

Dm Distribution Agreement

DESCRIPTION OF THE PARTIES

"Airwair"

COMPANY NAME	AirWair International Limited
COMPANY NUMBER	03009359
ADDRESS	Cobbs Lane, Wollaston, Northamptonshire NN29 7SW
CONTACT NAME	
TELEPHONE	
E-MAIL	

"Distributor"

COMPANY NAME	
COMPANY NUMBER	
ADDRESS	
CONTACT NAME	
TELEPHONE	
E-MAIL	

SCOPE OF AGREEMENT

- A Airwair is a member of the Airwair Group which owns or has licensed to it certain rights relating to the Products.
- B Airwair is the sales and marketing company for the Airwair Group and owns and/or licences certain rights relating to the Products, including the right to source, market and sell the Products in various countries including the Territory.
- C The Distributor wishes to be appointed as Airwair's distributor to Customers in the Territory. The Parties have agreed that the Distributor will be so engaged on the terms of this Agreement.

COMMERCIAL TERMS SHEET

Effective Date				
Territory				
Products excluding Industrial Footwear and excluding Collaborations:	Footwear products including boots, shoes and sandals ("Footwear")			
	Other products: clothing, bags, accessories ("Non-Footwear")			
Minimum Pairage (per year):	Year 1	Year 2	Year 3	Year 4

Business Plan Summary					
Product Category Commitment (for Footwear):	Product Category	Year 1	Year 2	Year 3	Year 4
	Originals				
	Fusion				
	Casual				
Minimum Marketing Spend per Year:	5%				
Payment Currency:	USD				
Payment Terms:	Distributor will pay all Airwair invoices within forty-five (45) days from the invoice date. Further, Distributor will furnish Airwair with an irrevocable letter of credit in a form, and from a bank, acceptable to Airwair that permits Airwair to draw upon it in the event of Distributor's breach of its payment obligations. The previous sentence and timely payment of amounts due Airwair are conditions precedent to Airwair's obligations and Distributor's rights under this Agreement.				
Term:	[Note: the tables above assume a four year Term. If the term is not four years, the tables should be adjusted accordingly.]				
Other Brands:					
Excluded House Accounts:					
Stores:					
Store Locations:					
Stores Support Services Fee:					

TERMS & CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 The capitalised terms used in this Agreement will have the meaning given to them in the table of definitions in this clause and the rules of interpretation set out below will apply:

Actively Sell	approaching individual Customers by for example direct mail, the sending of unsolicited e-mails, or visits; actively approaching a Customer group or Customers in a specific country through advertisement in media, on the internet (including the use of paid for internet placement) or through promotions specifically targeted at any Customer group or targeted at Customers in that country, or establishing any branch or maintaining any distribution depot for the Products in a country;
Agreement	this distribution agreement, which includes the Commercial Terms Sheet;
Airwair Data	all personal data in whatever form or medium which is (i) supplied, or in respect of which access is granted to the Distributor (or any approved third party) whether by AirWair or otherwise in connection with this Agreement, or (ii) produced or generated by or on behalf of the Distributor (or any approved third party) in connection with this Agreement and which shall in any event include the following types of personal data: name, address, email address, phone number, bank details, medical information, browsing history etc. in respect of Airwair employees and business contacts;
Airwair Group	Airwair, any parent undertaking of Airwair from time to time, and any undertaking which is a subsidiary undertaking from time to time of Airwair and/or any such parent undertaking and including GFM Trademarks GmbH;
Applicable Laws	all regional, national and international laws, rules, regulations and standards including those imposed by any governmental or regulatory authority and all applicable industry standards and standards determined by any self-regulatory body which apply from time to time to the person or activity in the circumstances in question;
Brand Guidelines	Airwair's guidelines in force from time to time containing requirements for the usage of its Trade Marks;
Business Day	a day (excluding Saturday or Sunday) when banks are ordinarily open for business in the City of London;
Confidential Information	information directly or indirectly disclosed by a Party to the Party which is represented to be (either in writing or orally), or would appear to a reasonable business person to be confidential and which relates to the business affairs of the disclosing Party (and/or, in the case of Airwair, any member of the Airwair Group), including products, product information, processes, designs, drawings, specifications, prototypes, plans, developments, trade secrets, know how, the Brand Guidelines, financial or marketing information, research, inventions, customer and supplier information, price lists, photographs, data, formulae, market opportunities, personnel information, and all information derived from the above, in any form whatsoever, whether tangible or intangible, and whether or not in writing;
Confirmed Order	an Order placed by the Distributor with Airwair for which Airwair has issued a written confirmation;
Content	copy, layouts, artwork, storyboards, scripts, presentations, drawings, documents, charts, graphics, photographs, films and/or other materials created or produced by the Distributor for the purpose of executing an Approved Seasonal Marketing Plan, on any media (whether offline or digital, as at the Commencement Date or subsequently developed) and for use in any form (e.g. brochures, mail-outs, trade show materials, business cards, stationery, content for a Digital Site, press releases and directory representations);
Customers	third party retailers selling direct to consumers through their bricks and mortar stores or on-line platforms, in accordance with this Agreement;
Data Protection Legislation	the EU General Data Protection Regulation 2016/679 ("the GDPR"), the UK Data Protection Act 2018, the UK Telecommunications (Lawful Business Practice) (Interception of Communication) Regulations 2000 (SI 2000/2699), the EU Privacy and Electronic Communications Directive 2002/58/EC, and the UK Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) together with guidance, directions, determinations, codes of practice, circulars, orders, notices or demands issued by any Supervisory Authority and any applicable national, international, regional, municipal or other data privacy and data protection laws or regulations in any other territory where the Distributor performs its obligations under this Agreement or which are otherwise applicable, all as amended or replaced from time to time;

Digital Site	any webpage, social media account, mobile site or app, network-enabled device or other digital or “connected” presence whether existing now from which the Distributor markets, promotes, advertises, markets, sells or offers to sell) or distributes (or offers to distribute) the Products;
Distributor's Group Companies	any company, any other person or entity that directly or indirectly controls, is controlled by, or is under common control with the Distributor;
Effective Date	means the effective date identified as such in the Commercial Terms Sheet;
Excluded House Accounts	means those accounts / channels which are reserved to Airwair, which as at the date of this Agreement are set out in the Commercial Terms Sheet and which may be updated by Airwair in its sole discretion from time to time with notice to the Distributor;
Force Majeure	an event which is beyond the control of an affected Party and which such party could not anticipate or mitigate by means of insurance, contingency planning or any other prudent business;
Gross Revenue	in respect of any period, all amounts directly received by the Distributor from the sale of the Products in the Territory, less (i) cancelled sales and returns, and (ii) value added tax and any other tax applicable on sales of Products in the Territory including sales tax, but without any other deduction;
Insolvency Event	has the meaning given to it in clause 24.1(b);
Intellectual Property	all industrial and intellectual property rights owned by or licensed to Airwair and/or a member of Airwair Group from time to time including but without limitation any patents, design rights or registered designs, trade dress, trade marks (including the Trade Marks) whether registered or unregistered (and any applications throughout the world or the right to apply therefor for any of the foregoing), copyright (including moral rights), Know-how, Confidential Information, any business name, trading name or style or brand name and any merchandising rights or equivalent rights and any domain name;
Interest	interest at the rate of seven per cent (7%) per annum above the base lending rate of HSBC Bank PLC from time to time (or if such base rate ceases to be published then at such other comparable rate as Airwair may designate) except such interest rate will not exceed the rates allowed by law in the applicable jurisdictions;
Know-how	all and any know-how of Airwair from time to time including experience, drawings, designs and all other technical information relating to the Products or any process relating to the Products or their manufacture, sourcing, distribution and sale;
Local Regulations	all laws and regulations affecting the manufacture, sale, packaging, labelling and advertising of Products which are in force within the Territory or any part of it;
Mandatory Policies	those policies set out in Schedule 3 to this Agreement, as they may be updated or amended from time to time;
Order	an order from the Distributor to Airwair, which once accepted and confirmed by Airwair, will constitute a Confirmed Order for the relevant Products;
POS Materials	point of sale materials relating to the Products;
Price Lists	the lists which set out the prices applicable under this Agreement which are issued by Airwair to the Distributor from time to time setting out Airwair's wholesale prices for the Products;
Purchases	in respect of any period, all amounts invoiced by Airwair to the Distributor, less (i) returns, and (ii) value added tax and any other tax applicable on the supply of the Products including sales tax, but without any other deduction;
Products	any products supplied by Airwair to the Distributor under this Agreement;
Quarter	a quarterly period in a Year, being 1 July, 1 October, 1 January and 1 April;
Restricted Person	any individual, entity or body either: (i) specifically designated or listed under Sanctions; (ii) owned or controlled by any person specifically designated or listed under Sanctions; (iii) acting for or on behalf of any person specifically designated or listed under Sanctions;

Sanctions	all laws and regulations which implement, administer and enforce: economic sanctions; export controls; trade embargoes; and, wider measures which prohibit or otherwise restrict the Airwair Group's ability or any of Airwair's distributors' ability to distribute the Products to Restricted Persons or to certain jurisdictions subject to Sanctions;
Season	a retail season i.e. 1 January to 30 June (Spring/Summer or S/S) and 1 July to 31 December (Autumn/Winter or A/W);
Seasonal Launch Date	nine months in advance of a Season: (so the Seasonal Launch Date for the S/S Season will be the preceding May and the Seasonal Launch for the A/W Season will be the preceding November);
Seasonal Plan Dates	1 December and 1 July each Year;
Seasonal Marketing Plan	a plan for the Distributor's planned marketing activities to promote the Products in the Territory in the relevant Season, which will be in the form prescribed from time to time by Airwair, giving such information as Airwair may from time to time require;
Seasonal Purchase Forecast	a plan in the form prescribed from time to time by Airwair, giving such information as Airwair may from time to time require about the Distributor's planned Orders for the relevant Season, broken down by reference to each SKU on a month-by-month basis;
Seasonal Sales Plan	a plan in the form prescribed from time to time by Airwair, giving such information about its sales plans for the relevant Season as Airwair may from time to time require including which Customers it proposes to sell to (including names, addresses, number of doors and business-type determined by reference to the relevant local classification); and planned sales (including numbers of each SKU, product segmentation; number of Aged Stock which it plans to sell);
Showroom	showroom space for the display of the Products;
Store(s)	the authorised "Dr Martens" branded retail stores which are owned or leased by the Distributor at the Store Location(s) outlined in the Commercial Terms Sheet or as later added in accordance with the terms of this Agreement;
Supervisory Authority	any competent data protection or privacy authority in any jurisdiction in which AirWair is established, the Distributor performs its obligations under this Agreement and/or in which the Distributor processes personal data;
Territory	means the territory which comprises the countries set out in the Commercial Terms Sheet;
Trade Marks	the registered trade marks and the applications for registration set out in Schedule 1, together with any unregistered trade marks used in relation to the Products owned or licensed to the Airwair Group and any reference to "the Trade Marks" will include a reference to any of them;
Transfer	any assignment, novation, charge by way of security, or declaration of trust, and "to Transfer" will be construed accordingly; and
Year	a period of 12 months, each period commencing on 1 April and continuing to the following 31 March.

