

TRI-DIRECT SALES LIST SUPPLY AGREEMENT

THIS AGREEMENT is dated.....2006

BETWEEN

1. Tri-Direct Sales Limited, a company incorporated under the Companies Acts (registered number 04567803) and whose registered office is at Spectrum House Coronation Road Basingstoke Hants RG21 4JX ("Tri-Direct Sales"); and

2. Limited, a company incorporated under the Companies Acts (registered number) and whose registered office is at("the Client");

WHEREAS:

The parties wish to enter into a business relationship where Tri-Direct Sales will supply Goods to the Client for its own use, or that of the User (all as defined herein)

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions:

"Agreement" means this agreement between the Client and Tri-Direct Sales for the right to use the Goods and which includes these Conditions any Order Confirmation issued by Tri-Direct Sales and any other appendices hereto.

"Client" means the individual firm limited company or other party specified in the Agreement that is acquiring the right to use the Goods direct from Tri-Direct Sales either for its own use or by a User.

"Conditions" means the terms and conditions set out in this Agreement.

"Force Majeure" means in relation to either party to the Agreement any circumstances beyond the reasonable control of that party (including without limitation any strike lockout or other industrial action).

"Goods" means any products materials or services supplied by Tri-Direct Sales including Information and Lists, as further detailed in an Order Confirmation.

"Information" means any printed material or data supplied as Goods including printed lists computer tapes or any other form of transferring or recording data.

"Intellectual Property Rights" means any and all patents trademarks copyrights rights in domain names rights in designs copyrights and database rights (whether registered or not) and any applications to register or rights to apply for registration of any of the foregoing rights in the List or Information and all other intellectual property rights of a similar or corresponding character that may subsist now or in the future in any part of the world.

"List" means any Information which is made up of names postal addresses mobile phone numbers email addresses and other information of individuals and/or businesses.

"Nett Names Arrangement" means the percentage of the total number of records included in the List or Lists supplied to the Client as specified in the Order Confirmation.

"Order Confirmation" means the confirmation of any order referencing these Conditions (whether directly or indirectly) and including any special terms and conditions agreed in writing between Tri-Direct Sales and the Client.

"Owner" means the individual firm limited company or other party to whom

the Information belongs.

"Processor" means any third party specified in the Agreement responsible to the Client or User to assist the Client or User in the use of the Goods.

"User" means the individual firm limited company or other party specified in an Order Confirmation that is using the Goods other than the Client.

- 1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time.
- 1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. BASIS OF THE AGREEMENT

- 2.1 These Conditions shall govern the Agreement to the exclusion of any other terms and conditions including those on any quotation that is accepted or purported to be accepted by Tri-Direct Sales or those in any order made or purported to be made by the Client. No variation to these Conditions shall be binding on the parties unless agreed in writing between the duly authorised representatives of Tri-Direct Sales and the Client.
- 2.2 Tri-Direct Sales's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by a duly authorised representative of Tri-Direct Sales in writing. In entering into the Agreement and submitting any order the Client acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed.
- 2.3 Any typographical clerical or other error or omission in any literature quotation price list acceptance of offer Order Confirmation invoice or other document or information issued by Tri-Direct Sales shall be subject to correction without any liability on the part of Tri-Direct Sales.
- 2.4 A failure by either party to the Agreement to exercise or enforce any rights conferred upon it by the Agreement or these Conditions shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.
- 2.5 Tri-Direct Sales will act as a principal at law in all its dealings with third parties.
- 2.6 Nothing in the Agreement shall create or be deemed to create a partnership or the relationship of employer and employee between the parties

3. ORDERS AND SPECIFICATIONS

- 3.1 No order submitted by the Client shall be deemed to be accepted by Tri-Direct Sales unless and until confirmed in writing by a duly authorised representative of Tri-Direct Sales.
- 3.2 The Client shall be responsible to Tri-Direct Sales for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Client and for giving Tri-Direct Sales any necessary information relating to the Goods within a sufficient time to enable Tri-Direct Sales to perform the Agreement in accordance with its terms.
- 3.3 When submitting an order or at such other time as required by Tri-Direct Sales the Client shall provide 2 samples of all promotional material which is to be delivered to any name postal address e-mail address or mobile phone number included in a List for approval by the Owner.
- 3.4 No order which has been accepted by Tri-Direct Sales may be cancelled by the Client except with the agreement in writing of Tri-Direct Sales and on terms that the Client shall indemnify Tri-Direct Sales and the Owner in full against all loss (including loss of profit) costs damages charges and expenses incurred by Tri-Direct Sales and the Owner as a result of cancellation and in all cases shall be subject to a minimum charge to the Client by Tri-Direct Sales of £100.

