by Seller or by delivery of the Goods or performance of the services. Any quotation by Seller and any price list published by Seller may be varied, withdrawn or cancelled by Seller at any time prior to acceptance.

4. Prices

4.1 Seller's prices for the Goods and/or services and (where appropriate) for packing and/or transporting the Goods shall be Seller's list prices or such other prices agreed in writing by Seller. The prices shall be exclusive of VAT which Buyer shall be additionally liable to pay at the rate prevailing at the time of delivery of the Goods or performance of the services.

5. Delivery

5.1 Delivery of the Goods shall be made by Buyer collecting the Goods from Seller's premises or, where Seller has agreed to arrange transport of the Goods to Buyer, by delivering the Goods to the appointed carrier.

- 5.2 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Seller shall not be liable for any delay in delivery of the Goods that is caused by a force majeure event under Condition 7 or Buyer's failure to provide Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.3 If Seller fails to deliver the Goods (in whole or in part), its liability shall as set out in Condition 6. Seller shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a force majeure event under Condition 7, Buyer's failure to provide Seller with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 5.4 Seller shall be entitled to make additional charges in respect of costs incurred by Seller arising from variations in Seller's standard delivery arrangements requested by Buyer, or if Buyer does not permit delivery to take place when tendered.
6. Complaints and Liability
- 6.1 Any complaint concerning the condition of the Livestock must be notified to Seller in writing, otherwise than upon consignment note or delivery documentation, within 24 hours of receipt of the Livestock by Buyer. Buyer acknowledges that because of the nature of Livestock Seller cannot guarantee that the Livestock will survive transit. Accordingly, Seller shall not be liable for any Livestock which does not survive transit to the Buyer's address. Any complaint of failure to deliver Livestock invoiced by Seller must be notified to Seller within three days of Seller's invoice date.
- 6.2 Any complaint concerning the quality or condition of the Dry Goods must be notified to Seller in writing, otherwise than upon consignment note or delivery documentation, within 24 hours of receipt of the Dry Goods by Buyer. The Dry Goods must be held by Buyer in a condition which causes no further loss to them, for collection by Seller. Any complaint of failure to deliver Dry Goods invoiced by Seller must be notified to Buyer within seven days of Seller's invoice date.
- 6.3 Any complaint concerning the quality of the services must be notified to Seller within 24 hours of their performance by Seller.
- 6.4 Nothing in these Conditions shall limit or exclude Seller's liability for:
- 6.4.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 6.4.2 fraud or fraudulent misrepresentation;
- 6.4.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- 6.4.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession);
- 6.4.6 defective products under the Consumer Protection Act 1987; or
- 6.4.7 for any matter for which it would be illegal for Seller to exclude or attempt to exclude liability.

- 6.5 Subject to Condition 6.4 where a complaint is notified to Seller in accordance with Condition 6.1, 6.2 or 6.3 and is accepted, Seller shall be entitled at its sole discretion to replace the relevant Goods or (where appropriate) make good the shortfall/failure to deliver and/or re-perform the relevant services or at Seller's option (if already paid) to refund to Buyer the price of the defective Goods and/or services or the Goods that have not been delivered. Seller shall have no further liability to Buyer in respect of any complaints concerning shortfall, failure to deliver or the quality of the Goods or services and the terms of these Conditions shall apply to any repaired or replacement Goods or services under this Condition 6.4. Buyer shall not be entitled to set off against any sums due to Seller the value of any claim Buyer may purport to have against Seller.
- 6.6 Subject to Conditions 6.4 and 6.5 Seller shall under no circumstances whatever be liable to Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the contract.
- 6.7 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are to the fullest extent permitted by law, excluded from the contract.
- 6.8 Without prejudice to the generality of the foregoing any sample supplied by Seller shall not render any subsequent sale a sale by sample.
- 6.9 This Condition 6 shall survive termination of the contract.
7. Force Majeure
- 7.1 Seller shall not be liable to Buyer or deemed to be in breach of the contract by reason of any delay in performing or failure to perform any of Seller's obligations in relation to the Goods and services if the delay or failure is due to any cause beyond Seller's reasonable control. Without limiting the generality of the foregoing, causes beyond Seller's reasonable control shall include, flood, storm, fire, strikes, lock-outs or other industrial action or trade disputes, difficulties in obtaining raw materials, fittings or other items of equipment, power failure or break down in machinery.
8. Payment Terms
- 8.1 Unless otherwise agreed in writing by Seller, payment for Livestock must be by cash, cheque or credit card on collection or, where Seller arranges delivery, by return post following arrival of the Livestock at Buyer's premises; payment for Dry Goods and services must be made no later than 30 days following Seller's invoice date.
- 8.2 If Buyer fails to make payment on the due date, without prejudice to any other right or remedy available to Seller, and without prejudice to Condition 10 Seller shall be entitled to:-
- 8.2.1 cancel the contract or suspend further deliveries to Buyer; and/or
- 8.2.2 charge interest at the rate of 8% per annum above the base rate of the Bank of England from time time of Seller's bankers from the due date until the actual date of payment; and/or