1.2 In this Agreement (unless the context requires otherwise):

- (a) the words "including", "include", "for example", "in particular" and other similar words will not limit the general effect of the words which precede them;
- (b) reference to any agreement, contract, document or deed will include that document as varied, supplemented or novated from time to time;
- (c) reference to any Party will be construed to include any successors and permitted assigns or transferees;
- (d) the headings are for reference only and will be ignored when construing this Agreement;
- (e) references to a clause are references to those of, or to, this Agreement;
- (f) reference to any legislation provision will be deemed to include any statutory instrument, by-law, regulation, rule, subordinate or delegated legislation or order and any rules and regulations which are made under it, and any subsequent re-enactment or amendment of the same;
- (g) if there is any conflict, ambiguity or inconsistency between the clause and the commercial terms, the clauses will prevail followed by the coversheet.

1.3 If this Agreement is translated and there is any conflict, ambiguity or inconsistency between the English language version and the translated version, then the English language version will prevail.

2. COMMENCEMENT AND TERM

This Agreement will come into force on the effective date shown on the Commercial Term Sheet ("**Effective Date**") and will, unless terminated earlier in accordance with its terms, or otherwise by operation of law, continue in force for the Term, at the end of which it will automatically expire.

3. APPOINTMENT OF DISTRIBUTOR

- 3.1 **APPOINTMENT** Airwair appoints the Distributor as its exclusive distributor to distribute the Products to Customers in the Territory, and/or sell directly to consumers itself in the Territory, during the Term on the terms of this Agreement and the Distributor accepts such appointment. Airwair may redefine the Territory on the basis of political changes in the countries within the Territory.
- 3.2 **DISTRIBUTOR OBLIGATIONS** During the Term of this Agreement the Distributor will:
- (a) not be concerned or interested, either directly or indirectly, in the manufacture, distribution or sale in the Territory of any products or brands which compete with the Products save for the other brands listed in the Commercial Terms Sheet ("Other Brands") unless otherwise agreed by Airwair;
 - (b) not be concerned or interested, either directly or indirectly, in the manufacture, distribution or sale in the Territory of any products which by virtue of their nature, purpose or associations may be detrimental to the reputation of Airwair, if there is any doubt the Distributor shall seek prior written consent from Airwair;
 - (c) not, market or Actively Sell the Products to other distributors (i.e. companies and businesses which themselves sell to Customers), unless otherwise agreed by Airwair in writing;
 - (d) if selling Products directly to consumers, only Actively Sell through the Stores or Distributor's own retail stores and online on Distributor's Digital Site and not through any other means;
 - (e) not Actively Sell to the Excluded House Accounts, which are reserved by Airwair;
 - (f) be entitled to satisfy passive orders, but may not Actively Sell to Customers in any country which is outside the Territory;
 - (g) not represent itself as an agent of Airwair for any purpose, pledge Airwair's credit, give any condition or warranty on Airwair's behalf in relation to the Products, make any representation on Airwair's behalf, or commit Airwair to any contracts;
 - (h) not purchase or obtain the Products from any person, firm or company other than directly from Airwair unless otherwise agreed by Airwair in writing;
 - (i) comply with all Airwair policies notified to the Distributor from time to time, including but not limited to the Mandatory Policies; and
 - (j) at its own expense, at the request of Airwair, attend at least two meetings of Airwair's distributors during each Year of the Agreement. The time and location of such meetings will be advised by Airwair.
- 3.3 **DISTRIBUTOR GROUP COMPANIES** The Distributor will:
- (a) obtain Airwair's approval before supplying the Products to any of Distributor's Group Companies;
 - (b) where approval is given by Airwair pursuant to clause 3.3(a), only contract with the relevant Distributor's Group Companies on terms which are arms-length (including complying with clause 9.10). In the event any contract is not arms-length, Airwair will include such consideration when calculating actual Gross Revenue in that period for the purpose of the Minimum Marketing Spend;
 - (c) provide, at Airwair's request and within three (3) Business Days of such request, such information as Airwair reasonably requires about the Distributor's terms of supply with the relevant Distributor's Group Companies;
 - (d) immediately inform Airwair if the Distributor, or any of the Distributor's Group Companies, or any of their respective directors or officers is a Restricted Person; and
 - (e) comply with any restrictions set by Airwair as to the maximum number of Product sales, transfers or otherwise provided to such Distributor's Group Companies.
- 3.4 **SUB DISTRIBUTORS** The Distributor will not appoint sub-distributors or agents without the consent of Airwair. Without prejudice to clause 3.3 above, where Airwair gives consent:

- (a) Airwair may, without any cost or liability, later require the Distributor to terminate any such appointment if Airwair believes that such sub-distributor or agent is bringing Airwair or any member of the Airwair Group or any of the Trade Marks into disrepute and/or not adhering to the Brand Guidelines or breaching any provision of this Agreement which, had the act or omission been that of the Distributor, would have been a breach by the Distributor;
- (b) the Distributor will at all times be responsible for the performance by the sub-distributor or agent for their compliance with this Agreement. Any breach by the sub-distributor or agent will be deemed to be a breach by the Distributor of this Agreement; and
- (c) the Distributor shall immediately inform Airwair in the event that the Distributor is aware or has any reasonable cause to suspect that the sub-distributor, or agent, or their respective directors or officers is a Restricted Person.

3.5 **AIRWAIR RESERVATIONS** Except as provided for in this Agreement, Airwair will not appoint any other Airwair distributor for the sale of the Products to Customers in the Territory, or itself sell the Products to Customers in the Territory; and to the extent that it is lawfully able to do so, it will restrict other Airwair distributors from Actively Selling to Customers in the Territory. Throughout the Term, Airwair will remain free to sell the Products to consumers in the Territory by whatever means whether online or via its own stores (owned and operated or franchised stores) and to sell to its global or regional account customers including the Excluded House Accounts who may operate within the Territory. Airwair reserves the right, at any time and without notice, to discontinue the production or change the specifications of any Product.

3.6 **NO PRIORITY** This Agreement does not entitle the Distributor to any priority or guarantee of supply of the Products as against Airwair's other distributors or customers. Airwair makes no assurances of the revenue to be received by Distributor by virtue of this Agreement.

4. PLANS AND SUPPLY OF THE PRODUCTS

4.1 **BUSINESS PLAN** The Parties have agreed a business plan, a summary of which is as set out in the Commercial Terms Sheet ("**Business Plan**"), which will provide a framework for the Distributor's distribution operation throughout the Term. The Distributor will achieve the metrics set out in the Business Plan.

4.2 **SEASONAL PLANS** On or around each Seasonal Launch Date, Airwair will issue the Distributor with relevant materials for that Season, including catalogues, Price Lists and any other materials that Airwair considers necessary relation to the Season. Based on these materials the Distributor will submit to Airwair a Seasonal Sales Plan and a Seasonal Purchase Forecast for that Season by the relevant Seasonal Plan Date; and by no later than 1st July or 1 December (as applicable) a Seasonal Marketing Plan for the following Season (together, the "**Seasonal Plans**") and:

- (a) Airwair will review the Seasonal Plans and make reasonable suggestions and recommendations for changes to the Distributor and such suggestions and recommendations will be promptly incorporated into the Seasonal Plans by the Distributor; and
- (b) the Parties will agree each of the Seasonal Plans by within one (1) month of the relevant Seasonal Plan Date.

If the Parties cannot agree on all or part of a Seasonal Plan, Airwair can specify its final terms, in its reasonable discretion.

4.3 **FORECAST ORDERS & MINIMUM SKU QUANTITIES** The forecasted Orders set out in the Seasonal Purchase Forecast ("**Forecast Orders**") do not bind either Party, but if the Forecast Orders are 15% greater or less than the number of pairs of Footwear in a Confirmed Order, Airwair has the right to terminate the Agreement upon written notice to the Distributor. The Distributor will be notified from time to time of the minimum Order/SKU quantities per Order and Airwair may not accept any Order from Distributor which is below the minimum Order/SKU quantity.

4.4 **BASIS OF SALE** No order is binding until Airwair has issued a written confirmation, at which point it becomes a Confirmed Order. The Distributor is responsible for the accuracy and completeness of the terms of the Order. If there are any obvious errors in any sales literature, quotations, Price Lists, Acknowledgments, invoices, delivery notes or other documents or information issued by Airwair, then these can be corrected without any liability for Airwair. Any Products covered by a Confirmed Order can be delivered by Airwair in installments, and each Confirmed Order will be a separate and binding contract. Any offer to sell by Airwair as well as any acceptance by Airwair of a Distributor's Order is expressly made conditional upon Distributor's assent to this Agreement. Airwair's confirmation of an Order will constitute a single sale contract, subject in all cases to the terms of this Agreement. Distributor's taking delivery of any Product shall be conclusive evidence of such assent. This Agreement is the only set of terms and conditions applicable to Distributor's purchase of Products. Additional terms and conditions provided by Distributor to Airwair in the form of purchase orders, routing guides or any other communication, whether printed or otherwise, are hereby rejected and not effective. All Orders are subject to availability.

- 4.5 **MINIMUM PAIRAGE AND PRODUCT CATEGORY COMMITMENT** In each Year the Distributor will place Confirmed Orders for Footwear with Airwair for at least the minimum pairage set out in the Commercial Terms Sheet ("**Minimum Pairage**"). The Distributor will ensure that the Orders it places during each Year comply with the relevant split between different categories of Products as set out in the Commercial Terms Sheet (the "**Product Category Commitment**"). If the Distributor fails to place Confirmed Orders for the Minimum Pairage from Airwair in any relevant Year of this Agreement, then Airwair may, without notice, Actively Sell, either by directly approaching Customers or a specific Customer group, or by establishing any branch or distribution depot, the Products itself to any Customers in the Territory and to appoint other Airwair distributors to do so and the restrictions on Airwair will be deemed to have terminated (inter alia clause 3.1 and 3.5).
- 4.6 **ORDER FULFILMENT** Subject to clause 4.5, Airwair will use its reasonable endeavours to fulfil Orders, up to the Minimum Pairage. Orders may be placed in addition to the Minimum Pairage, and Airwair may issue confirmations of these Orders at its discretion. The Distributor's obligations in future years will not be reduced because of any excess Confirmed Orders. In the final 6 months of the Term, regardless of any Minimum Pairage, Airwair will decide whether to fulfil Orders in full, in part, or not at all.
- 4.7 **PREPARATORY STEPS PRIOR TO EXPIRY OR TERMINATION** The Distributor recognises that on termination or expiry of this Agreement Airwair will be entitled to distribute Products to Customers in the Territory, either itself or through a successor to the Distributor. Notwithstanding any other provision of this Agreement, at any time during the Term either Airwair or any successor to the Distributor will be able to solicit and accept orders of Products for delivery at any time following the termination or expiry of this Agreement, will be allowed to make itself known to all relevant persons and entities as Airwair's prospective distributor (or in the case of Airwair, that it will be distributing on its own account) and will be entitled to take any actions necessary or prudent to prepare for a transition from Distributor to Airwair or a successor distributor. For the avoidance of doubt but without prejudice to any other right of Airwair under this Agreement, this clause shall not entitle Airwair or a successor distributor to deliver Products to Customers in the Territory during the Term.