3.5 Statements of the number of names postal addresses e-mail addresses or mobile phone numbers included in a List are approximate only.

4. PRICE OF GOODS

- 4.1 The price of the Goods shall be Tri-Direct Sales's quoted price as stated in the Order Confirmation. All prices quoted are valid for 30 days only or until earlier acceptance by the Client after which time they may be altered by Tri-Direct Sales giving written notice to the Client.
- 4.2 The Client shall be liable to pay Tri-Direct Sales's charges for handling and carriage.
- 4.3 The price is exclusive of any applicable value added tax which the Client shall be additionally liable to pay on the rendering by Tri-Direct Sales of an invoice.

5. TERMS OF PAYMENT

- 5.1 Subject to any special terms Tri-Direct Sales shall be entitled to invoice the Client for the price of the Goods on or at any time after delivery of the Goods unless the Goods are to be collected by the Client or the Client wrongfully fails to take delivery of the Goods in which event Tri-Direct Sales shall be entitled to invoice the Client for the price at any time after Tri-Direct Sales has notified the Client that the Goods are ready for collection or (as the case may be) Tri-Direct Sales has tendered delivery of the Goods.
- 5.2 The Client shall pay the price of the Goods within the number of days of the date of Tri-Direct Sales's invoice stated on the Order Confirmation and Tri-Direct Sales shall be entitled to recover the price notwithstanding a) that delivery may not have taken place provided that Tri-Direct Sales has notified the Client that the Goods are ready for collection or (as the case may be) Tri-Direct Sales has tendered delivery of the Goods and/or b) that the Client has raised any complaint query or claim that Tri Direct has failed adequately to perform its duties under the Agreement.
- 5.3 The time of payment of the price shall be of the essence of the Agreement. Receipts for payment will be issued only upon request.
- 5.4 If the Client fails to make any payment on the due date then without prejudice to any other right or remedy available to Tri-Direct Sales Tri-Direct Sales shall be entitled to:
 - 5.4.1 terminate the Agreement and/or
 - 5.4.2 charge the Client interest (both before and after any judgement) on the amount unpaid at the rate of two per cent per month until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest) and/or
 - 5.4.3 cancel or suspend any other contract between Tri-Direct Sales and the Client and/or
 - 5.4.4 require the immediate return of the Goods and/or
 - 5.4.5 set off against the price of the Goods any sums owed by Tri-Direct Sales to the Client under any contract between Tri-Direct Sales and the Client.
- 5.5 If the Nett Names Arrangement is less than 100% the Client shall be entitled to claim a discount in the form of a credit note only provided that:
 - 5.5.1 the Client claims the discount within one month of the invoice date (time being of the essence); and
 - 5.5.2 when claiming the discount the Client provides Tri-Direct Sales with such evidence satisfactory to Tri-Direct Sales that the Client is in fact entitled to a discount; and
 - 5.5.3 in any case the maximum discount to which the Client shall be entitled shall be calculated according to the Nett Names Arrangement and if the evidence provided by the Client under condition 5.5.2 of these Conditions shows a percentage of names and addresses actually used by the Client is more than the Nett Names Arrangement then this percentage figure shall be used to calculate the discount and not the Nett Names Arrangement.

