

CYCLONE VALVES DISTRIBUTION AGREEMENT PDF Form:

This agreement is made and entered into on Day of Month, Year by and between Seller (the “Seller”), a company located at Seller’ Address and Distributor (the “Distributor”), a company located at Distributor’s Address

WHEREAS:

- a) The Seller manufactures certain medical device products (the “Products”) as defined in Appendix 1: The Product Range; and
- b) The Seller wishes to appoint the Distributor as a distributor and as Official Representative for the promotion and sale of the Products in the territories as defined in Appendix 2: Territories (the “Territories”); and
- c) The Distributor wishes to be appointed as a distributor and as Official Representative for the promotion and sale of the Products in the Territories on the terms of this agreement.

NOW, THEREFORE

In consideration of the mutual promises and covenants hereinafter set forth, the parties hereto agree as follows:

1. APPOINTMENT OF DISTRIBUTOR

Subject to all of the terms and conditions of this Agreement, The Seller hereby appoints The Distributor, and Distributor hereby accepts appointment, as an authorised, independent distributor of the Products in the Territories.

2. RELATIONSHIP OF THE PARTIES

2.1 The Distributor buys and sells in his own name and for his own account. The Distributor acts as independent trader as regards both the Seller and the customers.

2.2 The Distributor shall not pledge the Seller’s credit or give any condition or warranty or make any representation on the Seller’s behalf or commit the Seller to any contracts. Further, the Distributor shall not, without the Seller’s prior written consent make any promises or guarantees with reference to the Products beyond those contained in this contract or otherwise incur any liability on behalf of the Seller.

2.3 The Seller shall provide Instructions For Use, and product labelling in English for each of the Products. Where local language Instructions For Use and product labelling are required the Seller shall undertake to provide the appropriate translations. The Seller must pre-approve any promotional material that is developed by the Distributor and contains references to the Seller before this material enters the local marketplace.

2.4 The Distributor must at all times seek prior approval from the Seller for all promotional and press release material prior to that material being circulated in the public domain. Such approval shall not unreasonably be withheld.

2.5 The Seller shall provide assistance in the form of product support information and technical documentation to the Distributor in obtaining any regulatory clearances that are necessary to market and/or sell the Products in the Territories. Such assistance shall be provided free of charge and the Distributor shall obtain such clearances on its own behalf and at its own cost.

2.6 The Distributor, as Official Representative, shall undertake to lodge Applications for an Establishment Licence, a Medical Device License or any Application for a Medical Device License Amendment with the appropriate authorities. The seller shall furnish the Distributor with all and any technical information necessary to lodge these applications.

2.7 The Distributor shall keep the required records and report complaints and investigations for input to the Corrective & Preventive action system. The point of contact to control the activities of Company regarding Corrective & Preventive action shall be the Seller's Quality Manager. Documented procedures for adverse events must meet the Medical Device requirements for Problem Reporting.

2.8 Distribution records shall be kept by the Distributor for the life-time of the device or two (2) years from shipping whichever is the greater. The Seller shall have access to these records as required. These distribution records must be adequate to permit a complete and rapid withdrawal of devices from the market.

2.9 The Distributor shall provide the Seller with all details requested, including without limitation, the customer name, address and contact details, including the batch or lot numbers, including quantities sold to facilitate traceability to the end user.

2.10 The Seller shall provide practical training for the Distributor's field sales personnel at the Seller's UK base. Costs associated with transport and subsistence of said personnel remain with the Distributor.

2.11 The Distributor shall have the right, upon reasonable notice to the Seller and during regular business hours, to inspect and audit the facilities being used by the Seller for production of the Products, to assure compliance by the Seller with applicable rules and regulations and with other provisions of this Agreement.

2.12 The Seller shall have the right, upon reasonable notice to the Distributor and during regular business hours, to inspect and audit the facilities being used by the Distributor for distribution of the Products, to assure compliance by the Distributor with applicable rules and regulations of the territories and with other provisions of this Agreement.