8.2.3 payment from Buyer on demand on a full indemnity basis, of all costs, charges and expenses in any way incurred by Seller in relation to the overdue payment and its recovery.

9. Risk in Goods

9.1 Risk of damage to or loss of the Goods shall pass to Buyer at the time of delivery or, if Buyer wrongfully fails to take delivery of the Goods, at the time that delivery is tendered.

10. Title in Goods

10.1 Title to the Goods shall not pass to Buyer until Seller has received payment in full (in cash or cleared funds) for:

10.1.1 the Goods; and

10.1.2 any other goods that Seller has supplied to Buyer in respect of which payment has become due.

10.2 Until title to the Goods has passed Buyer, Buyer shall:

10.2.1 hold the Goods on a fiduciary basis as Seller's bailee;

10.2.2 store the Goods separately from all other goods held by Buyer so that they remain readily identifiable as Seller's property;

10.2.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

10.2.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;

10.2.5 notify Seller immediately if it becomes subject to any of the events listed in Condition 11; and

10.2.6 give Seller such information relating to the Goods as Seller may require from time to time,

but Buyer may resell or use the Goods in the ordinary course of its business.

10.3.1 If before title to the Goods passes to Buyer, Buyer becomes subject to any of the events listed in Condition 11, or Seller reasonably believes that any such event is about to happen and notifies Buyer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Seller may have, Seller may at any time require Buyer to deliver up the Goods and, if Buyer fails to do so promptly, enter any premises of Buyer or of any third party where the Goods are stored in order to recover them.

10.4 If payment for the Goods and/or services under any other contract between Seller and Buyer is overdue in whole or in part. Seller (without prejudice to any of its other rights) may retake possession of and/or resell any Goods the title to which it has by these Conditions retained and Buyer shall, upon request of Seller, allow Seller its servants and agents during normal working hours to enter any premises where the Goods are for the purpose of recovering possession of such Goods.

11. Insolvency of Buyer

11.1 Notwithstanding any other agreement as to the terms of payment, the total price shall become due and payable and Seller shall have the right to forthwith terminate the contract (without prejudice to any of its other rights) if Buyer (being a company) suspends or threatens to suspend payment of its debts, seeks to reschedule its debts, is subject to any event regarding its winding up or the appointment of an administrator or administrative receiver; if Buyer (being an individual) is the subject of a bankruptcy petition; if a receiver is or could be appointed by anyone over Buyer's assets; ; or if Buyer ceases or threatens to cease to carry on business.

11.2 Upon termination of the contract pursuant to Condition 11.1 Seller shall have such rights of repossession and resale as are set out in Condition 10.3.

12. Right of Set-Off

12.1 Seller shall be entitled to apply any sum in any way arising out of the contract due from Seller to Buyer in settlement of any sum due from Buyer to any other division in Cranswick Pet and Aquatics Ltd and (where there is any amount due from any other division in Cranswick Pet and Aquatics Ltd to Buyer) Seller shall on behalf of Buyer be entitled to give such other division a good receipt for any sum which Buyer may pay to Seller in settlement of any sum due from Buyer to Seller in any way arising out of the contract.