6. DELIVERY

- 6.1 Any dates quoted for delivery of the Goods are approximate only. Time for delivery shall not be of the essence unless previously agreed by Tri-Direct Sales in writing. The Goods may be delivered by Tri-Direct Sales in advance of the quoted delivery date upon giving reasonable notice to the Client.
- 6.2 The Client must inspect the Goods upon delivery and must notify Tri-Direct Sales in writing within 7 days of delivery of any damage or shortage to the Goods supplied. If no such notification is given it shall be conclusively presumed that the Goods are complete and in good order and condition and fit for the purpose for which they are required and in every way satisfactory to the Client.

7 LIST SUPPLIED

All Lists supplied shall include a quantity (not exceeding fifty) of dummy names and addresses in order to monitor the usage of the List and to ensure that the List is used in accordance with the Agreement.

8 USE OF THE INFORMATION

- 8.1 Unless otherwise agreed in writing by the duly authorised representatives of the Client and Tri-Direct Sales:
- 8.1.1 the Client shall use the Information once only and as specified in the Order Confirmation and in any event within 6 months of the delivery of the Information to the Client.
- 8.1.2 the Client shall not use the Information until it has complied with condition 3.3 of these Conditions and the Owner has approved the sample.
- 8.1.3 the Client shall not communicate with any name and postal address contained in any List supplied in any way other than through the Royal Mail or other similar distribution or delivery medium.
- 8.1.4 the Client shall not communicate with any name and email address or mobile phone number contained in any List supplied in any way other than as provided for in the Order Confirmation.
- 8.2 Within one month of the date of use of the Information and unless otherwise agreed by Tri-Direct Sales in writing the Client shall comply with condition 15.2 of these Conditions as if a termination had occurred.

9 OWNERSHIP OF THE INFORMATION

- 9.1 At all times full legal and equitable title including all Intellectual Property Rights in all and any Information and any modifications and enhancements thereof supplied to the Client shall remain in the Owner.
- 9.2 The Client shall store or otherwise keep the Information in such a way as clearly to indicate at all times that the Information is owned by the Owner and shall not remove obscure or delete any mark placed on the Information by the Owner which may enable the Information to be identified.

10 PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

The Client agrees with Tri-Direct Sales throughout the period of the Agreement:

- 10.1 not to cause or permit anything which may damage or endanger the Intellectual Property Rights of the Owner or the Owner's title to the Information or assist or allow others to do so.
- 10.2 to notify Tri-Direct Sales and the Owner immediately of any suspected infringement of the Intellectual Property Rights.
- 10.3 to take such reasonable action as Tri-Direct Sales and/or the Owner shall direct at the expense of the Owner in relation to such infringement.
- 10.4 to compensate Tri-Direct Sales and the Owner for any use by the Client of the Information otherwise than in accordance with the Agreement.

- 10.5 to indemnify Tri-Direct Sales and the Owner for any liability incurred to third parties for any use of the Information otherwise than in accordance with the Agreement.

11 CONFIDENTIALITY

- 11.1 "Confidential Information" means: any information technical data or know-how including but not limited to that which relates to Lists research product plans products services customers markets software developments inventions processes designs drawing statistics marketing or finances or other business or technical information which is treated confidentially including that of the Owner. Confidential Information does not include information that:
- 11.1.1 is in the possession of the receiving party at the time of the disclosure;
 - 11.1.2 becomes part of the public knowledge or literature, not as a result of any action or inaction of the receiving party;
 - 11.1.3 is approved for release by the disclosing party in writing;
 - 11.1.4 becomes available to the receiving party from a third source not bound by any obligation of confidentiality with respect to such information;
 - 11.1.5 was independently developed or prepared by a party; or
 - 11.1.6 is required to be disclosed by law.
- 11.2 Each party agrees not to use or reveal the Confidential Information disclosed to it by the other party for any purpose except to further the objective of this Agreement. Each party agrees that it will take all reasonable measures to protect the secrecy of and avoid disclosure or use of confidential information of the other in order to prevent it from falling into the public domain or possession of persons other than those persons authorized hereunder to have any such information, which measures shall include at least a reasonable degree of care. This provision shall be binding on the parties and shall be treated and safeguarded hereunder by the receiving party notwithstanding the termination or expiry of this Agreement.
- 11.3 Each party shall keep confidential all provisions of this Agreement and shall not make any public announcement of it or its subject matter without the other party's prior written consent.
- 11.4 The Client shall procure that all its employees who have access to any information to which these Conditions apply shall be made aware of and subject to these obligations.