3. SUB-REPRESENTATIVES

3.1 The Distributor shall have the right to appoint its current sub-distributors, dealers, or other representatives to sell the Products in part or whole of the Territories. Subject to giving notice in writing to the Seller, the Distributor has the right to appoint new sub-

distributors, dealers, or other representatives to sell the Products in part or whole of the Territories. The Distributor agrees to purchase the Products exclusively from the Seller.

3.2 The Distributor shall use its best endeavours to market and to promote the sale of the Products within the Territories by advertising, distribution of technical and sales matters, personal calls upon prospective customers and other activities, all of which shall be undertaken by the Distributor at his sole cost and expense.

4. SERVICES, ADVERTISING AND EXHIBITIONS

4.1 The Distributor shall provide a sufficient number of suitably trained sales personnel to ensure proper fulfilment of the Distributor's obligations under this Agreement.

4.2 The Distributor shall advertise the Products within the Territories at its own cost, in a manner similar to the services provided by the Distributor for similar products developed or distributed by the Distributor, with a similar market potential.

4.3 Participation in fairs or exhibitions within the Territories shall be at Distributor's expense. In case the fair or the exhibition has the purpose of being international, the participation shall be the subject of prior consultation between the Parties.

5. TRADEMARK

5.1 The Seller hereby grants to the Distributor the non-exclusive right in the Territories to use the trademarks Trademarks in the promotion, advertisement and sale of the Products in accordance with the terms of and for the duration of this Agreement. The trademarks Trademarks are registered trademarks, owned and used by the Seller. The Seller makes no representation or warranty as to the validity or enforceability of the trademark, nor as to whether the same infringe on any intellectual property rights of third parties in the Territories.

5.2 The Products shall be sold under the Seller's trademark and on all Products, containers and advertisements for the Products as may be prescribed by the Seller. All representations of such trademark which the Distributor intends to use shall first be submitted to the Seller for approval.

5.3 After termination of this Agreement the Distributor shall immediately cease all use of Seller's name or any of Seller's trademarks in any manner whatsoever.

5.4 The Distributor may not put any trademark of his own on any Products or Product's documentation material (including without limitation any inserts), without the Seller's permission in writing in advance. Such authorisation shall not be unreasonably withheld as long as regulatory requirements are met.

5.5 The Distributor shall not, without the prior written consent of the Seller, alter or make any addition to the labelling or packaging of the Products displaying the aforementioned Seller's trademarks, and shall not alter, deface or remove in any manner any reference to

such trademarks, any reference to the Seller or any other name attached or affixed to the Products or their packaging or labelling.

5.6 Both Seller and the Distributor shall promptly inform each other of any situation, where it has a reason to believe that trademark rights may be infringed or challenged by third parties. The Distributor shall not do or omit to do anything in its use of the Seller's trademarks that may or would adversely affect their validity.

5.7 The Seller agrees to and at its own expense to take appropriate action (in its sole discretion) to protect its trademark and other intellectual property rights. The Distributor agrees at the request and expense of the Seller to provide all reasonable assistance in connection with any action to be taken by the Seller pursuant to clause 12.2.

6. REPORTS

6.1 The Distributor shall with due diligence keep the Seller informed of market conditions, state of competition and shall supply a general report as frequently as may be required, but in no event less than once every quarter.

6.2 The Seller shall report to the Distributor all relevant product documentation and any changes or improvements in the Products, which the Seller intends to make commercially available. The Seller shall not implement any such changes or improvements commercially, if not approved by the appropriate regulatory authorities.

7. DELIVERY PLAN AND ORDER

7.1 During the term of this Agreement, the Seller shall supply the Distributor with Products as ordered by the Distributor pursuant to this Agreement for distribution in the Territories. The Products shall conform to the specifications as set forth in Appendix 1 The Product Range to this Agreement and as approved by the regulatory authorities.