5. MARKETING AND PROMOTION

- 5.1 **MARKETING PLAN** The Distributor will promote the distribution and sale of the Products in the Territory each Season, in accordance with the applicable Seasonal Marketing Plan agreed pursuant to clause 4 above (the "**Approved Seasonal Marketing Plan**") and will not carry out (and not authorise any third party to carry out) any marketing or promotional activities that are not set out in the applicable Approved Seasonal Marketing Plan. Once agreed, any additions or amendments to the Seasonal Marketing Plan must be approved by Airwair (acting reasonably).
- 5.2 **MINIMUM MARKETING SPEND** Each Year, the Distributor will spend an amount equal to or in excess of the minimum expenditure on marketing, as set out in the Commercial Term Sheet ("**Minimum Marketing Spend**") on advertising, promoting and marketing the Products in the Territory as set out in the applicable Approved Seasonal Marketing Plan. The planned Gross Revenue should be used by the Distributor to calculate the Minimum Marketing Spend but it is the Distributor's responsibility to ensure that by the end of each Year, the amount it has spent reflects the correct proportions of the actual Gross Revenue in that period. If the Distributor does not spend the full amount of the Minimum Marketing Spend, the Distributor will pay the unspent amount to Airwair (in the Payment Currency) within the time frame specified in a written demand from Airwair and Airwair shall put this money towards the cost of Airwair's advertising, promotions and/or marketing in the Territory.
- 5.3 **CALCULATION OF MARKETING SPEND** The only costs which will be taken into account for the purpose of the Minimum Marketing Spend will be costs and expenses directly and identifiably attributable to advertising, promoting and marketing the Products in the Territory in accordance with the prevailing Approved Seasonal Marketing Plan, and will not include business costs such as those relating to Showroom repairs and maintenance, cleaning, and back office or administrative tasks such as payroll, etc.
- 5.4 **MATERIALS** No less than two months before each Seasonal Plan Date, Airwair will provide the Distributor with catalogues of choices of Airwair POS Material. Airwair may, at any time, provide the Distributor with such other materials as Airwair may consider appropriate ("**Other Materials**"). The POS Materials (and catalogues), Brand Guidelines, seasonal campaign guidelines and Other Materials will be in English, and may be in paper or electronic form. They must be returned at the end of the Term.
- 5.5 **ORDERS FOR MARKETING MATERIALS** Orders for the POS Materials will be placed by the Distributor by the dates specified in the Airwair POS Material catalogues. Airwair will use its reasonable endeavours to accept such orders, provided they are in accordance with the relevant Approved Seasonal Marketing Plan.

- 5.6 **SUFFICIENCY OF MARKETING MATERIALS** Subject to clause 5.5, the Distributor will at all times have a sufficient amount of POS Material to use itself in its Showrooms and Stores and to execute the Approved Marketing Plan and to provide to Customers.
- 5.7 **APPROVED MARKETING MATERIALS** The Distributor will only use and provide Customers with POS Material which is either Airwair POS Material, obtained in accordance with clause 5.5 or created by or on behalf of the Distributor and approved by Airwair in accordance with clause 5.9. The Distributor will procure that Customers use the POS Material which it supplies to them and will monitor such use and ensure that out of-date POS Material is removed.
- 5.8 **CONTENT** All Content created by or on behalf of the Distributor will:
- (a) comply with the Brand Guidelines;
 - (b) comply with any Seasonal Campaign Guidelines;
 - (c) comply with all Applicable Laws;
 - (d) not make any promises or guarantees about the Products beyond those contained in the promotional material supplied by Airwair, unless approved in accordance with clause 5.9; and
 - (e) not infringe, misappropriate or otherwise violate any third party intellectual property rights or other rights and the Distributor hereby agrees to indemnify, defend and hold harmless Airwair (and each member of the Airwair Group) from and against any and all claims, demands, obligations, lawsuits, judgments, awards, causes of action, costs, expenses, attorneys' fees, liabilities of any nature whatsoever asserted, arising directly or indirectly in whole or in part out of any alleged infringement of third party intellectual property rights.
- 5.9 **APPROVAL OF MARKETING CONTENT** All Content produced by or on behalf of the Distributor must be approved by Airwair before being used. The Distributor will submit originals of any draft Content, accompanied with a full English translation of all text, to Airwair in a timely manner, giving Airwair no less than thirty (30) days to review and either approve it or request changes, before it is used. Airwair will confirm its approval of this content provided it complies with the above, reflects the Approved Seasonal Marketing Plan and is of a high quality.
- 5.10 **APPOINTMENT OF AGENCIES** The Distributor will obtain Airwair's approval prior to the appointment of any public relations or advertising firm in relation to the advertising and promotion of the Products, any promotional or marketing event, or agreeing to sponsor, either wholly or partly, any other event.
- 5.11 **NO MAKING OF CLAIMS** The Distributor will make no claims or representations, directly or indirectly relating to the Products which are inconsistent with or go beyond those made by Airwair about the Products, and undertakes to indemnify and hold Airwair harmless from all claims and liabilities arising out of or consequent upon any claims or representations made by the Distributor in relation to the Products or any Content which has not been pre-approved by Airwair.
- 5.12 **ASSIGNMENT OF IP RIGHTS** The Distributor will at Airwair's request, use its best endeavours to procure the assignment to Airwair of the right to use any Intellectual Property in any Content, on terms to be agreed between Airwair, the Distributor and the Intellectual Property rights owner. Where the Distributor is unable to procure an assignment it will procure a perpetual, royalty-free licence (without limitation as to territory or mode of usage) to Airwair of the right to use any Intellectual Property in any Content, on terms to be agreed between Airwair, the Distributor and the Intellectual Property rights owner.
- 5.13 **DIGITAL AND OTHER MEDIA** Where a Digital Site is operated, maintained, transmitted by or on behalf of the Distributor, the terms below will apply:
- (a) the Distributor must obtain prior written approval from Airwair for any Digital Site prior to commencing use or operation of it, such notification to include provision of access to the Digital Site and the Distributor will make changes to the Digital Site if at any time, Airwair believes that the Digital Site does not meet the standards required by Airwair and made available to the Distributor from time to time. For the avoidance of doubt the Distributor may not register or seek to register any domain name which incorporates the Trade Marks or phonetically similar words or other words which could create confusion in the minds of users.
 - (b) any Digital Site will not mimic the existing or former Airwair Group websites and must be part of a multi-branded offering and not a "Dr.Martens" dedicated site.
 - (c) the Distributor acknowledges that anywhere the brand is being identified in a search engine, social media account, or domain name Airwair will maintain control of such listings and the Distributor will not seek to do so without Airwair's prior written consent.

- (d) the Distributor will ensure that at all times the Digital Site clearly explains that the advertisement, marketing and/or sale of the Products on the Digital Site, is by the Distributor not Airwair; that it directly complies with the Brand Guidelines; that it displays a comprehensive range of the Products and correctly categorises such Products; that it incorporates Content, approved in accordance with this Agreement; that it is easy to navigate and (if the Digital Site is used for the sale of Products to Customers), has an easy sales process supported by clear information and terms.
- (e) the Distributor will provide an on-line after-sales service for Customers in relation to the Products.
- (f) without prejudice to clause 15, the Distributor will ensure that its Digital Site and all policies, documents and other material displayed on the Digital Site comply with all Applicable Laws including, but not limited to those in relation to data protection, e-commerce, consumer contracts, language and the sale and supply of goods.
- (g) the Distributor will be a full and current member of such accredited internet trading or self-governing bodies as required in the Territory and as requested by Airwair from time to time.
- (h) the Distributor will not purchase any adwords or search terms for the promotion of its Digital Site without Airwair's prior written consent.
- (i) the Distributor will ensure, insofar as it is reasonably able to, that the Digital Site operates at a high speed (within time parameters set by recognised industry bodies).
- (j) during the Term the Distributor will subscribe to an independent third party monitoring service as approved by Airwair in order to verify the up time of the Digital Site. The Digital Site will be available to customers for at least 99.9 per cent of each calendar month. The Distributor will provide Airwair with all up time data concerning the Digital Site as is reasonably required by Airwair.
- (k) Distributor will comply with law and follow regulatory and industry "best practices" guidelines (and train and monitor influencers on compliance with the same). Distributor will comply with all social media platform rules or other terms that are applicable to the use of any websites or services. This sentence does not imply that Distributor has any rights to market or sell via such platforms; such right must be granted separately by Airwair. Distributor will not register domain names, social media pages, or the like featuring any trademark owned or licensed by Airwair
- (l) the Distributor will ensure that, whenever possible, any significant maintenance of the Digital Site will be undertaken outside of the hours of 8 am to 11p.m. (in the time zone of the Territory).

6. SALES AND STOCK

- 6.1 **SHOWROOM** Throughout the Term, the Distributor will maintain a minimum of two Showrooms, all Showrooms being at all times compliant with Airwair's quality standards for Showrooms as provided to the Distributor from time to time. Airwair or its agents can, upon giving reasonable notice inspect and check the Showrooms for such compliance, and if the Showrooms are found non-compliant Airwair may require that they are closed until they are brought up to Airwair's quality standards for Showrooms from time to time (to Airwair's reasonable satisfaction).
- 6.2 **PERSONNEL** The Distributor will employ a sufficient number of suitably qualified personnel to ensure the proper fulfillment of the Distributor's obligations under this Agreement and all such personnel will be proficient in speaking and writing the English Language to a business competent level. Airwair may make reasonable suggestions to the Distributor regarding the number of personnel to be appointed, but for the avoidance of doubt, these shall not be binding on the Distributor.
- 6.3 **SALES FORCE** The Distributor will hold meetings with its sales force at least twice a year (giving Airwair at least four weeks' notice), will ensure that its sales force visits regularly the business premises of potential Customers, and will ensure that they visit and attempt to obtain orders for the Products from any persons to whom they may be directed by Airwair in the Territory.
- 6.4 **SAMPLES** The Distributor must purchase from Airwair Product samples in such quantities as Airwair considers reasonably necessary in order for the Distributor properly to perform its obligations pursuant to this Agreement. This Agreement and Airwair's Price Lists will apply to all sales of samples by Airwair to the Distributor.
- 6.5 **PRICING** Airwair will provide the Distributor with recommended retail prices for the Products. However, the Distributor is entitled to sell the Products to its Customers at any prices or subject to any promotions, discounts or rebates it chooses.
- 6.6 **STOCK** The Distributor will maintain such stocks of the Products required to meet its Customers' demands and will ensure they are always supplied to the Customers in a good condition and at any one time, no more than 10 % of the Distributor's total stock of the Products will be more than 12 months old ("Aged Stock").