12 CLIENT'S FURTHER OBLIGATIONS

- 12.1 The Client shall not be entitled to assign or sub-licence the rights of the Agreement to any third party without the prior written consent of a duly authorised representative of Tri-Direct Sales.
- 12.2 The Client shall ensure that any agreement between it and any User or Processor contains terms materially consistent with the Client's obligations herein and that such User or Processor undertakes to act or not to act (as the case may be) in such ways as shall be consistent with the Client's obligations in the Agreement. Further Tri-Direct Sales shall be named as a party with full rights under the Contracts (Rights of Third Parties) Act 1999 to enforce the terms of such agreement against the User or Processor.
- 12.3 The Client agrees and warrants that any items delivered by or on behalf of the Client as a result of using the Information shall conform to the samples supplied to and approved by the Owner in accordance with condition 3.3 of these Conditions and will not contain anything which infringes the Intellectual Property Rights of any third party including the Owner
- 12.4 The Client agrees and warrants that neither the items delivered nor the manner of delivery will be unlawful or in breach of applicable industry regulations or codes of practice.
- 12.5 The Client agrees to conform and to procure that any User conforms at all times with the British Code of Advertising Practice and any other regulations

and codes of practice applicable to either the promotional material or the method of distribution.

- 12.6 The Client agrees to conform and to procure that any User and any Processor conforms at all times with the Data Protection Act 1998 as if the Client User or Processor were a data controller and will promptly inform Tri-Direct Sales of any notice of non-compliance with the Data Protection Act 1998 by the Client such User or Processor.
- 12.7 The Client shall not be entitled to use the Information unless and until it has signed a current "List User Warranty" and/or has obtained a signed "List User Warranty" by the User as required by the Direct Marketing Association.
- 12.8 The Client shall fully indemnify Tri-Direct Sales and the Owner against any breach of the Agreement by the Client or any act or omission of the User or the Processor which if it were an act or omission of the Client would constitute a breach of the Agreement.

13 TRI-DIRECT SALES'S RIGHTS

- 13.1 Tri-Direct Sales shall be entitled to assign or sub-contract all or any part of its rights and/or obligations under this Agreement.
- 13.2 Tri-Direct Sales shall be entitled to refer to the Client User or Processor and outline the nature of the work performed for the Client for publicising Tri-Direct Sales to any third party.

14 EXCLUSION OR LIMITATION OF TRI-DIRECT SALES'S LIABILITY

- 14.1 Tri-Direct Sales relies on the description of a List given to it by the Owner and has not verified the accuracy of such description.
- 14.2 Tri-Direct Sales does not accept any responsibility for the contents of or description attached to any Lists supplied.
- 14.3 Except as expressly provided in this Agreement no warranty condition undertaking or term (express or implied statutory or otherwise) as to the satisfactory quality or fitness for purpose is given or assumed by Tri-Direct Sales and all such warranties conditions undertakings or terms are hereby excluded.
- 14.4 Tri-Direct Sales does not accept any liability for loss resulting from the non-delivery to names postal addresses e-mail addresses and/or mobile phone numbers included in any Lists supplied.
- 14.5 Tri-Direct Sales shall not be liable for any reduced quantity of names postal addresses e-mail addresses or mobile phone numbers included in any List supplied other than to reduce the Agreement price calculated pro rata by reference to the actual number of names postal addresses e-mail addresses or mobile phone numbers supplied in the List.
- 14.6 Tri-Direct Sales shall not be liable for any delay in delivery of the Goods howsoever caused.
- 14.7 In any event and notwithstanding anything contained in the Agreement Tri-Direct Sales shall not be liable for consequential special indirect or incidental loss (whether for loss of profit or otherwise) and Tri-Direct Sales's liability in contract tort (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with the Agreement shall be limited to the price of the Goods specified in the Order Confirmation save for any liability that by law cannot be limited.