7.2 The Distributor shall provide an initial non-binding written twelve (12) month forecast upon execution of this Agreement and every six (6) months thereafter of the Distributor's expected requirements for Products.

7.3 The Distributor shall place a binding order for Products, in the form agreed to by the parties, on a quarterly basis by written or electronic purchase order (or by any other means agreed to by the parties) to the Seller, which shall be placed at least sixty (60) days prior to the desired date of delivery. In no event shall the Distributor be obligated to purchase Products except by means of the aforementioned binding purchase order.

7.4 The Distributor agrees to purchase each year from the Seller a minimum quantity of Products in each Territory, which quantity shall be as set forth in Appendix 3: Minimum Quantity by Period by Territory. The Distributor shall make purchases for the Territories directly from the Seller from the United Kingdom. The Distributor is obliged to provide a report to the Seller every calendar Quarter (3 months period) summarising the quantity of

Products sold within the Territories and any other information relating to the performance of its obligations under this Agreement the Seller may reasonably require from time to time. Should the Distributor fail, in any Territory, to purchase the minimum quantity as agreed upon (Appendix 3: Minimum Quantity by Period by Territory) then the Seller has the right (in its sole discretion), subject to three (3) months notice in writing, to terminate this Agreement for that Territory.

7.5 The Distributor shall make a pre-payment (the “Pre-payment”) to the Seller amounting to minimum quantities of Product in each Territory for the first six (6) months following execution of the Agreement. The Pre-payment will be made to the Seller no later than one month following execution of the Agreement.

7.6 The Seller shall without delay submit to the Distributor an acknowledgement in writing of each order placed by the Distributor.

7.7 The Seller shall use all best efforts to deliver the Products ordered in Distributor’s purchase orders within sixty (60) days after receipt of any such order or such longer period as may be specified in such order.

7.8 The Seller shall have the right to reject any purchase order on the grounds that the Distributor has changed to an unreasonable extent its previously estimated requirements as to quality or quantity of the Products.

7.9 The Products shall be delivered by the Seller to the Distributor Ex Works. For the avoidance of doubt, the Distributor shall be responsible for obtaining any necessary import or export licences or permissions in relation to the Products and any and all customs duties, clearance charges, taxes, brokers’ fees and other amounts which may be payable in connection with the import, export, purchase and delivery of the Products.

8. PRICES, CURRENCY AND TERMS OF PAYMENT

8.1 The prices charged by the Seller to the Distributor as set forth in Appendix 4: Price List, or as may subsequently be determined, shall be Ex Works.

8.2 The Distributor shall provide payment to the Seller for each respective order of Products in full in advance of the agreed shipping date.

8.3 If not otherwise agreed to between the Parties the payment shall be made in the currency as set forth in Appendix 4: Price List. Payment may be made by international bank transfer to the account nominated by the Seller from time to time or by cheque made out to Seller. The Distributor shall not be entitled by reason of any set-off, counter-claim, abatement or other similar deduction to withhold payment of any amount due to the Seller.

8.4 The prices for Products shipped during the first year of the term of this Agreement shall be as set forth in Appendix 4: Price List. The Seller and the Distributor shall meet

and review pricing each year. Any changes to pricing shall take account of changes in costs of raw material, changes in manufacturing costs, costs related to changes in state and municipal statutes laws, rules or regulations. Furthermore, changes in the exchange rates between applicable currencies shall be taken into consideration.

9. PRODUCT LIABILITY

9.1 The Distributor shall maintain product liability insurance with a reputable insurer for the duration of this Agreement of not less than £5 million for any one occurrence and not less than £10 million in the aggregate in any one year in respect of any and all liability (howsoever arising) in respect of a claim that the Products are faulty or defective (in all Territories) and shall provide a copy of the insurance policy and proof of payment of the current premium to the Seller on written request.