- 6.7 **PRODUCT QUALITY** The Distributor will comply strictly with all reasonable instructions of Airwair to ensure that the Products supplied to Customers are of high quality and will return to Airwair or destroy any Products at Airwair's option which in the opinion of Airwair or Airwair's representatives are defective or may have become unsatisfactory. The Distributor is not permitted to sell or otherwise dispose of, in any way, any of the Products which are in any way sub-standard or damaged.
- 6.8 **INSURANCE** The Distributor will provide appropriate security for the Products, at its own cost and will insure at its own cost with a reputable insurance company all stocks of the Products, as are held against all risks which would normally be insured against by a prudent businessman to at least their full replacement value and produce to Airwair on demand full particulars of that insurance and the receipt for the then current premium.
- 6.9 **STOCK INSPECTIONS BY AIRWAIR** Airwair or its agents will have the right, upon giving reasonable notice to the Distributor, to inspect the stock and the conditions of storage of the Products at whatever place or places they may be kept and may exercise such right without notice in the event that the goods are at risk for any reason including as a result of non-payment by the Distributor. If Airwair is of the reasonable opinion that the Products are at risk and where title has not passed, Airwair will be entitled to remove the products from storage and will be under no obligation to return them until payment in full is received.
- 6.10 **PACKAGING** The Distributor will supply the Products to Customers only in the packaging, form and get up in which they are supplied to the Distributor by Airwair, except as otherwise agreed in advance by Airwair in writing and will not tamper, remove, obscure or over-label any labelling on the packaging of the Products. This clause does not prevent the Distributor making any such changes as are necessary to comply with Local Regulations, including the use of local language in communications with consumers, provided Distributor notifies Airwair in advance of such changes.
- 6.11 **CUSTOMER COMPLAINTS** The Distributor will provide an after-sales service for Customers in relation to the Products, which will include processes for product recalls, qualitative returns and responding to Customer enquiries about the Products and Airwair will endeavour to answer, as soon as reasonably practicable, any technical enquiries concerning the Products made by the Distributor or its Customers.
- 6.12 **RESOLUTION OF CUSTOMER COMPLAINTS** The Distributor will pass on to Airwair promptly any complaints or unusual comments (whether favourable or unfavourable or by way of requests for information) it may receive with regard to the Products together with all available evidence and other information relating to them. The Distributor will strictly observe Airwair's reasonable instructions with regard to such complaints and comments and will, if Airwair wishes to deal with any such matters, itself give Airwair any assistance it may request in connection with them. If any dispute arises between the Distributor and any third party in relation to the quality or characteristics of any of the Products sold by the Distributor the Distributor will not, without the consent in writing of Airwair, take or defend any proceedings in respect of or compromise such dispute.

7. STORES

- 7.1 **FUTURE AGREEMENTS** If, following execution of this Agreement, a separate agreement is entered into by the parties for the operation by the Distributor of retail stores in the Territory, such agreement will take precedence over the provisions of this clause 7 to the extent of any inconsistency.
- 7.2 **PRIOR APPROVAL REQUIRED FOR STORES** The Distributor will not open any more stores than those Stores listed in the Commercial Term Sheet, without Airwair's prior written consent in respect of each individual store, store location and proposed format/presentation of the store. Any new stores or locations approved by Airwair will be deemed a "Store" or "Store Location" under this Agreement and the terms of this Agreement will apply.
- 7.3 **RENEWAL OF STORE LEASE** The Distributor may not renew a lease for a Store without first submitting a renewal proposal to Airwair for consideration. Distributor may not proceed with the renewal unless it has received written consent from Airwair.
- 7.4 **SERVICES FEE** For the avoidance of doubt, Distributor will be responsible for all costs relating to the maintenance of the Store Locations and the running of the Stores and in consideration for the right to operate the Stores in the Territory and the support provided by Airwair hereunder, the Distributor will pay to Airwair without deduction or set off and clear of any withholding taxes, duties, charges or costs whatsoever, quarterly in arrears the Stores Support Services Fee in respect of each Store in the Payment Currency.
- 7.5 **STORE COMPLIANCE** Throughout the Term the Distributor will:
- (a) ensure that the Stores comply with all legal requirements in the Territory and maintain all licences, permissions and consents required for the operation of the Stores in accordance with this Agreement;

- (b) only sell Products in the Stores and comply with the retail guidelines issued by Airwair ("**Retail Guidelines**") and will respect any directions from Airwair and optional guidance provided by Airwair in relation to the visual presentation (both exterior and interior) of the Stores;
- (c) ensure that the layout of the Stores complies with all of the instructions and specifications of Airwair and regularly change window displays;
- (d) refurbish the Stores in the event of any deterioration caused by wear and tear, keep the Stores clean and tidy, maintain safety standards (both legal and best practice in the Territory) and keep fixtures and fittings in working order;
- (e) maintain such standards of customer service as are customary for retailers selling comparable products;
- (f) ensure that the overall effect of the Stores is in alignment with "themes" communicated by Airwair from time to time by purchasing certain fittings and displaying items for the Stores from Airwair, and to incorporate its own sourced items as approved in advance by Airwair;
- (g) comply with all provisions in relation to the use of the Intellectual Property;
- (h) install and maintain a footfall/traffic counter in each Store. The Distributor shall provide Airwair with a copy of the data collected by the footfall/traffic counters in each Store; and
- (i) refurbish, redecorate and/or improve the Stores at its own expense, on the dates and at the frequency agreed with Airwair, but at least once during the Term. To the extent the design, layout, and/or fixtures and fittings of the Stores do not meet the Retail Guidelines at the Effective Date, the Distributor will bring them up to standard at the next refurbishment, redecoration or improvement. All refurbishments, redecoration and/or improvements will be in accordance with guidance provided to it by Airwair.

7.6 **ACCESS TO STORES** The Distributor will provide access to Airwair to the Stores at all reasonable times, on reasonable notice and during usual business hours during the Term to allow it to inspect the Store and ensure that the Distributor is complying with its obligations under this clause.

7.7 **POS FOR STORES** The provisions in Clause 5.4 to 5.9 shall apply in respect of all POS Materials and Other Materials used in Stores.

7.8 **STATIONERY FOR STORES** The Distributor will ensure that all stationery which it uses in relation to the Stores states the full corporate name and address of the Distributor and a statement clearly explaining that the Store is an authorised store. The Distributor will submit draft stationery materials to Airwair and obtain its prior written consent (not to be unreasonably withheld or delayed) prior to commencing production.

7.9 **OPENING HOURS** The Distributor will keep the Stores open during such hours as are customary for similar retail stores in the Territory or such other hours as may be agreed in writing between the parties.

7.10 **STORE STAFF** The Distributor will be solely responsible for recruiting, employing and paying all personnel, and for compliance with all local laws and regulations in respect of the recruitment and employment of all personnel, however, Airwair will have the right, if it decides necessary, to set standards and criteria relating to the appointment of the Store manager and assistant Store manager(s), such approval not to be unreasonably withheld or delayed. In relation to the personnel, the Distributor will ensure that at all times, they are adequately trained and all senior personnel and managers have received and completed Airwair's mandatory induction training and that all senior staff and managers attend such pre-season product presentations as are arranged by Airwair.

7.11 **OVERHANGING LEASES** In circumstances where the Distributor has opened Stores, and the leases for such Stores will continue after the end of this Agreement, 6 months before the expiry or termination of this Agreement, Airwair may in its discretion elect to do any of the following: -

- (a) cease supplying the Products to the Distributor;
- (b) authorise the Distributor to continue sell the Product in the Stores until the end of the leases;
- (c) direct that the Distributor assign or transfer the leases of the Stores to Airwair;
- (d) if a different distributor for the Territory will be appointed Airwair may direct the Distributor to assign or transfer the leases to the new distributor;

If, for any reason, this Agreement is terminated prior to its expiry Airwair may at that time in its discretion elect to do any of the above. The Distributor shall execute all such documents and deeds, do all such acts, and take all reasonable steps as

may be required (or shall procure the same from its Affiliates), either during and after this Agreement, to assign or transfer to Airwair (or such party as directed by Airwair) all Store leases.

8. REPORTING AND INFORMATION SHARING

8.1 REPORTS The Distributor will provide the following marketing and promotion reports to Airwair:

- (a) a "Marketing Report" summarising the Distributor's marketing activities (including paid advertising or media, online and offline editorial coverage, trade activity, events, product placement and social media activity) which will be provided in the form prescribed from time to time by Airwair, on a monthly basis; and
- (b) a "Campaign Analysis Report" summarising the Distributor's marketing activities in relation to a particular Seasonal campaign, which will be provided in the form prescribed from time to time by Airwair on a Seasonal basis.
- (c) a "Monthly Sales Report" detailing the actual number of pairs of Footwear Products that the Distributor sells (less any cancelled sales and returns), actual sales by the Distributor of other Products and sell-through and inventory data.

Airwair will keep any detailed sales and marketing information confidential and will not use it other than for its own business monitoring purposes to ensure compliance with the terms of this Agreement, and will not disseminate it (directly or indirectly) to third parties including other Airwair distributors.

8.2 REPORT FORMAT AND CONTENTS Airwair may at any time specify such changes to the frequency, format, content or other features of the Reports as it may reasonably require, including requesting additional reports.

8.3 SUBMISSION OF REPORTS Reports will be submitted:

- (a) Where they are monthly or quarterly, not later than the 10th of each month, in relation to the previous month or end of the quarter; and
- (b) Where they are Seasonal, not later than thirty (30) days after the end of the relevant Season.

8.4 ACCESS VIA CLOUD The Distributor will provide Airwair with a secure means of access either via remote link (e.g. Citrix) to the Distributor's systems or a cloud-based system ("System") which includes information that Airwair can access on:

- (a) the Distributor's sales of the Products, including numbers of each SKU sold and which Customers it has sold to (including names, addresses, number of doors and business-type determined by reference to the relevant local classification);
- (b) the Distributor's stock levels including: numbers of each SKU in stock; and number of units of Aged Stock; and
- (c) the Distributor will ensure the information is up to date.

8.5 ACCESS WARRANTIES The Distributor warrants that:

- (a) the operation of the System will be uninterrupted (except in the case of emergency or agreed out-of-hours downtime) and free of errors and material defects;
- (b) where access is disrupted due to emergency circumstances then the Distributor will use its reasonable commercial endeavours to rectify the problem as soon as is reasonably possible, and implement processes and procedures to prevent any similar reoccurrence; and
- (c) the information provided on the System will be accurate to within five (5) Business Days.

Airwair will keep confidential (in accordance with clause 18) any information which it obtains regarding the Distributor's sales and will in particular not disseminate such information to other Airwair Distributors.

If the Distributor is unable to provide access to the System via the means specified in clause 8.1(c) at any point during the Term (other than as provided in clause (b)), it will notify Airwair, who may, in its sole discretion, agree with the Distributor a temporary manual reporting process, by which the Distributor will provide the information set out in clause 8.1(c) to the same degree of accuracy as required by clause (c), for such period as may be determined by Airwair.

9. INTELLECTUAL PROPERTY

9.1 GRANT OF RIGHTS Airwair hereby grants to the Distributor the limited, revocable right to use in the Territory the Trade Marks and other Intellectual Property in the POS Materials, Seasonal Campaign Guidelines and Other Materials for the sale and advertisement of the Products, in accordance with this clause 9 and the other provisions of this Agreement, provided that:

- (a) the Distributor will always comply with the requirements contained in the latest version of the Brand Guidelines notified to it and any other standards as Airwair may prescribe relative to the size, design, position and appearance of the Trade Marks;
- (b) the Distributor never uses the Intellectual Property and, in particular, the Trade Marks except in the normal course of the sale and advertisement of the Products; and
- (c) each reference to and use of any of the Trade Marks is accompanied by an acknowledgement.

9.2 **PROOF OF USE PROGRAMME** The Distributor will assist Airwair with its Trade Mark proof of use programme. In particular, the Distributor will:

- (a) at its own cost, advertise the Products at least twice a year in a local newspaper and in local trade magazines of each country in the Territory of this Agreement, each advertisement to include an Airwair approved public notice. Such advertisements will be incorporated into the Distributor's Minimum Marketing Spend and must be approved by Airwair in accordance with clause 5.9. The Distributor will submit a copy of each publication which contains such advertisements to Airwair within (twenty-one) 21 days of a request from Airwair;
- (b) include on all sales invoices and delivery notes such proof of use wording as prescribed by Airwair;
- (c) every Year provide Airwair with four invoices and delivery notes for each country in the Territory and Customs and shipping documents evidencing sales of all Products in each of the two previous six month periods. The Distributor will respond to any request from Airwair for this information and provide copies of all media coverage and marketing materials generated in this previous period as is specified by Airwair within (twenty-one) 21 days of receipt of the request from Airwair.