13. Proper Law and Jurisdiction

13.1 The contract shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English Courts.

Schedule 4

TMC's quality standards and criteria for internet sales

1. The Distributor's website shall make provision for high availability, have adequate bandwidth capability and be free from any persistent technical issues that may impede users from adequately accessing the website.
2. The Distributor will not sell or promote the Products over an internet site other than its own branded site that complies with the standards set out in this agreement.
3. The Distributor's website shall include the Distributor's full company name as used for the purposes of this agreement and no other name.
3. The Distributor's website shall include a link to TMC's website as notified to it from time to time.
4. The Distributor will ensure that customers do not visit its website through a site carrying the name or logo of a third party.
5. The Distributor shall ensure that its website complies with all legal requirements such as cookies and distance selling (where the customers are consumers).
6. The Distributor shall ensure that the Products are shown and described in a professional and accurate manner. All advertising shall present the Products as quality products and shall use suitable language for this purpose. Any advertising that in TMC's reasonable opinion is inappropriate shall be immediately discontinued or (if required) recalled by the Distributor.
7. The Distributor shall feature the Products on separate pages to any other products that it sells.
8. The Distributor shall only use images of the Products that have been supplied for that purpose by TMC and shall immediately remove such images at the request of TMC.
9. The Distributor shall provide a customer helpline telephone number that is available from 9am to 5pm on Business Days. The helpline will be manned by a trained member of staff who is able to answer technical queries in relation to the Products and deal with sales related issues such as returns.
10. The Distributor shall clearly specify additional charges associated with the sale and delivery of the Products including postal charges and credit or debit card charges. These details must be made available before the point of ordering.
11. The Distributor shall not feature any of the Products on its website where it is unable to deliver such items within 7 days of the order and shall hold sufficient stocks of the Products for these purposes. The Distributor shall make it clear if an item featured on a website page is not in stock.
12. The Distributor shall ensure that payment from customers is via a secure payment method.

Schedule 5 Authorised Wholesaler Criteria

This Schedule is only relevant if the Distributor has been appointed as an Authorised Wholesaler.

Where this Schedule contains statements of fact about the business of the Distributor, the Distributor represents that such statements are true and correct to the best of its knowledge, information and belief.

Where this Schedule contains obligations, the Distributor undertakes to discharge such obligations during the Term.

1. COMPANY DETAILS

1.1 The company information set out in the New Account Form is accurate.

2. WAREHOUSING AND LOGISTICS

2.1 The Distributor has warehouse facilities at the locations agreed with TMC, all or a separate part of which can be dedicated to the storage of the Products so as to maintain them in perfect condition and suitable for resale.

2.2 From time to time and upon reasonable notice, the Wholesaler shall allow TMC or its authorised representative to inspect the Products when in storage under the control of the Distributor.

2.3 The Distributor shall maintain stocks of the Products in its warehouse facilities sufficient to satisfy demands for the Products in the Territory.

3. SALES SUPPORT

3.1 The Distributor will maintain a call centre capable of dealing with all expected technical pre-sales enquiries from Authorised Retailers in the Territory.

4. SALES SUPPORT PERSONNEL

4.1 The Distributor will employ a sufficient number of technically trained sales staff to respond to technical enquiries and provide demonstrations of the Products to Authorised Retailers.

Schedule 6 Authorised Retailer Criteria

An Authorised Retailer (Tier 1 - **First Class Reef to Retail**) shall meet the criteria in both sections A and B.

An Authorised Retailer (Tier 2 - **Product Partner**) shall meet the criteria in section A only.

Where this Schedule contains statements of fact about the business of the Distributor, the Distributor represents that such statements are true and correct to the best of its knowledge, information and belief.

Where this Schedule contains obligations, the Distributor undertakes to discharge such obligations during the Term.

