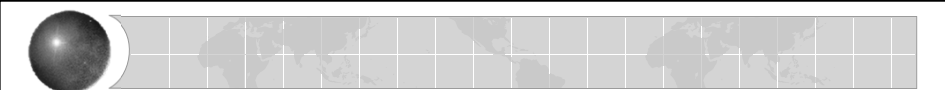



Distribution Contracts Clauses

**Best Practices in International Distribution Contract Drafting:
A Guide to Key Contract Provisions**


NYSBA International Section Fall Meeting – Tokyo



November 7, 2019
Tokyo





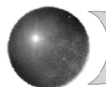
Grant and Reservation of Rights, Including Product Definition

November 7, 2019
Tokyo



 <p>Grant and Reservation of Rights, Including Product Definition</p>	
<p>SUPPLIER FRIENDLY</p> <p>Supplier is the owner of the trademarks and other intellectual property used in connection with the products listed on Schedule A (the "Products"). Subject to Distributor's strict performance of all obligations under the Agreement, Supplier is willing to permit the Distributor to distribute the Product on [<i>a non-exclusive/an exclusive</i>] basis, in the territory described in Schedule B to this Agreement (the "Territory"), during the Term of this Agreement.</p>	<p>DISTRIBUTOR FRIENDLY</p> <p>Supplier owns the trademarks listed on Schedule A, and all related service marks, designs, logos, trade names, advertising, commercial symbols and slogans (the "Trademarks"), and is engaged in the business of selling widgets using one or more of the Trademarks ("Products"). Subject to the provisions of this Agreement, Supplier grants to Distributor the exclusive right to sell and distribute Products within the Territory. The initial Products are those set forth on Schedule B. Additional Products that Supplier desires to introduce in the Territory shall be added to Schedule B.</p>
<p>November 7, 2019 Tokyo</p>	 <p>Tannenbaum Helpert Syracuse Hirschtritt LLP</p>

 <p>Grant and Reservation of Rights, Including Product Definition</p>	
<p>SUPPLIER FRIENDLY</p> <p>Supplier reserves to itself the unqualified right to manage its business in all respects, including without limitation the right to maintain or alter the formula, ingredients, labeling or packaging of the Products, to control the resale prices of the Products, and to sell directly or through others in the Territory any products other than the Products set forth on Schedule A.</p>	<p>DISTRIBUTOR FRIENDLY</p> <p>Supplier shall offer to Distributor the exclusive right to sell and distribute in the Territory pursuant to the terms and conditions of this Agreement, all new or additional widgets (beyond those sold using one or more of the Trademarks) manufactured, distributed, owned or licensed by Supplier that Supplier wishes to introduce in the Territory. If Distributor accepts such offer, then such new or additional products shall be added to Schedule B as Products under this Agreement.</p>
<p>November 7, 2019 Tokyo</p>	 <p>Tannenbaum Helpert Syracuse Hirschtritt LLP</p>



***Grant and Reservation of Rights,
Including Product Definition***

MIDDLE OF THE ROAD

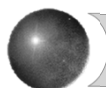
Supplier owns the trademarks and other intellectual property used in connection with the Products listed on Schedule A to this Agreement (the "Products").

Subject to the provisions of this Agreement, Supplier hereby grants to Distributor **the exclusive right to sell and distribute the Products within the Territory set forth on Schedule B** to this Agreement.

This Agreement does not grant Distributor any rights to new or additional products, except that Supplier shall offer Distributor the exclusive right to distribute any Brand Extensions under the terms of this Agreement. For purposes of this Agreement, "Brand Extension" means any widget offered for sale in the country in which the Territory is located that uses as part of its brand name, logo, packaging or trade dress, or that is sold or marketed substantially in association with, a brand name, logo, packaging or trade dress, then distributed by Distributor.

November 7, 2019
Tokyo

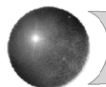
■■■■
Tannenbaum Helpern
Syracuse Hirschtritt LLP



Most Favored Customer Clause

November 7, 2019
Tokyo

■■■■
Tannenbaum Helpern
Syracuse Hirschtritt LLP

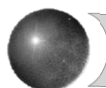


Most Favored Customer Clause

Supplier's prices and terms of sale to Distributor for the Products shall be no less favorable to Distributor than Supplier's contemporaneous prices and terms of sale to any other customer for similar quantities.