9.3 **USE OF TRADEMARKS** The Distributor undertakes with Airwair that it will not:

- (a) remove from the Products or their packaging any of the Trade Marks without Airwair's consent or alter, remove or tamper with any of the Trade Marks, numbers or other means of identification used on or in relation to the Products;
- (b) use any of the Trade Marks in any way which may prejudice their distinctiveness or validity or the reputation or the goodwill of Airwair in them or on any advertising, promotional material and sales aid unless approved by Airwair in accordance with clause 5.9;
- (c) use in relation to the Products any trade marks other than the Trade Marks without obtaining the consent of Airwair;
- (d) use in the Territory in relation to the Products any trade marks or trade names so resembling any Trade Mark or trade names of Airwair as to be likely to cause confusion or deception; and
- (e) use or authorise any third party including, without limitation, Customers or website operators to use any of the Trade Marks or any trade names of Airwair or any member of the Airwair Group as part of any trading or company name or style or as part of any domain name, hypertext or adword for use on the Internet.
- (f) the Distributor will not apply to register, use or maintain any URL, social media account, "hash tag" or other identifier which incorporates any of the Trade Marks or any phonetically similar words (whether for use in conjunction with the Products or otherwise).

9.4 **NO RIGHTS** Except as provided in 9.1, the Distributor will have no rights in respect of the Intellectual Property in relation to the Products or of the goodwill associated with them and the Distributor hereby acknowledges that, except as expressly provided in this Agreement, it will not acquire any rights in respect of the Intellectual Property and goodwill and that all such rights and goodwill are, and will remain, vested in Airwair.

9.5 **ASSISTANCE WITH IP PROTECTION** The Distributor will, at Airwair's cost, take reasonably required steps to assist Airwair or any member of the Airwair Group in maintaining the validity of the Intellectual Property and the Trade Marks during the Term and will not do anything which detracts from the Intellectual Property and affects the enforcement rights of Airwair or any member of the Airwair Group.

9.6 **DISTRIBUTOR NOT TO INVALIDATE IP** The Intellectual Property the Distributor will not do or authorise any third party to do any act which would or might invalidate or be inconsistent with any aspect of the Intellectual Property and will not omit or authorise any third party to omit to do any act which, by its omission, would have that effect.

9.7 **INFRINGEMENTS BY THIRD PARTIES** The Distributor will promptly notify Airwair fully of any actual, threatened or suspected infringement of any of the Intellectual Property within the Territory, (including any suspected internet infringement or attempt by a third party to register an infringing domain name) which comes to the Distributor's notice, or of any claim by any third

party so coming to its notice that the importation of the Products or counterfeits of the Products into the Territory, or their sale, offer for sale or other disposal howsoever infringes any rights of any other person or any actual, threatened or suspected claim against the validity of the Intellectual Property. The Distributor will, when reasonably requested by Airwair, provide assistance in resolving the issues and will pay towards any expenses incurred as a result of any action taken by Airwair or the Airwair Group provided that the Distributor's contribution does not exceed 50% of the aggregate expenses of Airwair and all members of the Airwair Group. The Distributor undertakes with Airwair that it will at the request of Airwair do all such things as may be reasonably required to assist Airwair or any member of the Airwair Group in the taking or resisting of any proceedings.

- 9.8 **FREEDOM TO DEAL WITH IP** Nothing in this Agreement will prevent Airwair or any member of the Airwair Group from freely assigning, licensing or sub-licensing or otherwise disposing of the Intellectual Property to any other company in the Airwair Group or from a company in the Airwair Group to Airwair.
- 9.9 **INVALID IP** If any of the Products is held by a court of last resort or court of lower jurisdiction from which no appeal has been taken to constitute an infringement of any intellectual property, Airwair or any relevant member of the Airwair Group will at its own cost and without prejudice to anything in this clause 9 either (at its discretion):
- (a) procure for the Distributor or any subsequent purchaser the right to continue using the relevant Products; or
 - (b) replace it with a comparable non-infringing product; or
 - (c) modify it so that it becomes non-infringing; or
 - (d) accept the return of the relevant Products and refund the purchase price plus actual freight charges and duty (if any) paid thereon by the Distributor; or
 - (e) in the case of Confirmed Orders where the Products have not been delivered declare the Confirmed Order cancelled without any liability on the part of either Party thereby arising.
- 9.10 **CUSTOMER TERMS** Airwair has invested significant time and monies in developing the Trade Marks and marketing and selling under the Trade Marks, with the result that they now attract a substantial reputation and goodwill, which is associated with high quality standards. In order to maintain such reputation, goodwill and standards, it is essential that both the Distributor and its Customers support Airwair's brand protection activities. In recognition of this clause 9.10, in its terms and conditions with Customers, the Distributor will include terms which are substantially similar to those contained in this Agreement. The Distributor will enforce its terms with Customers so far as reasonably practicable.

10. THIRD PARTY ONLINE MARKETPLACES

- 10.1 The Distributor must not, and must ensure that any Customers to which it sells the Products do not promote, list or sell any of the Products on any third party branded online marketplaces, including but not limited to those marketplaces listed in Schedule 2.
- 10.2 Customers remain free to sell the Products through their own website, or through any website hosted by a third party which does not carry any third party brand.

11. PRICE, PAYMENT TERMS & DELIVERY

- 11.1 **PRICES** The prices for Products purchased by Distributor from Airwair, will be Airwair's applicable Price List at the relevant time and Airwair will supply to the Distributor up to date copies of all Price Lists for the Products from time to time. All Product prices listed are expressed as exclusive of any applicable value added or any other sales tax which will be payable in addition by the Distributor. Airwair can change the prices as listed at any time, provided it informs the Distributor in writing any time, up to one week, before the delivery. Except as otherwise provided in this clause 11.1, no employee, Airwair sales representative, or any other party other than an officer of Airwair is authorised to alter Airwair pricing.
- 11.2 **INVOICING** Airwair may invoice the Distributor for the Products at any time on or after the date on which such Products are made available for collection by the Distributor.
- 11.3 **PAYMENT** The Distributor will pay the price set out in the applicable Price List in the Payment Currency on the Payment Terms without set-off, chargeback, or the like. Distributor will be responsible for all taxes, customs, duties, or other governmental charges relating to its purchase of Products. If the purchases from Airwair are exempt from sales tax, Distributor must provide Airwair with a copy of the relevant state sales tax resale exemption certificate for each state where Distributor has retail sales. Time for payment of the price will be of the essence. Without prejudice to the other rights and remedies of Airwair under this Agreement or Applicable Law, Airwair will have the sole right and discretion unilaterally to modify the Payment Currency and/or the Payment Terms with respect to all orders not accepted as of the date of such modification. The

amount reflected in an Airwair invoice will be deemed accepted and binding upon Distributor unless Distributor notifies Airwair in writing of a dispute within thirty (30) days of the date of the invoice. Interest will be charged on all past due invoices plus costs of collection (including attorney's fees and other costs and expenses of litigation).

11.4 FAILURE TO PAY If the Distributor fails to pay the any sums by the due date Airwair may:

- (a) stop any Products in transit; and / or
- (b) suspend further deliveries of the Products; and / or
- (c) revoke any credits or discounts provided to Distributor; and/or/
- (d) cancel or suspend any further delivery to the Distributor under any contracts which it has in place with the Distributor until payment is made in full; and / or
- (e) by Notice to the Distributor, terminate this Agreement and all other contracts between Airwair and the Distributor.

11.5 DELIVERY Delivery will be made by Airwair Ex Works at the location notified by Airwair to the Distributor for each Confirmed Order in accordance with Incoterms 2020 except as otherwise provided in this Agreement. It is the Distributor's responsibility to nominate a freight forwarder, and to notify a routing to Airwair for each Order. If a routing is not provided and the Products have not been collected within 14 days of the ex-factory date notified by Airwair, the Products will be automatically dispatched to the nominated freight forwarder.

11.6 ERROR IN SKU / SIZE / VOLUME SUPPLIED Airwair expects the Distributor to examine all Products immediately after receipt, including checking the description of the Products on the delivery note and product labels and checking the quantity of received Products is correct. In the event of any discrepancy whatsoever, the Distributor must notify Airwair within 5 days of receipt of the Products and before the Products are processed in any way. No responsibility will be accepted for any deviations against the Confirmed Order in the absence of such notification. If there has been an error in the SKU or sizes supplied or the number of Products actually delivered is less than stated in the Confirmed Order, Airwair will (at its option) replace the missing Products free of charge, reduce the invoice accordingly (and the Distributor return the Products) or the Distributor may retain the Products and Airwair will reduce the invoice accordingly. If the number of Products delivered is up to 5% greater than stated in the Order, the Distributor shall notify Airwair who may, at its option, invoice the Distributor for the additional Products delivered or require that the Distributor returns the additional Products. If the number of Products delivered is more than 5% greater than stated in the Order, the Distributor shall notify Airwair and the parties will arrange for return of the excess Products at Airwair's cost.

11.7 PRODUCTS ARE DAMAGED OR DEFECTIVE AS TO QUALITY In such cases the Distributor's remedies are set out at clause 19.219.3, subject to the procedure at clauses 19.2 and 19.3 being complied with.

11.8 ADDITIONAL POLICIES The then-current Airwair policies will apply to Orders and returns of Products. Distributor shall comply with the same and latest version supercede clauses 10.5 and 10.6.

12. RISK AND TITLE

12.1 RISK Until the title of the Products passes to the Distributor, the Distributor will be the bailee of the Products for Airwair and will:

- (a) Store the Products separately from all other good held by the Distributor so they are easily identifiable as Airwair's property; and
- (b) Not remove, deface or obscure any identifying mark or packing on or relating to, the Products;
- (c) Maintain the Products in satisfactory condition and keep them insured against all risk for their full price from the date of delivery; and
- (d) Notify Airwair immediately if the Distributor is subject to an Insolvency Event; and
- (e) Give Airwair such information relating to the Products as required from time to time.

12.2 TITLE AND RISK Title to the Products will pass to the Distributor on payment in full for such Products. Risk in the Products will pass to the Distributor on delivery. The Distributor can resell / use the Products in the ordinary course of business before Airwair receives payments for the Products. If the Distributor does resell the Products before that time they must do so as a

principal and not as Airwair's agent, and title to the Products will pass from Airwair to the Distributor immediately before the resale.

- 12.3 **INSOLVENCY EVENT** If the Distributor is subject to an Insolvency Event, then, without limiting any other right or remedy Airwair may have, then the Distributor's right to resell the Products or use them in the ordinary course of business ceases. Airwair may also require the Distributor to deliver up all Products supplied to the Distributor by Airwair under any Contract in its possession which have not been resold, and if the Distributor fails to deliver up such Products, Airwair may enter any of the premises where they are stored to retrieve them.

13. RECORDS

- 13.1 The Distributor will:

- (a) keep and maintain books, accounts and records in accordance with accepted accounting principles, which will be up-to-date and accurate and which will fully and completely reflect the nature of the Distributor's compliance with this Agreement (including in relation to Orders, Confirmed Orders, sales, stock holding and marketing spend, and which will be sufficient to ascertain and verify all sums spent and payable under this Agreement);
- (b) keep full and proper records of all enquiries relating to the Products;
- (c) keep such books and records as will show the names and addresses of all Customers;
- (d) maintain full and proper records of any activities undertaken to ensure compliance with this Agreement; and
- (e) retain its accounting and financial records for at least six years after the end of any accounting year to which those records relate.

14. AUDIT RIGHTS

- 14.1 **RIGHT OF ACCESS** The Distributor will, and will ensure that any of its sub-contractors will, grant to Airwair, its agents and representatives, and to any statutory or regulatory auditors of Airwair, the right of access to any of the Distributor's premises (including Showrooms and Stores), systems, personnel and records (as referred to in clause 14.1) (and, if necessary, the right to copy the records as Airwair may reasonably require) during normal business hours at its own expense, and on at least twenty (20) Business Days' prior notice, in order to verify that the Distributor is complying with the terms of this Agreement.
- 14.2 **AUDIT REPORT** Any audit will remain open until all identified issues are resolved, and the Distributor will furnish to Airwair or its designated auditors any additional information reasonably specified by Airwair that relates to the audit. Airwair will report or make available its findings to the Distributor within ninety (90) days of completion of an audit.
- 14.3 **AUDIT COSTS** The costs of the audit will be borne by Airwair save when an audit discloses material non-compliance with this Agreement by the Distributor (which will include underspend or underpayment (as applicable) of more than 2.5% of the value of the Minimum Marketing Spend or Services Fee over the period that is being audited), the Distributor will reimburse Airwair for its reasonable expenses in conducting such audit. Airwair's rights under this clause 14 are without prejudice to any other or additional rights or remedies available to Airwair under this Agreement.

15. COMPLIANCE

- 15.1 **LICENCES AND PERMITS** The Distributor will 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. The Distributor will be responsible for any customs duties, clearance charges, taxes, brokers' fees and other amounts payable in connection with the importation and delivery of the Products. The Distributor represents and warrants to Airwair that it has informed Airwair of Local Regulations at the date of this Agreement.
- 15.2 **COMPLIANCE** The Distributor will comply with all applicable legal requirements from time to time in force relating to the storage, marketing and sale of the Products including but not limited to those in relation to data protection, consumer contracts and the sale and supply of products and including but not limited to any anti-terrorism or export control laws regulations or directions emanating from the US or EU or other applicable jurisdiction.
- 15.3 **LOCAL REGULATION CHANGES** The Distributor will give Airwair as much advance notice as reasonably possible of any prospective changes in the Local Regulations.
- 15.4 **COMPLIANCE WITH POLICIES** In any case where employees of either Party visit the premises of the other Party for the purposes of this Agreement, the first mentioned Party will:

- (a) procure that each such employee complies with all security, safety and other regulations which apply to or are in force at the other Party's premises; and
- (b) indemnify the other Party against all liabilities, costs, damages and expenses to the extent that the same are caused by any negligent act or omission by any such employee at the other Party's premises.

16. TRADE COMPLIANCE

16.1 **SANCTIONS** The Distributor shall:

- (a) comply with all applicable Sanctions;
- (b) not cause the Airwair Group to violate any Sanctions which apply to the Airwair Group; and
- (c) have and shall ensure implementation throughout the term of this Agreement appropriate policies and procedures to ensure compliance with Sanctions.

16.2 **RESTRICTED PERSONS** The Distributor shall not supply Products, either directly or indirectly, to any Customer or to any other third party if the Distributor knows or has reasonable cause to suspect that:

- (a) such supply is to a Restricted Person;
- (b) the Product will be re-supplied to or for the benefit of a Restricted Person; or
- (c) such supply risks violating Sanctions.

16.3 **SUPPLIERS AGENTS & SUBCONTRACTORS** The Distributor shall ensure that all of its suppliers, agents, subcontractors and Customers under this Agreement comply with the terms of this clause 16, and only perform goods or services on the basis of a written contract which has terms equivalent to these in clause 16.

16.4 **BREACH OF CLAUSE 16** Breach of this clause 16 will be deemed a material breach of this Agreement.

17. ANTI-BRIBERY

17.1 **DISTRIBUTOR OBLIGATIONS** The Distributor will:

- (a) comply with all Applicable Laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the **UK Bribery Act 2010**, **UK Criminal Finances Act 2017** and **US Foreign Corrupt Practices Act 1977** (each as updated or replaced from time to time) ("**Relevant Requirements**") and comply with Airwair's ethics, anti-bribery and anti-corruption policies, as may be updated from time to time ("**Relevant Policies**");
- (b) have and will maintain in place throughout the term of this Agreement its own policies and procedures to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;
- (c) promptly report to Airwair any request or demand for any undue financial or other advantage of any kind received by the Distributor in connection with the performance of this Agreement;
- (d) immediately notify Airwair (in writing) if a public official becomes an officer or employee of the Distributor or acquires a direct or indirect interest in the Distributor, and the Distributor warrants that it has no public officials as direct or indirect owners, officers or employees at the date of this Agreement; and
- (e) within three months of the date of this Agreement, and annually thereafter, certify to Airwair in writing signed by an officer of the Distributor, compliance with this clause 17 by the Distributor and all persons referred to under clause 17.2. The Distributor will provide such supporting evidence of compliance as Airwair may reasonably request.

17.2 **SUPPLIERS AGENTS & SUBCONTRACTORS** The Distributor will ensure that all of its suppliers, agents and subcontractors under this Agreement comply with the terms of this clause 17, and only perform goods or services on the basis of a written contract which has terms equivalent to these in clause 17 ("**Relevant Terms**"). The Distributor will be responsible for the observance and performance by such persons of the Relevant Terms, and will be directly liable to Airwair for any breach by such persons of any of the Relevant Terms as if it was a breach by the Distributor of the corresponding provisions of this Agreement.

17.3 **BREACH OF CLAUSE 17** Breach of this clause 17 will be deemed a material breach of this Agreement.

18. CONFIDENTIALITY AND ANNOUNCEMENTS

- 18.1 **CONFIDENTIALITY** All Confidential Information given by one Party to the other, or otherwise obtained or developed by one Party relating to the other, will be kept secret and confidential by the receiving Party throughout the Term and for the five (5) years following its termination or expiry and will not be used or disclosed other than for the purposes of the proper performance of this Agreement or with the prior written consent of the other Party. Where the Distributor is required by law to provide a copy of the Agreement or any confidential information relating to its performance to a government authority, court or administrative body, it shall inform Airwair as promptly as possible, and assist Airwair in seeking to protect all confidential and commercially sensitive information. The Distributor will not release any press statement or make any other announcement regarding its relationship with Airwair or disclose the existence of this Agreement or any of its provisions without Airwair's consent.
- 18.2 **EXCEPTIONS** The obligations of confidentiality in this clause 18 will not extend to any matter which the receiving Party can show is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under this Agreement, was independently disclosed to it by a third party entitled to disclose the same, or is required to be disclosed under any Applicable Law, or by order of a court or governmental body or authority of competent jurisdiction.

19. WARRANTIES

- 19.1 **PRODUCT WARRANTY** Airwair warrants that on delivery the Products will be of satisfactory quality and in all material respects will comply with the description of them as set out in Airwair's standard documentation.
- 19.2 **NON-COMPLIANCE WITH PRODUCT WARRANTY** The Distributor must notify Airwair in writing of any patent (not hidden) nonconformities (defects) in the Products within 5 days of Distributor's receipt of the Products or 45 days from delivery, whichever date is first. The Distributor must notify Airwair in writing of any latent (hidden) nonconformities in the Products within 15 days of discovery, provided, however, that any notice of such latent nonconformities must be given no later than six months from delivery of the Products. If no such notifications are given, the Distributor has no claim against Airwair for those nonconformities. The notice must describe the nonconformity specifically enough that Airwair can act to remedy the defect and must specify the Products to which it refers. In the event of any breach of warranty, Airwair's liability will be limited to replacement of the Products within a commercially reasonable time period or, at Airwair's option, credit to the Distributor's account at the lowest price paid by the Distributor less any discounts that may have been awarded with purchase.
- 19.3 **WARRANTY CLAIMS PROCEDURE** Unless Airwair otherwise authorizes in writing, Distributor must return Products that do not conform to the warranty above ("**Defective Products**") by freight prepaid at Distributor's own expense to obtain any warranty remedy. If the warranty applies, Airwair will reimburse the return freight charges at its then prevailing schedule, which may not cover all of the actual costs of the return.
- (a) New or used Products that are suspected defective must be returned to Airwair for inspection or a report provided with clear photographs, at Airwair's direction. Airwair will inspect such Products or such report, and upon confirmation of defects, will issue a credit for the Products or provide a replacement for the Products provided the Products are received by Airwair within three hundred sixty-five (365) days of the date of delivery to the Distributor. Distributors will not be allowed to deduct the value of a return from an invoice payment without receiving a credit memo from Airwair. After three hundred sixty-five (365) days from the date of delivery, returns will not be accepted.
 - (b) If Airwair determines that any Products are not defective, Airwair will inform Distributor and Airwair will then ship Products back to the address from which the Products were initially shipped to Airwair, unless Distributor instructs otherwise.

If Distributor has been given an allowance for defective Products, Distributor may not send defective Products to Airwair. Such an allowance is provided in lieu of the warranty above. Instead, Distributor must destroy such defective Products. Distributor may not resell defective Products.
 - (c) This clause 19.3 states Distributor's sole and exclusive remedy for breach of warranty and otherwise for damaged/defective Products.
- 19.4 **EXCLUSIONS FROM PRODUCT WARRANTY** The warranty in clause 19.1 does not apply to the extent:
- (a) the defect is due to the failure of the Distributor to store the Products in accordance with either Airwair's instructions or good trade practice; or
 - (b) the Distributor makes any use of the Products after giving notice of a breach of warranty claim; or
 - (c) the Distributor alters or repairs the Products without Airwair's written consent; or

- (d) the defect is due to fair wear and tear, wilful damage, negligence or abnormal storage working conditions; or
- (e) the Products differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

19.5 **EXCLUSION OF ALL OTHER WARRANTIES** Except as expressly provided for in this Agreement, no warranty, condition, undertaking, or term, express or implied, statutory or otherwise will be given by Airwair, and such warranties, conditions or undertakings will be excluded to the fullest extent permitted by law.

20. LIABILITY

20.1 **LIABILITY** Nothing in this Agreement will limit or exclude any liability for (or remedy in respect of):

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by a Party's negligence, or the negligence of its employees, agents or sub-contractors (as applicable);
- (c) any other liability that may not be restricted, or excluded, pursuant to the Applicable Law.

20.2 **LIMITATION OF LIABILITY** Save to the extent that it may not limit or exclude its liability by law, Airwair will not be liable to the Distributor by reason of any representation or implied warranty, condition or other term or any duty at common law or under statute, or under the express terms of this Agreement or otherwise on any common law, statutory or other basis whatsoever, for any injury and/or loss and/or damage of any kind whatsoever and howsoever arising or arisen whether direct, indirect, consequential or special and howsoever caused whether occasioned by the negligence of Airwair or its officers, employees or agents or otherwise resulting from or arising out of or in connection with the Products (including without limitation any failure to comply with specification or any defect therein) except as expressly provided in this Agreement. Notwithstanding and without limitation to any other provision hereof in no event will Airwair or any member of the Airwair Group be liable under any terms of or otherwise in connection with this Agreement for loss of business or lost profits of the Distributor, diminution of goodwill or any incidental or consequential damages.

Airwair's total aggregate liability arising out of in connection with this Agreement will not exceed the total amounts paid by Distributor to Airwair for Orders for the twelve (12) month period preceding the time that liability arose. Distributor acknowledges that, on any termination or expiry of this Agreement, to the extent permitted by law, it is not entitled to any payment from Airwair or the Airwair Group for goodwill, indemnity, loss of future profits, or investments made or expenses incurred in connection with fulfilling this Agreement, unless expressly provided for in this Agreement.

20.3 **INDEMNITY** The Distributor will (without prejudice to the other rights and remedies of Airwair) indemnify, defend and hold harmless Airwair and the Airwair Group and licensors, and their respective officers, directors, employees, representatives and agents in full against all claims, demands, obligations, lawsuits, judgments, awards, losses, charges, causes of action, costs, expenses, attorney's fees or other liabilities awarded against or incurred or suffered whatsoever (including consequential loss and loss of profits but excluding any liability based on the negligence of Airwair, its officers, employees or agents) which:

- (a) arises directly or indirectly out of any contract or arrangement between the Distributor and any of its customers; or
- (b) arises as a result of or in connection with any claim made against Airwair by any third party in respect of any matter:
 - (i) caused by the Distributor, or
 - (ii) for which liability has been assumed by the Distributor; or
 - (iii) relating to or arising directly or indirectly from any promotional or marketing event including without limitation any sponsorship event or endorsement conducted by or on behalf of the Distributor or any other event sponsored wholly or partly by the Distributor; or
 - (iv) arising from or relating to the employment or contracting relationship between or among Distributor, any sub-distributors, and any employees or contractors of either of them.
- (c) arises as a result of any transfer or alleged transfer of employees from the Distributor or a sub-distributor to the Airwair Group for any reason on expiry or termination of this Agreement or during the Term, including for the avoidance of doubt any costs relating to Airwair Group's termination of such employees.

20.4 **INSURANCE** The Distributor will take out and maintain all-risk insurance with a reputable insurance company (or companies) with such amount of cover as Airwair may, in its absolute discretion, specify. Such policy (or policies) will include liability for employees and third parties, public liability, liability under the consumer protection laws in the Territory and professional

indemnity cover. The Distributor will not breach, or allow any breach of, such policies and will provide Airwair with copies of all such policies and renewals.

21. PRODUCT RECALL

- 21.1 **PRODUCT RECALL** Airwair may issue a notice to recall or withdraw the Products from the market if:
- (a) it forms the reasonable opinion that either the Products are, or may be, unsafe; and/or
 - (b) the Products are, may be, or may become illegal or non-compliant with any law, regulation or government agency or industry standard;
 - (c) a defect in the Products may cause harm to Airwair's reputation or brand; or
 - (d) any other ground which in the reasonable opinion of Airwair warrants a recall of the Products.
- 21.2 If AirWair becomes aware of or is the subject of a request, court order, or any other directive of a governmental or regulatory authority to withdraw any of the Products from the market, it will immediately notify the Distributor in writing and attach a copy of the notice.
- 21.3 Unless compelled by law or court order, the Distributor may not undertake a recall or withdrawal of the Products from the market without the written permission of Airwair.
- 21.4 In the event of any Product recall directed by Airwair as a result of the acts or omissions of Airwair, Airwair will, subject to clause 20, indemnify the Distributor and keep the Distributor indemnified against damages, losses, costs and expenses incurred by the Distributor in effecting such Product recall.

22. DATA PROTECTION

- 22.1 **TERMS USED** Within this clause 22, the terms "**personal data**", "**data controller**", "**data processor**", "**process**", "**processing**", "**data subject**", shall bear the meanings ascribed under the UK Data Protection Act 2018 or the GDPR (as applicable).
- 22.2 The Distributor and AirWair hereby agree that for the purposes of this Agreement and the Distributor's processing of the AirWair Data in connection with its performance of this Agreement, the Distributor and Airwair shall be separate data controllers and each party shall comply with its obligations as a data controller under the Data Protection Legislation in respect of that personal data.
- 22.3 The Distributor, acting as a data controller, will:
- (a) implement appropriate technical and organisational measures to maintain the security of the Personal Data and prevent unauthorised or unlawful access to, or processing of, or any accidental loss, destruction or damage to the Personal Data;
 - (b) notify AirWair promptly in writing if it becomes aware of any unauthorised or unlawful processing, disclosure of, or access to, AirWair Data and/or any accidental or unlawful destruction of, loss of, alteration to, or corruption of AirWair Data (a "Data Breach") and provide sufficient information to Airwair about the nature of the Data Breach, the personal data impacted, and its actions to resolve the Data Breach and mitigate its impacts;
 - (c) inform AirWair promptly of any penalty or other censure the Distributor receives from any Supervisory Authority in respect of its processing of AirWair data;
 - (d) provide AirWair such assistance and co-operation as AirWair may reasonably request to enable AirWair to comply with any obligations imposed on AirWair by Data Protection Legislation in relation to the AirWair Data processed by the Distributor; and
 - (e) immediately on demand, fully indemnify AirWair and keep AirWair fully and effectively indemnified against all costs, claims, demands, expenses (including legal costs and disbursements on a full indemnity basis), losses (including indirect losses and loss of profits), actions, proceedings and liabilities of whatsoever nature arising from or incurred by AirWair in connection with any failure of the Distributor or any third party data processor appointed by the Distributor to comply with the provisions of this clause 22 and/or Data Protection Legislation in respect of its processing of AirWair Data.

23. FORCE MAJEURE

- 23.1 **SUSPENSION** If the Distributor is delayed or prevented from complying with its obligations under this Agreement by a Force Majeure event then the requirement to comply with those obligations will be suspended for as long as, and to the extent that, performance is delayed or prevented by that event.
- 23.2 **TERMINATION** If the suspension continues for more than twenty one (21) days Airwair may terminate this Agreement by giving not less than thirty (30) days' notice in writing to the Distributor. If notice to terminate is given under this clause, and, during the notice period the Distributor's performance ceases to be hindered, prevented or delayed by the Force Majeure event, then the notice of termination will still be effective, unless otherwise agreed by Airwair in writing.
- 23.3 **CANCELLATION OF ORDERS** If the Agreement is terminated pursuant to clause 23.2 any outstanding Confirmed Orders will be deemed cancelled and neither Party will be liable to the other for such termination, without prejudice to the rights and remedies of either Party arising under or in connection with this Agreement or by law (including in respect of any breach of this Agreement occurring prior to such termination).

24. EXPIRY AND TERMINATION

- 24.1 **TERMINATION BY EITHER PARTY** Without prejudice to its other rights and remedies, either Party may terminate this Agreement by notice to the other if:
- (a) the other Party commits, or is deemed to have committed, any remediable breach of any of the terms or conditions of this Agreement and fails to remedy the breach within twenty-one (21) days' notice of the breach, giving the full particulars of the breach and requiring it be remedied. Such breach is capable of remedy if the Party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence); or
 - (b) the other Party enters into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them, passes a resolution or makes a determination for it to be wound up (except for the purposes of a solvent amalgamation or reconstruction); has a winding up order or bankruptcy order made against it; appoints or appointed a receiver or administrative receiver of the whole or any part of its assets; or where applicable bankruptcy orders are made in respect of any or all of its partners; admits its inability to pay its debts when due; or suffers any event or takes any step analogous to the events or steps listed, in any jurisdiction (each an **"Insolvency Event"**); or
 - (c) if the importing of the Products into the Territory is rendered impossible or uneconomic by reason of either the non-availability of import licences or the imposition of quotas of Products to be imported or similar reason.
- 24.2 **TERMINATION BY AIRWAIR** Without prejudice to its other rights and remedies, Airwair may terminate this Agreement by notice to the Distributor if:
- (a) there is any misrepresentation by the Distributor of a material fact or fraud in entering into this Agreement or if any officer or director of the Distributor is convicted of a crime related to the operation of its business or if the Distributor has wilfully abandoned its business;
 - (b) there is any change in the ownership, control or management of the Distributor which is unacceptable to Airwair for any reason;
 - (c) the Distributor ceases or threatens to cease to carry on business or if Airwair reasonably considers that the Distributor has become unable to pay its debts or unable to fulfil its obligations under the Agreement;
 - (d) the Distributor misuses the Intellectual Property in any way;
 - (e) the Distributor fails to purchase the Minimum Pairage any Year;
 - (f) the Distributor gives excessive estimates or attempts to place Orders for Product that are significantly in excess of the original estimates or quantities for which, will result in unacceptable levels of stock being held by the Distributor in the final 6 months of the Term;
 - (g) the sales of the Products into the Territory or to the Distributor is rendered unlawful for Airwair; or

- (h) any event, condition or change materially and adversely affects or could reasonably be expected to materially and adversely affect the assets, liabilities, financial results of or operations, financial condition, business or prospects of the Distributor, which for the avoidance of doubt would include a significant change in import duties or other trade levies in the Territory.

24.3 TERMINATION FOR CONVENIENCE Airwair may terminate this Agreement for any reason or no reason upon one hundred eighty (180) days notice to Distributor. Airwair's rights under this clause 22.3 are subject to any limitations and obligations imposed by any provision of Applicable Law that cannot be limited by contractual waiver. Distributor hereby irrevocably waives (and agrees to irrevocably waive) such rights and limitations and Airwair's obligations to the extent they may be waived under Applicable Law and are not expressly provided in this Agreement.

24.4 EXPIRY This Agreement will expire automatically if and when Airwair and/or the relevant member or members of the Airwair Group cease to have the right to manufacture and sell the Products in the Territory in which event there will be no compensation or purchase obligations due to the Distributor from Airwair or any member of the Airwair Group.

25. CONSEQUENCES OF TERMINATION AND EXPIRY

25.1 SURVIVAL OF CLAUSES Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement will remain in full force and effect which includes without limitation, the disclaimers, dispute resolution and limitations of liability. Termination or expiry of this Agreement will not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

25.2 DELIVERY OF PRODUCTS POST TERMINATION OR EXPIRY If this Agreement expires or if Airwair terminates this Agreement, Airwair will only be obliged to deliver Products where:

- (a) such Products are the subject of Confirmed Orders before the date of notice of termination; and
- (b) Airwair is in receipt of an irrevocable confirmed letter of credit issued by a United Kingdom bank approved by Airwair acting reasonably in respect of the price for such Products,

save that where Airwair terminates this Agreement for breach pursuant to clauses 24.1(a) or 24.2, Airwair will have no obligation to deliver any Products to the Distributor from the date of the notice of termination, whether or not they are Confirmed Orders and all Confirmed Orders will be cancelled with no further obligation or liability on the part of Airwair.

25.3 NO COMPENSATION ON TERMINATION Without prejudice to any liability which may have already accrued hereunder, neither Airwair nor any member of the Airwair Group, nor the Distributor will, by reason of the termination or expiry of this Agreement, be liable to the other for compensation, reimbursement or damages on account of the loss of prospective profits on anticipated sales nor on account of expenditure or commitments incurred in connection with the business or goodwill of Airwair, the Airwair Group or the Distributor.

25.4 PURCHASE OF STOCK Within thirty (30) days after the termination or expiry of this Agreement (unless a new agreement in writing will have been entered into between the Parties relating to the subject matter of this Agreement):

- (a) subject to clause 25.5 Airwair may:
 - (i) re-purchase from the Distributor all or any of the stock of the Products then in the possession of and owned by the Distributor at the following prices:
 - (A) in respect of stock of Products from the then current Season and the point of termination or expiry (including any carry-over Products), at the purchase price paid by the Distributor to Airwair including actual freight charges and duty (if any) paid thereon by the Distributor; and
 - (B) for all other stock of the Products, at a discounted price as reasonably determined by Airwair taking into account the age of the stock, the Season(s) for which the Products were Ordered, the net realisable value of the Products and market conditions; and
 - (ii) call for re-delivery at the Distributor's expense all or any of the Products delivered to but not yet paid for by the Distributor; and
- (b) if Airwair elects to re-purchase or call for re-delivery in accordance with 25.4(a), the Distributor will ship each such Product to Airwair or to such third party as Airwair may specify .

25.5 NON PURCHASE OF STOCK To the extent that Airwair does not purchase all stock pursuant to clause 25.4, the Distributor may (after the termination or expiry of this Agreement) sell any Products which it has in stock:

- (a) for which it has accepted orders from Customers prior to the date of termination or expiry of this Agreement; or
- (b) for a limited period of six months following the date of expiry or termination, for which Airwair does not exercise the options provided in clause 25.4(a), (save that the Distributor must obtain the advance written permission of Airwair before selling the Products to a retail clearance house, broker or other similar business) and for those purposes and to that extent (and subject to the rights of any successor to the Distributor) the provisions of this Agreement will continue in full force and effect but the Distributor will not otherwise be entitled to claim that this Agreement is thereby reinstated in whole or in part. Any stock that has not be sold during the six month period mentioned in the foregoing, will be destroyed by the Distributor in the presence of a representative from Airwair and any costs incurred will be borne by the Distributor.

25.6 EFFECTS OF TERMINATION Upon termination of this Agreement howsoever arising, or upon its expiry:

- (a) the Distributor will return to Airwair all versions of the Brand Guidelines and any training materials (whether in electronic or paper format) other documentation which have been supplied to the Distributor or which are otherwise in the Distributor's possession;
- (b) the Distributor will at its own expense within thirty (30) days dispose of in accordance with the directions of Airwair all samples of the Products and send to Airwair any advertising, promotional or sales material relating to the Products then in the possession of the Distributor;
- (c) the Distributor will at its own expense within thirty (30) days return to Airwair or (at Airwair's option) destroy in accordance with the directions of Airwair all copies of any materials and records of any kind that are in its possession or under its control (and in any medium) that contain any part of Airwair's Confidential Information except that the Distributor may retain a copy of any Confidential Information that it reasonably requires for its accounting purposes or to comply with any Applicable Laws;
- (d) outstanding unpaid invoices rendered by Airwair will become immediately payable by the Distributor and invoices in respect of Products for which there were Confirmed Orders prior to termination for which an invoice has not been submitted will be payable immediately upon submission of the invoice;
- (e) the Distributor will immediately cease to promote, market or advertise the Products or to make any use of the Trade Marks other than, in each case, for the purpose of selling any Products in accordance with clause 25.5;
- (f) the provisions of clauses 11 and this 25 and all provisions hereof providing for the indemnification of Airwair or any member of the Airwair Group by the Distributor will continue in force in accordance with their respective terms; and
- (g) subject as otherwise provided herein and to any rights or obligations which have accrued prior to termination, neither of the Parties will have any further obligation to each other under this Agreement.

26. GENERAL

26.1 COSTS Each Party will bear its own costs and expenses incurred in relation to the negotiation, preparation, execution and implementation of this Agreement.

26.2 NO FURTHER OBLIGATION Airwair will have no other obligations except as expressly provided in this Agreement.

26.3 AIRWAIR ASSETS To the extent that Airwair or third party on Airwair's behalf delivers any assets, equipment, software, hardware, or other materials to Distributor (collectively, the "Airwair Materials"), Distributor will: (a) use the Airwair Materials solely in connection as permitted by this Agreement and Airwair's instructions, (b) use due care in protecting the Airwair Materials and assume all risk of loss and damage to the Airwair Materials, and (c) immediately return the Airwair Materials to Airwair upon the earlier to occur of Airwair's request therefor or any termination of this Agreement. Except as to the limited right to use the Airwair Materials as set forth in the foregoing clause (a), Airwair will retain all rights in and to all Airwair Materials.

26.4 PAYMENT DEFAULT If the Distributor fails to pay any amount due to Airwair under this Agreement or any other Agreement with Airwair then without limiting any other rights or remedies which Airwair may have arising under, or in connection with, this Agreement or by law:

- (a) the Distributor will pay Interest on such sum for the period from (and including) the due date for payment to (but excluding) the date on which its obligation to pay the sum is discharged (whether before or after judgment). Interest will accrue on a daily basis; and
- (b) at Airwair's sole discretion Airwair may terminate this Agreement pursuant to clause 24.1(a); or terminate the restrictions on Airwair set out in clause 3.5

The Parties agree that the provisions of this clause 26.2 provide a substantial contractual remedy for the late payment of sums under this Agreement.

- 26.5 **SET OFF AND WITHHOLDING** All amounts due from the Distributor to Airwair under or in connection with this Agreement will be paid in full without any set-off, counterclaim, deduction or withholding. The Distributor will make all payments under this Agreement without withholding or deduction of, or in respect of, any tax, levy, impost, duty, charge or fee, unless required by law. If any such withholding or deduction is required, the Distributor will, when making the payment to which the withholding or deduction relates, pay to Airwair such additional amount as will ensure that Airwair receives the same total amount that it would have received if no such withholding or deduction had been required.
- 26.6 **ASSIGNMENT AND SUBCONTRACTING** The Distributor will not assign, transfer or otherwise deal with any of its rights or obligations under this Agreement, or sub-contract the performance of any of its obligations under this Agreement without the prior written consent of Airwair, such consent not to be unreasonably withheld or delayed.
- 26.7 **WAIVER & CUMULATIVE REMEDIES** No failure or delay by either Party to exercise any right or remedy arising under, or in connection with, this Agreement (collectively, any "**action**") will act as a waiver, or otherwise prejudice or restrict the rights of that Party, in relation to that action or any other contemporaneous or future action. The rights and remedies arising under, or in connection with, this Agreement are cumulative and, except where otherwise expressly provided in this Agreement, do not exclude rights and remedies provided by law or otherwise.
- 26.8 **RELATIONSHIP OF THE PARTIES** Nothing in this Agreement is intended to, or will be deemed to create a partnership, agency or a joint venture or a legal relationship of any kind between the Parties that would impose liability upon one Party for the act or failure to act of the other Party and save where expressly stated in this Agreement, neither Party will have authority to make representations, act in the name or on behalf of, or otherwise to bind, the other.
- 26.9 **FURTHER ASSURANCE** The Distributor will at the request and cost of Airwair do or procure the doing of all such further acts, and execute and deliver or procure the valid execution and delivery of all such documents, as may from time to time be necessary in Airwair's opinion to give full effect to this Agreement and to secure to Airwair the full benefit of the assets, rights, remedies and benefits conferred on Airwair by this Agreement.
- 26.10 **SEVERANCE** If any provision (or part of any provision) of this Agreement is, or becomes illegal, invalid or unenforceable in any respect: (a) it will not affect or impair the legality, validity or enforceability of any other provision of this Agreement; and (b) that provision (or part provision), will be deemed deleted.
- 26.11 **THIRD PARTY RIGHTS** Subject to the indemnities granted by the Distributor to the Airwair Group pursuant to clause 19 or otherwise impliedly provided for in this Agreement, a person who is not a Party to this Agreement will not have any right under the Contracts (Rights of Third Parties) Act 1999 ("**CRTPA**") to enforce any term of the Agreement. This clause will not affect any right or remedy of any person which exists, or is available, otherwise than pursuant to CRTPA.
- 26.12 **VARIATION** No variation of this Agreement will be valid unless it is in writing and signed by, or on behalf of each of the Parties.
- 26.13 **COUNTERPARTS** This Agreement may be executed in any number of counterparts, and by the Parties as separate counterparts, but will not be effective until each Party has executed at least one counterpart. Each counterpart will constitute an original of this Agreement, but all the counterparts will together constitute one and the same Agreement. . The parties hereby consent to the receipt and use of electronic communications. Electronic signatures (e.g., PDF) will be given the same weight and effect as originals.
- 26.14 **ENTIRE AGREEMENT** This Agreement constitutes the entire agreement and understanding between the Parties in respect of its subject matter and supersedes and extinguishes all previous drafts, arrangements, agreements, and understandings between, and Representations given by or on behalf of, the Parties, (in each case whether written or oral), relating to the subject matter of this Agreement.

Each Party acknowledges that it has not relied on, and subject to clause 20 will have no remedies (whether in equity, contract, tort (including negligence or negligent misstatement), for breach of statutory duty, for misrepresentation (including innocent or negligent misrepresentation) or in any other way) for, any Representation which is not expressly set out in this Agreement.

Subject to clause 20, neither Party will be liable for innocent or negligent misrepresentation or negligent misstatement, in respect of any Representation which is set out in this Agreement.

In this clause, "Representation" means representation, statement, assurance, covenant, warranty, undertaking or commitment (whether contractual or otherwise) made or given before the date of signature of this Agreement.

26.15 **NOTICES** All notices provided in connection with this Agreement will be in writing and will be deemed to have been given (a) when delivered by hand; (b) when delivered if sent by an internationally recognized commercial courier with proof of postage; or (c) on the day after the first post-mark of the sender's postal service if sent by first class mail, postage prepaid (return receipt requested, if available). The notices must be sent to the respective Parties at the address indicated at the beginning of this Agreement (or at such other address specified in a notice given in accordance with this clause.)

26.16 **GOVERNING LAW** This Agreement and any dispute or non-contractual obligation arising out of or in connection with it will be governed by, and construed in accordance with the law of England and Wales.

26.17 **JURISDICTION** Where a dispute is identified, the Parties will first attempt to resolve it informally but in the event that the Parties are initially unable to resolve the dispute within one week of it being referred to them, the dispute will be referred to a senior manager within each business who has the authority to settle such dispute, and they will resolve such dispute within two weeks of it being referred to them. Subject to this, each Party irrevocably agrees that the courts of England and Wales will have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement.

SIGNATURES	
Signed by duly authorized representatives of	Signed by a duly authorized representative of
Airwair International Limited	Distributor
Signature: _____	Signature: _____
Name: _____	Name: _____
Position: _____	Position: _____
Date: _____	Date: _____

Schedule 1 - Trade Marks

[To be inserted.]

Schedule 2 – Marketplaces

This Schedule is subject to amendment from time to time by AirWair at its discretion. The list below is not exhaustive but merely illustrative.

1688
Alibaba
Allegro
Amazon
Bol.com
Carrefour
CDiscount
CDON.com
Dawanda
Ebay
Etsy
Flubit
Fnac
Fruugo
Go Sport
Jd.com
La Redoute
Line
Newegg
Onbuy
Pixmania
Price Minister
Rakuten
Real.de
TMall
Tokopedia
Vente Privee
VK
Xiaohongshu
Yoyobuy.com
Zulily

Schedule 3 – Mandatory Policies

Code of Conduct



Generic Supplier
Code of Conduct (non

Anti-Bribery & ruption Policy

Supplier Anti Bribery
Policy.pdf