SECTION A (for **All** Authorised Retailers)

1. COMPANY DETAILS

1.1 The company information set out in the New Account Form is accurate.

2. LIVESTOCK

2.1 The Distributor must have facilities to hold and sell tropical, marine or coldwater aquatic livestock at the location of the premises given for the purposes of this agreement and it shall have received and shall maintain all necessary permissions and licences for the sale of livestock from these premises.

3. RETAIL PREMISES

3.1 The premises are suitable for the retail sale of the Products and shall have a high quality appearance and be clearly identifiable as such externally.

3.2 The premises must be open to the general public and specialise in the retail sale of Aquarium related products or have a specialist department for the sale of Aquarium related products.

3.3 The premises must not give the impression that it is a self-service shop (e.g. sales from pallets).

3.4 Where the premises are not solely dedicated to the sale of the Products but are organised for the display and sale of different brands of products, including third party brands, the Distributor shall display the Products in a separate section of the premises which shall be of at least equal prominence to any other section of the premises. This section of the premises shall be clearly branded so that the location of the sales area dedicated to the Products is obvious to any potential customer immediately on entering the premises. All space dedicated to promoting the Products shall be in the house style of TMC and shall be kept clean and visually attractive.

- 3.5 The Distributor shall not exhibit or sell any item whose trade mark or brand name might give rise to confusion with the Trade Marks.
- 3.6 The Distributor shall mount continual and changing displays of the Products in prominent and appropriate positions in the outside windows and on the floor of the premises.
- 3.7 The Distributor has adequate storage facilities at the premises. All or a separate part of the storage facilities shall be dedicated to the storage of the Products so as to maintain them in perfect condition and suitable for resale.
- 3.8 The premises shall be open as a minimum between 9am and 5pm on Business Days and shall have a shop front with window displays.

4. SALES SUPPORT PERSONNEL

- 4.1 The Distributor will employ a sufficient number of technically trained sales staff within the premises who shall be:
- (a) able to deal competently with technical enquiries and demonstrations of the Products to customers;
 - (b) able to determine whether or not a product is functioning correctly; and
 - (c) available throughout the premises' opening hours.
- 4.2 If required by TMC, the Distributor shall arrange for sales staff to attend training provided by TMC. Such training will be provided free of charge but the Distributor shall be responsible for all travel, salary and other costs associated with attending the training.

5. PRODUCT PROMOTION

- 5.1 All advertising shall present the Products as quality products and shall use suitable depictions and language for this purpose. Any advertising that in TMC's reasonable opinion is inappropriate shall be immediately discontinued or (if required) recalled by the Distributor.
- 5.2 All sales brochures, catalogues, technical information sheets and point of sale materials shall be either (i) materials supplied by TMC or (ii) materials previously approved in writing by TMC.
- 5.3 The Distributor shall use any point of sale materials provided by TMC in such manner as TMC may reasonably specify.

6. AFTER-SALES

- 6.1 The Distributor shall provide a full after-sales service to customers.
- 6.2 The Distributor shall provide a warranty and returns service in accordance with TMC's reasonable instructions from time to time.

SECTION B (For Authorised Retailers Tier 1 - First Class Reef to Retail only)

1. The Distributor shall sell ornamental marine livestock from the premises and must regularly buy across all livestock categories from TMC (fish, inverts, live rock) at agreed monthly levels.
2. The Distributor must be a member of OATA.
3. The Distributor shall use Tropic Marin Salt in its Livestock systems.
4. The Distributor shall feed Gamma food products to livestock held in store.
5. The Distributor shall use TMC Tank labelling for TMC livestock.
6. The Distributor shall maintain records for mortalities and water quality.
7. The Distributor must regularly advertise TMC Products.
8. The Distributor must stock a full range of TMC products across minimum of 3 product groups within V2, Aquaray, AquaHabitat, Aquagro and any TMC Pond group.
9. The Distributor shall provide customers with after sale repair and warranty service and for 6 months after termination of distribution agreement.

Signed by Paul West
for and on behalf of Cranswick Pet
& Aquatics Ltd

.....
Director

Signed by
for and on behalf of Distributor

.....
Director /Proprietor/Partner