15 TERMINATION

- 15.1 Either party may terminate the Agreement by giving written notice to the other party:
 - 15.1.1 immediately upon breach by the notified party of any of these Conditions or other terms of the Agreement (including failure to pay any agreed charges).
 - 15.1.2 immediately upon the notified party entering into liquidation whether compulsory or voluntary (not being a voluntary liquidation for the purposes of reconstruction and amalgamation) or upon an encumbrancer taking possession or a receiver being appointed over any of the property of assets of such party or upon such party

making any assignment for the benefit of its creditors or ceasing to carry on its business

- 15.2 Forthwith upon termination of the Agreement howsoever arising the Client shall:
- 15.2.1 cease to use the Information and return the Information to Tri-Direct Sales unless Tri-Direct Sales directs otherwise in writing.
 - 15.2.2 cause the Information to be erased from its computer (including any back-up copies) if appropriate and unless otherwise agreed in writing with Tri-Direct Sales.
 - 15.2.3 certify in writing by its duly authorised representative that condition 15.2.2 of these Conditions have been complied with if Tri-Direct Sales so requires.
- 15.3 Termination of the Agreement for any reason shall not bring to an end:
- 15.3.1 the confidentiality of the parties to the Agreement under condition 11.
 - 15.3.2 the provisions of condition 16 (Employment of Personnel).
 - 15.3.3 the Client's further obligations under condition 12.8 of these Conditions.

16 EMPLOYMENT OF PERSONNEL

- 16.1 Each of the Client and Tri-Direct Sales undertakes and covenants with the other that during the continuation of the Agreement and for a period of one year thereafter it will not endeavour to solicit or entice away from the other (whether as an employee agent partner or consultant) any employee or former employee who (at that time) is or had been (as the case may be) employed by the other and who is or was engaged in relation to the performance of the provisions of the Agreement.
- 16.2 The party in breach of condition 16.1 agrees that such a breach by it will entitle the other party:
- 16.2.1 to claim by way of reasonable liquidated damages an amount equal to one half of the annual salary last paid to such employee or former employee
 - 16.2.2 to claim injunctive relief

17 FORCE MAJEURE

- 17.1 If either party to the Agreement is affected by Force Majeure it shall promptly notify the other party of the nature and extent of the circumstances in question.
- 17.2 Notwithstanding any other provision of the Agreement neither party shall be deemed to be in breach of the Agreement or otherwise be liable to the other for any delay in performance or the non-performance of any of its obligations under the Agreement to the extent that the delay or non-performance is due to any Force Majeure of which it has notified the other party and the time for performance of that obligation shall be extended accordingly.

18 NOTICES

- 18.1 Any notice required to be given by either party to the Agreement to the other shall be in writing and shall be served by sending the same by registered or recorded delivery post to the address of the other party as detailed above or as notified by that party as being its address for service.
- 18.2 All notices documents communications and any other data to be provided under the Agreement shall be in the English language unless otherwise agreed.

19 GOVERNING LAW AND DISPUTES

- 19.1 The construction validity and performance of the Agreement shall be governed in all respects by English law.
- 19.2 All disputes arising in any way out of or affecting the contract shall be subject to the exclusive jurisdiction of the English Courts to which the parties to the Agreement agree to submit save that Tri-Direct Sales or the Owners shall have the right to sue for breach of their Intellectual Property Rights in any country where it believes that infringement or a breach of this

Agreement relating to such Intellectual Property Rights might be taking place.

19.3 If any term or provision in the Agreement shall be held to be illegal or unenforceable in whole or in part under any enactment or rule of law such term or provision or part shall to that extent be deemed not to form part of the Agreement but validity and enforceability of the remainder of the Agreement shall not be affected.

19.4 Save for the Owner who may enforce the terms of this Agreement against the Client and the User who may benefit from the provisions of condition 8 (Use of Information), a person who is not a party to this Agreement does not have any rights under the Contract (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any term of this Agreement.

IN WITNESS whereof the parties have set their hands this day and year first before written by their duly authorised representatives

SIGNED BY: _____

SIGNED BY: _____

For and on behalf of Limited

For and on behalf of Tri-Direct Sales Limited

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____