November 7, 2019
Tokyo


■ ■ ■ ■
Tannenbaum Helpern
Syracuse Hirschrift LLP



Territorial Restraints

November 7, 2019
Tokyo

■ ■ ■ ■
Tannenbaum Helpern
Syracuse Hirschrift LLP




Territorial Restraints


Distributor shall not sell or distribute Products outside the Territory or sell the Products to any person that Distributor knows or has reason to believe is likely to resell the Products, directly or indirectly, outside the Territory. Supplier shall include a provision substantially similar to the restrictions set forth in this section in all its distribution agreements with all distributors with territory within 1,000 miles of the Territory. Supplier shall not suffer or permit in the Territory any other distributor of the Products and shall not itself sell, nor suffer or permit any others to sell, Products for resale or use in the Territory, nor shall Supplier sell any Products to any person that Supplier knows or has reason to believe is likely to resell the Products, directly or indirectly, in the Territory.

Distributor shall refer all inquiries for supply outside the Territory to the Supplier or the Supplier's distributor for that territory.

November 7, 2019
Tokyo




**Tannenbaum Helpert
Syracuse Hirschrift LLP**

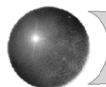


Internet Sales

November 7, 2019
Tokyo



**Tannenbaum Helpert
Syracuse Hirschrift LLP**



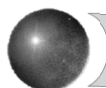
Internet Sales

Supplier shall not sell the Products online within the Territory directly or through others; provided that Supplier may sell the Products online to consumers in the Territory, not for resale, through ABC.com and 123.com, and such other online resellers as the parties may mutually agree in writing (the "Permitted Online Resellers"), on condition that:

November 7, 2019
Tokyo



**Tannenbaum Helpern
Syracuse Hirschtritt LLP**




Internet Sales

- A. Supplier shall [use commercially reasonable efforts to] cause each Permitted Online Resellers to decline any order from any customer in the Territory for more than twelve (12) cases of a Product;
- B. Supplier shall [use commercially reasonable efforts to] cause each of the Permitted Online Resellers to provide, within forty-five (45) days of the end of each quarter, a report of all sales of Products in the Territory during such quarter by postal code and SKU ("Online Sales Reports").
- C. Supplier shall pay Distributor, within sixty (60) days of the end of each quarter, an invasion fee of \$xx.00 per case of Product sold by each Online Reseller within the Territory during such quarter (the "Online Invasion Fee"), accompanied by an accounting of the calculation of such payment.

November 7, 2019
Tokyo





**Tannenbaum Helpern
Syracuse Hirschtritt LLP**



Pricing

November 7, 2019
Tokyo




Pricing


Distributor shall ensure that its prices are aligned with the Supplier's recommended prices.

In particular, Distributor shall be entitled to an additional 2% rebate in the event that retail prices are maintained at a level at least 20% above the prices for the products of Supplier's competitor Z.

Distributor shall ensure that any discounts it may offer below Supplier's recommended prices, from time to time, are not actively advertised to customers in any media or on Distributor's website.


November 7, 2019
Tokyo






Force Majeure

November 7, 2019
Tokyo



**Tannenbaum Helpert
Syracuse Hirschtritt LLP**

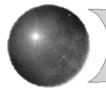


Force Majeure

Failure by either party to perform any of the provisions of this Agreement by reason of strikes, lockouts, labor disputes, floods, fires, war, terrorist acts or threats, severe weather, earthquake, volcanic activity, lightning, explosion, riots, disturbance, civil commotion, epidemics, internet, satellite or other communication interruptions, electric shutdowns, power interruptions, embargoes, quotas, shortage of supplies, shortage of labor, delays in transportation, or government action, including but not limited to price controls, currency controls or detention of goods by authorities, failure of public services or absence of transport facilities, or other causes beyond its reasonable control, shall not be deemed a breach of this Agreement until the circumstances no longer prevent performance.

