

TERMS AND CONDITIONS OF APPOINTMENT FOR EXPORT DISTRIBUTORS
OF TOPPER INTERNATIONAL LIMITED

In these Standard Terms and Conditions of Appointment the following definitions apply:

- (a) "The Supplier" means Topper International Limited.
- (b) "The Distributor" means the person, company, partnership or other concern appointed as distributor for the Products under the Appointment letter.
- (c) "the Trade Marks" means the trade mark TOPPER together with any further trademarks of which the Supplier may become the proprietor in the Territory in respect of the Products and which the Supplier may permit the Distributor by express notice in writing to use in respect of the Products.
- (d) "The Territory" means the Republic of Bulgaria

Words and phrases which are defined in the Appointment Letter shall have the same meanings herein.

1. Duties of the Distributor

The distributor shall at all times during the term of this Agreement:

- 1.1 purchases the Products only from the Supplier;
- 1.2 not distribute during the duration of this Agreement any goods of the same description as and which compete with the Products;
- 1.3 refrain outside the Territory from seeking customers for the Products (save with the prior written consent of the Supplier);
- 1.4 refrain outside the Territory from establishing any branch or maintaining any distribution depot for the sale of the Products;
- 1.5 use its best endeavours to ensure that the Products are imported into the Territory with the minimum of delay and attend to and complete in a proper and efficient manner all necessary documents and formalities in connection therewith;
- 1.6 use its best endeavours to develop, promote and sell the Products in the Territory and to expand the sale of the Products to all potential purchasers thereof by all reasonable and proper means (including, but without prejudice to the generality of the foregoing, demonstrations, exhibitions of the Products at fairs, exhibitions and shows, personal visits, correspondence, encouraging sympathetic editorial comment in the media and advertising both on a national level and on a local basis.
- 1.7 pay or ensure payment to the Supplier of all sums due to the Supplier in respect of sales of the Products;
- 1.8 maintain on its own account sufficient stock of the Products in order for the Distributor to meet all customer delivery and service requirements for the Products throughout the Territory.

- 1.9 insure at its own cost with a respectable insurance company all stores of the Product as are held by it against all risks to at least the full replacement value thereof.
- 1.10 display advertising materials and other signs provided by the Supplier;
- 1.11 observe all directions and instructions given to it by the Supplier in relation to the promotion and advertising of the Products;
- 1.12 not represent itself as an agent of the Supplier for any purpose or pledge the Supplier's credit or give any condition or warranty or make any representation on the Supplier's behalf or commit the Supplier to any contracts nor without the Supplier's prior written consent make any promises or guarantees with reference to the Products beyond those contained in the promotions material supplied by the Supplier or otherwise incur any liability on behalf of the Supplier;
- 1.13 inform the Supplier immediately of any changes in the Distributor's organisation or method of doing business which might affect the performance of the Distributor's duties hereunder;
- 1.14 except with the Supplier's prior express written consent not assign, transfer, charge or in any other manner deal in this Agreement or its rights hereunder or any part hereof or purport to do any of the same nor appoint sub-distributors hereunder;
- 1.15 provide for customers of the Products in the Territory an efficient maintenance, repair and after-sales service and maintain at the cost and risk of the Distributor a stock of spare parts, accessories and ancillary equipment adequate therefore;
- 1.16 indemnify and keep indemnified the Supplier against any and all costs, claims, demands or other liabilities made against the Supplier arising from or in connection with any breach of the Distributor's obligations under this Agreement.

2. **Orders**

The Supplier shall use all reasonable endeavours to meet all orders for the Products forwarded to the Supplier by the Distributor in accordance with orders placed 3 months in advance. Orders that are received outside the three month order form, will be acknowledged and a delivery time advised at the time of receipt of such order. For example if the current months order book is full, and also the subsequent month the order will be acknowledged for delivery the third month after receipt of such order. If the current month order book is full and the next month has capacity, then the order will be acknowledged for delivery in the next month after receipt of such order.