9.2 The Distributor undertakes to maintain appropriate up-to-date and accurate records to enable the immediate recall of any batches of the Products or any of them from the retail or wholesale markets. These records shall include records of deliveries to customers (including details of batch numbers, delivery date, name and address of customer, and telephone number and fax or telex number if available). The Distributor shall, at the Supplier's cost, give such assistance as the Seller may reasonably require for the purpose of recalling as a matter of urgency any quantities of the Products or any of them from the retail or wholesale market

10. LIMITATION OF LIABILITY

10.1 The Seller and the Distributor shall in no case have any liability to each other for loss of use and other special, indirect or consequential losses or damages. However, the Distributor shall be liable to the Seller for loss of profit.

11. SECRECY

11.1 Each Party agrees and undertakes that during the term of this Agreement and thereafter it shall keep confidential and shall not use for its own purposes all information of a confidential nature (including, without limitation, information relating to a Party's business, know-how, processes, product information and trade secrets) which may become known to that Party from the other Party ("Confidential Information"), unless the information is public knowledge or already known to that Party at the time of disclosure or subsequently becomes public knowledge other than by breach of this Agreement or subsequently comes lawfully into the possession of that Party from a third party.

11.2 Either Party's Confidential Information shall be maintained in strictest confidence by the other Party and shall be treated as the other Party would treat its own Confidential Information. It may only be used for the sole purpose of assisting that other Party in adequately discharging its obligations hereunder. Such Confidential Information shall not

be disclosed to any third party, unless with prior written approval from the other Party or unless required by local law. This obligation shall survive the termination of this Agreement for seven (7) years from the end of the contract.

12. INFRINGEMENT

12.1 Both Distributor and Seller shall inform the other party of all acts of unfair competition, breach of confidence and of all infringements of patent or similar rights or other intellectual property rights of the Seller or the Distributor, which come to their notice.

12.2 The Distributor shall, at the request of the Seller, assist the Seller to the best of its ability to protect the Seller against such acts and infringements. The Seller shall compensate the Distributor for reasonable external expenses incurred in this regard, provided that, external expenses over £500.00 must be pre-approved by the Seller.

13. ASSIGNMENT

13.1 This Agreement may not be assigned by either Party without the prior written consent of the other. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns

14. CHANGES OF AGREEMENT

14.1 Changes or additions to this Agreement shall not be valid unless made in writing and signed by both parties.

15. INVALID CLAUSES

15.1 In case one or more provisions of this Agreement are invalid, the validity of the remaining provisions of the Agreement shall not be affected thereby.

16. TERM AND TERMINATION

16.1 This Agreement shall come into effect on the date last signed and shall continue in force for a period of one (1) year unless otherwise terminated as provided herein.

16.2 Without prejudice to any remedy either Party may have against the other for breach or non-performance of this Agreement, both Parties shall have the right to terminate this Agreement with immediate effect by giving the other Party written notice: (i) if the other Party commits any material breach of any of the terms of this Agreement and (is such breach is remediable) fails to remedy that breach within 30 days of that Party being notified of the; or (ii) an order is made or a resolution is passed for the winding up of the other Party, or an order is made for the appointment of an administrator to manage the affairs, business and property of the other Party, or such an administrator is appointed, or documents are filed with the Court for the appointment of an administrator, or notice of intention to appoint an administrator is given, or a receiver is appointed of any of the other Party's assets or undertaking, or circumstances arise which entitle the Court or a

creditor to appoint a receiver or manager or which entitle the Court to make a winding-up order, or the other Party takes or suffers any similar or analogous action in consequence of debt anywhere in the world, or an arrangement or composition is made by the other Party with its creditors or an application to a court for protection from its creditors is made by the other Party.

16.3 If the Distributor has not fulfilled any payment within thirty (30) days after having fallen due and if the Distributor still has not made the payment of such amount after two (2) reminders from the Seller within at least fourteen (14) days between each reminder with reference to this Clause, the Seller is entitled to terminate this Agreement immediately on giving written notice.