November 7, 2019
Tokyo


**Tannenbaum Helpert
Syracuse Hirschtritt LLP**



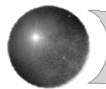
Force Majeure

Supplier-friendly: If such circumstances preventing performance hereunder persist for a period of 3 months or longer, Supplier may terminate this Agreement.

Middle ground: Notwithstanding the foregoing, if a *Force Majeure* event affects Distributor for more than 30 days, Supplier shall have the right to otherwise distribute and sell the Products in the Territory in order to protect its market share, until Distributor is able to perform.

November 7, 2019
Tokyo

■■■■
Tannenbaum Helpert
Syracuse Hirschtritt LLP




Force Majeure

How to address *Force Majeure* that does not prevent performance, but creates economic hardship or altered circumstances?

E.g., tariff increases. Adjust prices? Adjust performance goals? Change manufacturing location? Reformulate product? Effects on costs, IP?


November 7, 2019
Tokyo


■■■■
Tannenbaum Helpert
Syracuse Hirschtritt LLP



Change in Control

November 7, 2019
Tokyo



**Tannenbaum Helpert
Syracuse Hirschrift LLP**




Change in Control


<p>DISTRIBUTOR FRIENDLY</p> <p>Distributor shall not transfer its interest in this Agreement without the written consent of Supplier, <i>provided</i> that such consent is not unreasonably withheld; and <i>provided</i> that no consent shall be required so long as the majority of the voting equity of the entity holding Distributor's interest under this Agreement is held by current owners of Distributor or their immediate family.</p>	<p>SUPPLIER FRIENDLY</p> <p>Supplier may terminate the Agreement forthwith on written notice to the Distributor if there is a change in the management or control of the Distributor without Supplier's prior written consent.</p>
---	---

November 7, 2019
Tokyo



**Tannenbaum Helpert
Syracuse Hirschrift LLP**



Termination



**Tannenbaum Helpern
Syracuse Hirschtritt LLP**

November 7, 2019
Tokyo







Termination (a) *Bankruptcy*

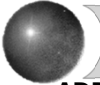

<p style="text-align: center;">SUPPLIER FRIENDLY</p> <p>This Agreement will terminate immediately without notice upon the institution of insolvency, bankruptcy or similar proceedings by or against Distributor, any assignment or attempted assignment by Distributor for the benefit of creditors, or any appointment, or application for such appointment, of a receiver for Distributor. Supplier may terminate this agreement upon 15 days' prior written notice if it reasonably apprehends any of the foregoing events occurring.</p>	<p style="text-align: center;">DISTRIBUTOR FRIENDLY</p> <p>This Agreement may be terminated by either party upon any insolvency of the other party or assignment by such party for the benefit of creditors; or the filing of a voluntary bankruptcy petition by such party or its failure to vacate an involuntary bankruptcy petition filed against it within 60 days after the date of such filing, or the failure of such party to vacate the appointment of a receiver or trustee for such party or any interest in its business within 60 days after such appointment.</p>
---	--

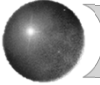


**Tannenbaum Helpern
Syracuse Hirschtritt LLP**

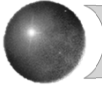
November 7, 2019
Tokyo

	
<p style="text-align: center;">SUPPLIER FRIENDLY</p> <p>(a) Supplier may terminate this Agreement without cause, upon fifteen (15) days' written notice, or such longer notice as may be required by applicable law, to the Distributor.</p>	<p style="text-align: center;">DISTRIBUTOR FRIENDLY</p> <p>(a) Distributor may terminate this Agreement at any time by giving Supplier at least ninety (90) days' prior written notice.</p>
<p>November 7, 2019 Tokyo</p>	