3. **Delivery**

All delivery times are best estimates and whilst the Supplier will endeavour to avoid delay, the Supplier shall under no circumstances whatsoever be liable to the Distributor for any loss or damage whether direct, indirect or consequential, arising from delay in delivery

Unless the Supplier shall otherwise expressly agree in writing, delivery of the Products by the Supplier to the carrier shall constitute delivery of the Products by the Supplier. The Products will be at the Distributors

risk immediately on delivery, and the Distributor shall insure comprehensively against the usual risk accordingly. The Supplier shall not be liable in any way whatsoever for any delay, breakage or damage to or loss of the Products after the Supplier has made delivery to the carrier.

4. **Warranty**

The Products are covered by a warranty, the terms of which are laid out in the Warranty document and maximized to three years after delivery.

5. **Supplier's Undertakings**

The Supplier Undertakes:

- 5.1 (Whilst this Agreement is exclusive) to supply the Products to the Distributor for resale in the Territory and not to supply the Products to users in the Territory and to refer all enquiries received by the Supplier regarding the sale of Products in the Territory to the Distributor;
- 5.2 to provide the Distributor with information on the advertising and promotion used by the Supplier and supply such quantities of promotional and advertising material as the Distributor shall reasonably request at the cost of the Distributor or at the Supplier's cost if this in the promotional plan of the Supplier.
- 5.3 to provide such information and support as may reasonably be requested by the Distributor to enable it properly and efficiently to discharge its duties hereunder;
- 5.4 to supply the Distributor with such quantities of promotional and point of sale materials and samples of the Products as the Supplier shall consider reasonably necessary at a charge to be agreed;
- 5.5 to give to the Distributor any information and advise reasonably requested by the Distributor in connection with marketing, advertising, packaging and product content in respect of the Products, as much advanced notice of any intended changes in the design of Products as circumstances permit and any guidance requested by the Distributor as regards marketing.

6. **Prices**

- 6.1 the prices to be paid by the Distributor to the Supplier for the products shall be the Supplier's published list prices as established by the Supplier from time to time.
- 6.2 any and all expenses, cost and charges incurred by the Distributor in the performance of its obligations hereunder shall be paid by the Distributor unless the Supplier has expressly agreed beforehand in writing to pay such expenses, cost and charges;
- 6.3 the supplier shall give the Distributor 3 months written notice of any change in the Supplier's published list prices of the Products save where such change is necessitated by any increase in price caused by legislation changes or fluctuation in the rate of exchange;
- 6.4 the Distributor shall be responsible for the collection, remittance and payments for any or all taxes, charges, levies, assessments and other fees of any kind imposed by governmental or other authority in respect of the purchase, sale, importation lease or other distribution of the Products.

7. **Licences and Permits**

The Distributor shall be responsible for obtaining any necessary import licences or permits necessary for the entry of the Products into the Territory or their delivery to the Distributor and the Distributor shall be responsible for any and all customer duties, clearance charges, taxes, broker's fees or other amount payable in connection with such importation and delivery.

8. **Withdrawal of Products and Specification Changes**

The Supplier shall be entitled upon giving 3 months' written notice to the Distributor to exclude from this Agreement such one or more of the Products as it thinks fit for any reason the production of such Products shall have been permanently discontinued. The Supplier shall be entitled to make changes to the Product specifications which do not adversely affect the Product's performance and shall give notice of such changes to the Distributor as soon as may be practical.

9. **Conditions of Sales**

The Supplier's Conditions of sale in force from time to time shall apply to all sales by the Supplier to the Distributor hereunder. If there is any inconsistency between the Conditions of sale and the terms of this Agreement the latter shall prevail.

10. **Trade Marks**

- 10.1 The Distributor shall not without the previous written consent of the Supplier alter the labelling or packaging of all and any of the Products displaying the Trade Mark, shall not make any addition thereto and shall not alter, deface or remove in any manner any reference to the Trade Mark, any reference to the Supplier or any other name attached or affixed to the Products or its packaging or labelling.
- 10.2 The Distributor shall do nothing during or after the termination of this Agreement which would adversely affect the validity or enforceability of the Trade Mark.
- 10.3 The Distributor shall not at any time during or within one year after termination of this Agreement adopt, use or register without the prior written consent of the Supplier any word or symbol or combination thereof the same as or similar to the Trade Mark.
- 10.4 The Distributor shall cease using the Trade mark after the termination of this Agreement or after any time allowed to the Distributor for the disposal of stocks of the Product under clause 9.3 hereof in the event of the Distributor using such time and shall not use the Trade Mark otherwise than in accordance with this agreement.
- 10.5 The trademark/s remain the property of Topper International and the Distributor has the right to use the trademark/s whilst the Agreement is in force. On termination of the Agreement the Distributor must cease using the Trademark/s forthwith.

- 10.6 The Distributor acknowledges that this Agreement shall not operate to vest any right title or interest in the Trade Mark in the Distributor other than pursuant to clause 8.5 above.
- 10.7 The Distributor will immediately bring to the notice of the Supplier any improper or wrongful use in the Territory of the Trade Mark and the Distributor will at the cost of the Supplier assist on being so requested by the Supplier in taking all steps to defend the rights of the Supplier including the institution at the Supplier's cost of any actions which it may deem necessary to commence for the protection of any of its rights.
- 10.8 Any accretion of goodwill in the business in the Products derived by the Distributor by reason of the use of the Trade Mark or otherwise by its being connected in the course of trade therewith shall accrue to the Supplier whether arising at common law or otherwise and the Supplier or its successors in the title may call for an assignment thereof without any payment therefore to the Distributor.

11. **Termination and its effects**

- 11.1 The Supplier may give notice in writing to the Distributor terminating this Agreement with immediate effect if: -
- (i) The Distributor is in breach of any of the terms hereof and (if such breach is remediable) fails to remedy such breach within 30 days of the Distributor being notified of such breach;
 - (ii) the Distributor enters into a Deed of Agreement or commits an act of bankruptcy or compounds with his creditors for receiving orders made against him or if (being a company) an order is made or a resolution is passed for the winding up of the Distributor or if an order is made for the appointment of an administrator to manage the affairs, business and property of the Distributor or if a receiver is appointed over any of the Distributor's assets or undertaking or if 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 if the Distributor takes or suffers any similar or analogous action in consequence of debt;
 - (iii) The Distributor changes its organisation or methods of business in such a way as in the opinion of the Supplier to be able less effectively to carry out its duties hereunder.
 - (iv) if for any reason the Distributor is prevented from performing its duties hereunder for a period of 3 consecutive months.
- 11.2 Termination of this Agreement howsoever caused shall be without prejudice to any rights or liabilities accrued at the date of termination.
- 11.3 Upon termination of this Agreement howsoever caused:-
- (i) At the sole option of the Supplier either:-
 - (a) The Distributor shall be permitted for a period of 3 months following termination hereof to sell and distribute such stocks of the Products as it may at the time have in store or under its control,
 - (ii) The Distributor shall promptly return to the Supplier or otherwise dispose of as the Supplier may instruct all samples, instruction books, technical pamphlets, catalogues, advertising materials, specifications and other materials, documents or papers whatsoever sent to the Distributor and relating to the Supplier's business (other than correspondence which has passed between the parties) which the Distributor may have in its possession or under its control.

(iii) The termination of this Agreement shall not of itself give rise to any liability on the part of the Supplier to pay any compensation to the Distributor for loss of profits or goodwill.

11.4 Subject the Clause 11.3 all other rights and licences of the Distributor hereunder shall terminate on the termination date.

11.5 The Supplier shall be entitled to cancel all orders placed by the Distributor prior to the termination date which have been accepted by the supplier without any liability of whatsoever nature to the Supplier.

12. **Relationship**

Nothing in this Agreement shall constitute or shall be deemed to constitute a partnership between the parties hereto or constitute or be deemed to constitute the Distributor as an Agent of the Supplier for any purpose whatsoever and the Distributor shall have no authority power to bind the Supplier or to contract in the name of, create a liability against the Supplier in any way or for any purpose. The Distributor hereby undertakes that it will in all correspondence and other dealings relating directly or indirectly to the sale, distribution or other disposal of the Products clearly indicate that it is acting as Principal.

13. **Confidentiality**

13.1 Each party agrees and undertakes that during the term of this Agreement and thereafter it will keep confidential and will not use for its own purposes nor without the prior written consent of the other party disclose to any third party all information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party ("confidential information") unless such information is public knowledge or already known to such 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 such party from a third party .

13.2 To the extent necessary to implement the provisions of this Agreement each party may disclose the confidential information to such of its employees as may be reasonably necessary or desirable provided that before any such disclosure each party shall make such employees aware of its obligations of confidentiality under this Agreement and shall at all times procure compliance by such employees therewith.

14. **Force Majeure**

14.1 The obligations of each party under this Agreement shall be suspended during the period and to the extent that such party is prevented or hindered from complying therewith by any cause beyond its reasonable control including (insofar as beyond such control but without prejudice to the generality of the foregoing expression) strikes, lock-outs, labour disputes, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, difficulty or increased expense in obtaining workmen, materials or transport or other circumstances affecting the supply of goods or of raw materials therefor.

14.2 In the event of either party being hindered or prevented, such party shall give notice of suspension as soon as reasonably possible to the other part stating the date and extent of such suspension and the cause thereof and the omission to give such notice shall forfeit the rights of such party to claim such suspension. Any party whose obligations have been suspended as aforesaid shall resume the performance of such obligations as soon as reasonably possible after the removal of the cause and shall so notify the other party. In the

event that such cause continues for more than (6 months) either party may terminate this Agreement on (30) days notice.

15. **Entire Agreement**

This Appointment Letter and these Terms and Conditions constitute the entire understanding between the parties hereto with respect to the subject matter hereof and supersede all prior agreements, negotiations and discussions between the parties hereto relating thereto.

16. **Amendments**

Save as expressly provided herein, no amendment or variation of this Agreement shall be effective unless in writing and signed by a duly authorised representative of the parties hereto.

17. **Headings**

Clause heading shall not form part of this Agreement for the purpose of its interpretation.

18. **Assignment**

Neither party shall without the prior written consent of the other party assign transfer charge or deal in any other manner with this Agreement or its rights hereunder or part thereof, or purport to do any of the same, nor sub- contract any or all of its obligations under this Agreement.

19. **Waiver**

The failure of a party hereto to exercise or enforce any right under this Agreement shall not be deemed to be a waiver thereof not operate so as to bar the exercise or enforcement thereof at any time to times thereafter.

20. **Notice**

Any notice required to be given pursuant to this Agreement shall be in writing and shall be given by delivering the same by hand at, or by sending the same by prepaid first class post (airmail if to an address outside the country of posting) or by email using the address set out below to, the address of the relevant party set out in this Agreement or such other address as either party may notify to the other from time to time. Any such notice given as aforesaid shall be deemed to have been given at the time of delivery (if delivered by hand) or received the first working day next following the day of sending (if sent by email) and when received (if sent by post).

The Supplier's email address rickreading@toppersailoats.com

The Distributor's email address

21. **Remedies not Exclusive**

No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy, except as expressly provided in this Agreement, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise.

22. **Governing Law**

This Agreement shall be governed by and construed in accordance with English law and each party hereby irrevocably submits to the non-exclusive jurisdiction of the English Courts.

I agree to all the terms and conditions (print name).....

Signature

Date