16.4 The Seller is entitled to terminate this Agreement on giving three (3) months prior written notice to the Distributor.

16.5 The parties are entitled to terminate this Agreement under any of the following change of control events ("Change of Control") arising at either the Seller or the Distributor:

- a) The purchase by a third party of 30% of the company's stock;
- b) A change in the majority of the board of directors;
- c) A merger or consolidation, after which the company's prior shareholders no longer control the company; or
- d) The sale of all or substantially all of the company's assets or the liquidation of the company.

17. RIGHTS AND LIABILITIES AFTER TERMINATION

17.1 Termination of this Agreement shall not release either Party from any obligation or liability incurred prior to the effective date of such Termination.

17.2 The Distributor shall, at his sole cost and expense, promptly return to the Seller all advertising materials, Confidential Information and all other property or equipment of the Seller in possession of the Distributor.

17.3 In the event of business transactions between the Parties subsequent to the serving of notice of, or subsequent to the date of, Termination of this Agreement, such relations shall not constitute a renewal of the Agreement or a waiver of Termination, but all such transactions shall be governed by terms identical to the applicable provisions of this Agreement, unless the Parties execute a new Agreement superseding this Agreement.

17.4 The termination of this agreement (howsoever arising) shall not of itself give rise to any liability on the part of the Seller to pay any compensation to the Distributor, including but not limited to, for loss of profits or goodwill.

18. REPLACEMENT OF PREVIOUS AGREEMENTS

This Agreement shall replace all other verbal or written Agreements (howsoever arising) between the Parties concerning the Distributor's right and licence to promote and distribute the Products within the Territories.

19. ENTIRE AGREEMENT

This document constitutes the entire Agreement of the Parties on the subject matter hereof and may not be modified or altered except by written document duly executed by both Parties.

20. FORCE MAJEURE

20.1 If either Party is prevented from performing any of its obligations hereunder due to any cause which is beyond the non-performing Party's reasonable control, including but not limited to fire, explosion, flood or other acts of God; acts, regulations, or laws of any government; strike, lock-out or labour disturbances; or unavailability or shortage of power, labour or transportation; war, rebellion or civil disorder (collectively, "Force Majeure Event"), such non-performing Party shall not be liable for breach of this Agreement with respect to such non-performance to the extent any such non performance is due to a Force Majeure Event.

20.2 Such non-performance shall be excused for six (6) months or until the termination of such event (whichever occurs sooner), provided that the non-performing Party gives written notice to the other Party of the Force Majeure Event no later than thirty (30) days after becoming aware that the Force Majeure Event shall prevent timely performance.

20.3 A Force Majeure Event affecting either party does not excuse non-payment of amounts due for accepted goods ordered and delivered to the Distributor or for defective or recalled goods returned to the Seller.

21. THIRD PARTY RIGHTS

21.1 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 Contract (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of a third party which exists, or is available, apart from that that Act.

22. APPLICABLE LAW

22.1 This Agreement shall be governed by, and construed in accordance with English law. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the Courts of England for determining any dispute, claim or difference concerning this Agreement or any matter arising therefrom.

22.2 This Clause and clauses 10, 11, 12.2, 17, 19 and 23 shall survive any Termination of this Agreement.

23. NOTICES

23.1 All notices and other communications hereunder shall be in writing and delivered personally or mailed by overnight mail, postage prepaid, or by certified or registered mail, return receipt requested, postage prepaid, or sent by DHL, Federal Express or other internationally recognised courier service (billed to sender), to Parties at the following addresses:

If to Seller: Seller's Address

If to Distributor: Distributor's Address

or to such other place either Party may designate by written notice to the other.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

DISTRIBUTOR: SELLER:

By:

Title:

Date:

Signature: Signature: