

# Steribottle Ltd

## TERMS AND CONDITIONS

### DEFINITIONS

"**Business Day**" means a day on which the clearing banks in the City of London are open for business;

"**Confirmed Order**" means an Order which has been confirmed in writing by Steribottle;

"**Delivery**" means the moment Steribottle informs the Distributor that the Products the subject of a Confirmed Order are available for collection Ex Works the Manufacturer's factory;

"**Delivery Dates**" means the dates for delivery set out in a Confirmed Order;

"**Group**" means in relation to any company, that company and any other company, which, at the relevant time, is that company's holding company or subsidiary (as defined by s.736 of The Companies Act 1985, as amended), or the subsidiary of any such holding company (as so defined);

"**Information**" means all technical, financial and commercial information obtained or received directly or indirectly from either Party (the "Disclosing Party") by the other Party (the "Receiving Party") including, but not limited to, where Steribottle is the Disclosing Party, the Intellectual Property Rights and the specification of the Products, know how, trade or business secrets and any other information relating to the business of either party;

"**Intellectual Property Rights**" means all copyright and rights in the nature of copyright, database rights, design rights, patents, trade marks, business names, applications for any of the foregoing, know-how, confidential information, or any other intellectual property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world in the Products;

"**Manufacturer**" means Sky Plastics Hungary KFT of 1103 Budapest, Gyömrői út 150, Hungary or such other manufacturer nominated by Steribottle to manufacture the Products and notified in writing to the Distributor;

"**Orders**" means the orders placed by the Distributor in accordance with the terms of this Agreement and Order means any one of them;

"**Trade Marks**" means the "Steribottle" trade mark" and any other trade marks Steribottle require to be used on or in relation to the Products at any time;

### 1 ACCOUNTS

- 1.1 The Distributor will introduce and maintain effective and appropriate control systems in relation to the accounting and record keeping functions of the Distributor and any of its subsidiaries in relation to marketing, distribution, sales and supply of the Products.
- 1.2 Steribottle shall be entitled, on two (2) days' prior written notice to examine the books and accounts of the Distributor and any relevant subsidiaries and, if Steribottle considers it reasonably necessary, to enter onto any premises where such books and accounts are held and the Distributor shall supply Steribottle with all information relating to the marketing, distribution, sales and supply of the Products as Steribottle may from time to time reasonably require.

### 2 APPOINTMENT OF DISTRIBUTOR

- 2.1 Steribottle will sell Products at the Price to the Distributor for resale in the Territory to retailers (or such other type of customer as shall be approved by Steribottle in advance in writing) on an exclusive basis subject to the terms and conditions of this Agreement.
- 2.2 The Distributor shall be entitled to describe itself as Steribottle's "Authorised Distributor" for the Products, but shall not hold itself out as Steribottle's agent for sales of the Products or as being entitled to bind Steribottle in any way without the express written permission of Steribottle.
- 2.3 The Distributor shall not make active sales of Products into a territory other than the Territory which Steribottle has either reserved exclusively to itself or allocated exclusively to another distributor.
- 2.4 The Distributor shall not obtain the Products for resale from any person, firm or company other than Steribottle or the Manufacturer.

### 3 SUPPLY OF THE PRODUCTS

- 3.1 Steribottle shall be entitled to appoint a Manufacturer who shall manufacture the Products.
- 3.2 The Distributor shall place Orders and pay for Confirmed Orders at the Price with Steribottle on the terms and conditions contained in this Agreement and no terms appearing on the Distributor's Orders or any other documentation of the Distributor shall be binding on the parties. Steribottle shall not be liable for any act or omission of the Manufacturer. The Distributor shall, in the Order, request dates for delivery of the Products which shall be at least 6 weeks after the date of the Order. The Confirmed Order shall

confirm the dates on which Steribottle will deliver the Products and Steribottle shall use reasonable endeavours to confirm the delivery dates requested by the Distributor.

- 3.3 Each Confirmed Order shall become binding on the date Steribottle sends the confirmation of the Order to the Distributor provided that time shall not be of the essence in relation to the Delivery Dates set out in the Confirmed Order.
- 3.4 Steribottle shall not be under any obligation to continue the manufacture of all or any of the Products, and Steribottle shall be entitled to make such reasonable alterations to specifications of the Products as it thinks fit.
- 3.5 The Distributor shall:
  - 3.5.1 ensure that all packaging, labelling and other materials to be used in relation to the Products are approved in advance in writing by Steribottle and that all such packaging, labelling and materials are accurately translated for use in the relevant country of the Territory and that they comply with all applicable labelling, marketing and legal requirements in the Territory; and
  - 3.5.2 obtain any necessary export licences, import licences, certificates of origin or other requisite documents, and paying all applicable customs, duties and taxes in respect of the importation of the Products into the Territory and their resale in the Territory.
- 3.6 The Distributor shall give Steribottle not less than three (3) months' written notice of its estimated requirements of the Products for each subsequent month, and shall promptly notify Steribottle of any changes in circumstances which may affect its requirements.
- 3.7 Risk in the Products shall pass to the Distributor on Delivery. The Distributor shall maintain at all times adequate warehousing facilities in the Territory and shall insure at its own cost with a reputable insurance company all stocks of the Products from the time of Delivery against all risks to at least the full replacement value of the Products and shall produce to Steribottle on reasonable demand full particulars of the insurance and the receipt for the then current premium.
- 3.8 Until payment in full of the Price in relation to the Products is received in cleared funds by Steribottle no title shall pass in the Products and the Distributor shall:
  - 3.8.1 hold the Products on a fiduciary basis as Steri-bottle's bailee;
  - 3.8.2 store the Products separately to all other goods belonging to the Distributor or any third party in such a way that they remain readily identifiable as Steribottle's property;
  - 3.8.3 store the Products in accordance with all applicable laws and regulations and in such a manner as to maintain the quality of the Products;
  - 3.8.4 not destroy, deface or obscure any identifying mark on or in relation to the Products; and
  - 3.8.5 allow Steribottle or its representatives access to the Distributor's premises and any other premises where the Products are stored in order to ensure that Distributor is complying with the provisions of this clause.
- 3.9 The Distributor's right to the possession of the Products will terminate immediately if:
  - 3.9.1 the Distributor suspends or threatens to suspend payment of its debts or is or is deemed to be insolvent, unable to pay its debts as they fall due for payment or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - 3.9.2 the Distributor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts or enters into any composition or arrangement with its creditors generally;
  - 3.9.3 the Distributor has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver or other similar officer appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Distributor or notice of intention to appoint an administrator is given by the Distributor, or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Distributor or for the granting of an administration order in respect of the Distributor, or any proceedings are commenced relating to the insolvency or possible insolvency of the Distributor;
  - 3.9.4 the Distributor suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Distributor ceases to trade;
  - 3.9.5 the Distributor encumbers or in any way charges any of the Products;
  - 3.9.6 any event occurs or proceeding is taken with respect to the Distributor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events set out in clauses 3.9.1 to 3.9.5 inclusive of these Terms and Conditions; or
  - 3.9.7 the Distributor is in breach of any of its obligations under this Agreement.
- 3.10 The Distributor grants Steribottle, its agents and employees a perpetual, irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them or, where the Distributor's right to possession has terminated, to recover them.

#### **4 MARKETING OF THE PRODUCTS**

- 4.1 The Distributor shall use best endeavours to promote the distribution and sale of the Products throughout the Territory and seek to maximise and satisfy market demand for the Products.
- 4.2 The Distributor shall be entitled, subject as provided in this Agreement, to promote and market the Products in the Territory in such manner as it may think fit, and in particular shall be entitled to resell the Products to retailers at such prices as it may determine provided that, subject to clause 4.3 of these Terms and Conditions, Steribottle may set the maximum price at which the Products shall be sold.
- 4.3 Steribottle may recommend the maximum price at which the Products shall be sold. Steribottle shall consult with the Distributor before making a recommendation and will take into account local market conditions.
- 4.4 The Distributor shall maintain such level of stocks of the Products as Steribottle reasonably considers necessary to meet the level of market demand and anticipated market demand in the Territory.
- 4.5 In connection with the promotion and marketing of the Products the Distributor shall:
- 4.5.1 sell the Products as packed and presented by the Manufacturer and shall not make any alteration or modification to the Products or their packaging;
- 4.5.2 make clear in all dealings with customers and prospective customers that it is acting as Distributor of the Products and not as agent of Steribottle by using the words "Distributed by the Distributor" in all publicity materials and that "the Trade Marks are used under licence from Steribottle Limited";
- 4.5.3 ensure that the Products continue to meet the standards set by the relevant regulatory authorities in the Territory and shall notify Steribottle immediately of any change thereto;
- 4.5.4 from time to time consult with Steribottle for the purpose of assessing the state of the market in the Territory and permit Steribottle on two days' written notice to inspect any premises or documents used by the Distributor in connection with the marketing, distribution and sale of the Products;
- 4.5.5 at the request of Steribottle provide to Steribottle copies of sales aids, including (without limiting the foregoing) catalogues, sales brochures and sales manuals, as relate to the Products;
- 4.5.6 use in relation to the Products their packaging and labelling only advertising, promotional and selling materials as are approved in writing by Steribottle;
- 4.5.7 maintain an active and suitably trained sales force;
- 4.5.8 spend not less than the amount agreed by Steribottle on advertising the Products in the Territory during each year; and
- 4.5.9 provide an after sales service for customers in relation to the Products to Steribottle's reasonable satisfaction.

#### **5 QUALITY CONTROL**

- 5.1 The Distributor shall:
- 5.1.1 at all times comply with all regulatory and statutory quality standards applicable to the Products in the Territory and comply with and maintain all other such quality standards as are reasonably specified by Steribottle and shall not ship any Products following Delivery if it should be clear from a reasonable inspection that the Products are damaged in any way. The Distributor shall inform Steribottle of such damage immediately on inspection;
- 5.1.2 permit representatives of Steribottle during normal working hours on two (2) days' written notice to enter and inspect the premises of the Distributor and all relevant records and documentation;
- 5.1.3 ensure that the Products are properly protected in transit and adequately stored and warehoused safely and comply with all legal requirements from time to time in force in the Territory relating to the storage, distribution, sale and advertising of the Products;
- 5.1.4 not sell or offer for sale Products in a deteriorated or damaged condition;
- 5.1.5 inform Steribottle immediately of any complaints in relation to the Products including complaints or allegations that the Products have caused death, injury or sickness to consumers;
- 5.1.6 ensure that all Products are clearly marked with batch numbers to facilitate prompt identification in the event of any product recall;
- 5.1.7 give all assistance required by Steribottle in relation to a product recall in any country of the Territory including but not limited to taking all affected Products out of the retail and distribution network in any country of the Territory at the expense of Steribottle unless the recall is due to any act or omission of the Distributor in which case the Distributor shall indemnify Steribottle against all costs incurred by it in relation to the recall.

#### **6 INTELLECTUAL PROPERTY RIGHTS**

- 6.1 Steribottle owns or is duly licensed to use and sub-license the use of the Trade Marks and authorises the Distributor to use the Trade Marks in the Territory on or in relation to the Products for the purposes only of selling Products in accordance with the terms conditions of this Agreement. Steribottle hereby licenses to the Distributor the right to use the Trade Marks on packaging, labelling and other materials for use in conjunction with the Products subject to the terms and conditions of this Agreement. The Distributor shall have no right to grant sublicences.
- 6.2 The Distributor shall ensure that all Products, packaging, labelling and advertising materials, bear the Trade Marks as required by Steribottle and each reference to and use of any of the Trade Marks by the

Distributor is in a manner from time to time approved by Steribottle and accompanied by an acknowledgement, in a form approved by Steribottle, that the Trade Mark is owned by Steribottle and used by the Distributor under licence from Steribottle Limited and that the Products is subject to both patent and design right protection.

- 6.3 The Distributor shall not:
  - 6.3.1 make any modifications to the Products or their packaging;
  - 6.3.2 alter, remove or tamper with any Trade Marks, numbers, or other means of identification used on or in relation to the Products;
  - 6.3.3 use the Trade Marks in any form other than that approved in writing in advance by Steribottle;
  - 6.3.4 use any of the Trade Marks in any way which might prejudice their distinctiveness or validity or the goodwill of the proprietor in the Trade Marks;
  - 6.3.5 use in relation to the Products, their packaging, labelling or advertising materials any trade marks or brand names or trading styles other than the Trade Marks without obtaining the prior written consent of Steribottle which consent shall not be unreasonably withheld or delayed.
  - 6.3.6 use in the Territory any trade marks or trade names resembling any trade mark or trade names of Steribottle as to be likely to cause confusion or deception.
  - 6.3.7 Nothing in this clause 6.3 of these Terms and Conditions shall prevent the Distributor from using the wording "Distributed by the Distributor" on packaging, labelling or other materials used in conjunction with the Products.
- 6.4 Except as provided in clause 6.1 of these Terms and Conditions the Distributor shall have no rights in respect of any trade names used by Steribottle in relation to the Products or the Trade Marks or of the goodwill associated with the Trade Marks, and the Distributor acknowledges that, except as expressly provided in this Agreement, it shall not acquire any rights in respect of the Trade Marks (or the Intellectual Property Rights) and that all such rights and goodwill are, and shall remain, vested in Steribottle or its licensor.
- 6.5 The Distributor shall, at the expense of Steribottle, take all such steps as Steribottle may reasonably require to assist Steribottle in maintaining the enforceability of the Intellectual Property Rights
- 6.6 The Distributor shall at the request and expense of Steribottle execute such registered user agreement or licences in respect of the use of the Trade Marks in the Territory as Steribottle may reasonably require.
- 6.7 Without prejudice to the right of the Distributor or any third party to challenge the validity of any Intellectual Property Rights, the Distributor shall not do or authorise any third party to do any act which would or might invalidate or be inconsistent with any Intellectual Property Rights and shall not omit or authorise any third party or omit to do any act which, because of its omission, would have the same effect.
- 6.8 The Distributor shall promptly and fully notify Steribottle of any actual, threatened or suspected infringement in the Territory of any Intellectual Property Rights which comes to the Distributor's notice, and of any claim by any third party coming to its notice that the importation of the Products into the Territory, or their sale in the Territory, infringed any rights of any other person. The Distributor shall at the request and expense of Steribottle do all such things as may be reasonably required to assist Steribottle in taking or resisting any proceedings in relation to an infringement or claim.

## **7 CONFIDENTIALITY**

- 7.1 At all times each of the parties undertakes to the other to keep confidential the Information and to use the Information only for the purpose of selling Products in accordance with this Agreement except where:
  - 7.1.1 the Information was already lawfully known, or became lawfully known to either of the parties independently;
  - 7.1.2 the Information is, or comes into, the public domain other than due to wrongful use or disclosure by the parties;
  - 7.1.3 disclosure or use is necessary by either of the parties for the proper and effective performance of its obligations under this Agreement;
  - 7.1.4 disclosure is required by law to any government, governmental department, agency, regulatory or fiscal body or authority (whether national or foreign) and their authorised agents (including professional advisers).
- 7.2 Each of the parties shall ensure that their respective employees, agents, sub-contractors or nominees shall comply with the requirements of this clause, and, if requested, shall ensure that contractors sign a confidentiality undertaking in a form approved by the other. The parties shall use the same standard of care in relation to the information as if it were Information of their own.
- 7.3 Each of the parties shall notify the other immediately if it becomes aware of a breach of this clause by any person to whom Information has been divulged and shall give the other party all reasonable assistance in connection with any proceedings against such person.

## **8 WARRANTIES AND LIABILITY AND INDEMNITY**

- 8.1 Steribottle warrants that the Products will be of satisfactory quality and have been officially approved by the relevant regulatory authorities in the United Kingdom and meet the equivalent regulatory requirements in the European Union. Steribottle will provide reasonable assistance to the Distributor at the Distributor's cost in applying for approval of the Products by the relevant regulatory authorities in the Territory;

- 8.2 The Products and the packaging shall meet or exceed the quality specifications attached in Schedule 4 and shall conform to standards EN1350 Part 1 and EN1400:2013 and be manufactured in cleanroom conditions, Steribottle shall supply copies of the relevant test reports, such test reports to have been conducted by an accredited independent organisation.
- 8.3 Steribottle warrants that to the best of its knowledge the Products do not violate any patent, copyright, or trade mark, and do not and will not contain any item, part or material which Steribottle is not authorized to use.
- 8.4 All other conditions, warranties and representations express or implied by statute, common law or otherwise in relation to the Products are excluded to the fullest extent permitted by law.
- 8.5 Steribottle shall not be liable to the Distributor for:
- 8.5.1 loss of profits, revenues, goodwill or any other economic loss;
- 8.5.2 any indirect loss or damage; and/or
- 8.5.3 any losses (whether direct, indirect, consequential or otherwise) due to the Products being damaged during transportation or at all following Delivery.
- 8.6 Nothing in this Agreement shall exclude or limit either party's liability for death or personal injury caused by its negligence or for fraud.
- 8.7 Subject to clauses 8.5 and 8.6 Steribottle's total liability in relation to any claims made during the Term by the Distributor under this Agreement or in negligence or otherwise shall be limited to \$1 million USD.
- 8.8 The Distributor shall indemnify Steribottle for all losses, demands, costs, expenses and damages incurred or suffered by Steribottle arising directly or indirectly as a result of (i) any claim(s) from third parties against Steribottle arising or in connection with any breach by the Distributor of any provisions of this Agreement or by the Distributor's negligence or otherwise arising from the Distributor's storage, distribution, advertising, marketing, sale or supply of the Products; and (ii) damage caused to the reputation of Steribottle or the Intellectual Property Rights as a result of acts or omissions of the Distributor, its directors, employees or agents. The Distributor shall insure at its own cost with a reputable insurance company against all costs, damages and losses suffered by it arising from claims by Steribottle against the Distributor or its directors, employees or agents for breach of contract or for negligence or otherwise and the Distributor shall produce to Steribottle on demand full particulars of the insurance policy and the receipt for the then current premium.

## **9 TERMINATION**

- 9.1 The parties shall be entitled to terminate this Agreement on notice in writing to the other party in accordance with clause 8 of this Agreement..
- 9.2 On the termination of this Agreement:
- 9.2.1 Steribottle shall be entitled (but not obliged) to repurchase (where Product has been paid for) from the Distributor all or part of any stocks of the Products then held by the Distributor at the Price;
- 9.2.2 the Distributor shall be responsible for arranging and for the cost of, transport and insurance of the Products to Steribottle;
- 9.2.3 the Distributor shall at its own expense within thirty (30) days send to Steribottle or a third party nominated by Steribottle, or at Steribottle's option otherwise dispose of in accordance with the directions of Steribottle, all samples of the Products and any advertising, promotional or sales material relating to the Products then in the possession of the Distributor;
- 9.2.4 all outstanding payments and any other amount owed to Steribottle in respect of sales of the Products or otherwise shall become immediately payable by the Distributor;
- 9.2.5 the Distributor shall cease to promote, market or advertise or sell the Products or to make any use of the Trade Marks;
- 9.2.6 the Distributor shall at its own expense join with Steribottle in procuring the cancellation of any registered user agreements entered into under clause 6.6 of these Terms and Conditions; and
- 9.2.7 the Distributor shall have no claim against Steribottle for compensation for loss of distribution rights, loss of goodwill or any similar loss.

## **10 FORCE MAJEURE**

- 10.1 Notwithstanding anything else contained in this Agreement, neither party shall be liable for delay in performing its obligations if and to the extent that the delay is caused either by circumstances beyond its reasonable control (including a delay caused by an act or omission of the other party); or by any of the following:
- 10.1.1 acts of God;
- 10.1.2 outbreaks of hostilities, riot, civil disturbance, acts of terrorism;
- 10.1.3 the act of any government or authority (including refusal or revocation of any licence or consent);
- 10.1.4 fire, explosion, flood, fog or bad weather;
- 10.1.5 power failure, failure of telecommunications lines, failure or breakdown of plant, machinery or vehicles;
- 10.1.6 default of suppliers or sub-contractors; and

- 10.1.7 theft, malicious damage, strike, lock-out or industrial action of any kind provided that the party suffering the delay promptly notifies the other party in writing of the reasons for, and likely duration of, the delay, the performance of that party's obligations shall be suspended during the period that the circumstances persist and it shall be granted an extension of time for performance equal to the period of the delay.

## **11 COMMUNICATIONS**

- 11.1 All communications between the parties with respect to this Agreement shall:
- 11.2 be delivered by hand, or sent by post to, the address of the addressee as set out in this Agreement or to such other address as the addressee notifies for the purpose of this clause; or
- 11.3 be sent by fax to the fax number stated below or as notified for the purposes of this clause.
- 11.4 Communications shall be deemed to have been received as follows:
- 11.5 (if sent by post) three (3) Business Days after posting;
- 11.6 (if delivered by hand) on the day of delivery, if delivered at least two (2) hours before the close of business hours on a Business Day, and otherwise on the next Business Day;
- 11.7 (if sent by fax) at the time of transmission, if received at least two (2) hours before the close of business hours on a Business Day, and otherwise on the next Business Day.
- 11.8 In this clause, "business hours" means between the hours of 09.00 and 18.00 inclusive, local time;

## **12 SEVERABILITY**

- 12.1 If any term or provision of this 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 this Agreement but the validity and enforceability of the remainder of this Agreement shall not be affected.

## **13 FURTHER ASSURANCE**

- 13.1 Each party shall at its own cost do and execute or arrange for the doing or executing of all acts, documents and things which may be necessary in order to implement this Agreement.

## **14 ENTIRE AGREEMENT**

- 14.1 This Agreement supersedes all prior agreements and understandings between Steribottle and the Distributor and constitutes the entire agreement between Steribottle and the Distributor relating to the subject matter of this Agreement. The Distributor confirms that it did not rely on any representations of Steribottle when entering into this Agreement provided that this shall not exclude liability of either party for fraudulent misrepresentation.

## **15 LEGAL STATUS**

- 15.1 Nothing in this Agreement shall be deemed to constitute a partnership or any employment relationship between the parties nor shall anything in this Agreement be deemed to constitute one party the agent of the other for any purpose.

## **16 VARIATION**

- 16.1 No addition to, or modification of, any provision of this Agreement shall be binding on either party unless made in writing and signed by duly authorised representatives of both parties.

## **17 WAIVER**

- 17.1 No failure or delay by either party to exercise any right or remedy under this Agreement shall be construed or operate as a waiver of that right or remedy nor shall any single or partial exercise of any right or remedy preclude the further exercise of that right or remedy. No waiver by either party of any breach of this Agreement shall be considered as a waiver of a preceding or subsequent breach. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

## **18 ASSIGNMENT**

- 18.1 The Distributor shall not assign, transfer or delegate, or purport to assign, transfer or delegate, any of its rights or obligations under this Agreement without the prior written consent of Steribottle.

## **19 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 19.1 The Contracts (Rights of Third Parties) Act 1999 is excluded from applying to this Agreement and accordingly no provision of this Agreement will be enforceable by any person who is not a party to them, whether in accordance with that Act or otherwise.

## **20 LAW AND JURISDICTION**

- 20.1 The construction, validity and performance of this Agreement are governed by the laws of England and Wales and, subject to clause 9 of this Agreement, the parties submit to the exclusive jurisdiction of the English courts.