	
<p style="text-align: center;">SUPPLIER FRIENDLY</p> <p>(b) If termination without cause conflicts with applicable law, Supplier may terminate:</p> <p style="padding-left: 20px;">(i) Upon 30 days' prior written notice, or such longer notice required by applicable law, any time after any of the following events; provided, however, that, except as otherwise provided, Distributor shall have 15 days from the date of such notice to cure any such default:</p> <p style="padding-left: 40px;">(A) Distributor's failure to comply with, any provision of this Agreement other than performance standards;</p> <p style="padding-left: 40px;">(B) Distributor's failure to pay any sums due Supplier within 5 days after written notice that such sum is due and payable, without any further time to cure;</p>	<p style="text-align: center;">DISTRIBUTOR FRIENDLY</p> <p>(b) Supplier may terminate this Agreement if Distributor does not correct any material failure (other than due to Force Majeure) to fulfill any obligation hereunder within 60 days after receiving written notice from Supplier identifying the failure with specificity; provided, that if any default cannot reasonably be cured within 60 days, Distributor shall be deemed to have timely cured the default if it commences to cure promptly and diligently proceeds to complete the cure; and provided further that if a default cannot reasonably be cured, Distributor shall be deemed to have cured such default if it establishes reasonable procedures to prevent a recurrence of the same type of default.</p>
<p>November 7, 2019 Tokyo</p>	

	Termination <i>(b) Default and Other</i>
ADDITIONAL SUPPLIER FRIENDLY GROUNDS	
<p>(ii) Immediately upon written notice by Supplier to Distributor given at any time after the occurrence of any of the following events:</p>	
<p>(A) Distributor's repeated breach of, or failure to comply with, any term or provision of this Agreement within a twelve (12) month period;</p>	
<p>(B) The conviction of Distributor, or any officer, director, substantial shareholder or principal of Distributor of any offense [substantially related to the business conducted by Distributor in connection with this Agreement or of any offense] punishable by a term of imprisonment;</p>	
<p>(C) Distributor's failure to comply with any applicable law or regulation or Distributor's engaging in any practice with respect to the Products, which is determined to be an illegal or unfair trade practice in violation of any applicable law or regulation, or which in the opinion of Supplier is an illegal or unfair trade practice in violation of any applicable law or regulation;</p>	
<p>November 7, 2019 Tokyo</p>	

	Termination <i>(b) Default and Other</i>
ADDITIONAL SUPPLIER FRIENDLY GROUNDS	
<p>(D) A lien is voluntarily granted other than in the ordinary course of business by Distributor on its inventory or there is an involuntary lien or levy against, or foreclosure or seizure of, any of Distributor's assets, including, without limitation, inventory, by a creditor, lienholder, lessor, government authority or other person, which has not been removed within 30 days;</p>	
<p>(E) Distributor's failure to act in good faith and in a commercially reasonable manner in connection with its obligations under this Agreement; or</p>	
<p>(F) Distributor's loss through failure to renew or because of suspension, cancellation or revocation, for a period of 15 days or more, of any license or permit required by law and necessary in carrying out the provisions of this Agreement;</p>	
<p>November 7, 2019 Tokyo</p>	



Termination


(b) Default and Other

ADDITIONAL SUPPLIER FRIENDLY GROUNDS

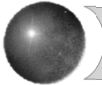
(b) Supplier may terminate this Agreement immediately upon written notice to Distributor given, except as otherwise provided, at any time after the occurrence of any of the following events:

- (i) Distributor's failure to meet any performance standards provided for hereunder with respect to any contract term of this Agreement; provided, however, that such written notice by Supplier is delivered within ninety (90) days after the conclusion of such contract term;
- (ii) The sale, distribution or any other disposition of substantially all of Distributor's assets or any change in control of Distributor;
- (iii) A change in Distributor's active management occurs, which change, in the opinion of Supplier, will have a material adverse effect on Distributor's ability to distribute and promote the Products.

November 7, 2019
Tokyo



**Tannenbaum Helpern
Syracuse Hirschtritt LLP**



Termination

(c) Compensation


SUPPLIER FRIENDLY

(c) **No Compensation.** Upon termination of this Agreement for reasons set forth in paragraphs (a) or (b) above, **Distributor shall not be entitled to any termination compensation, consequential damages, indemnity or other payment** for goodwill, lost profits, costs of re-establishment or replacement of the business or any other expenses, or rights relating to the business established by Distributor or to termination of this Agreement.


DISTRIBUTOR FRIENDLY

(c) **Compensation.** If Supplier terminates this Agreement for any reason, in addition to any other amounts payable by Supplier to Distributor, **Supplier shall pay to Distributor the fair market value** of Distributor's Products business and assets, together with fair and reasonable compensation for other damages sustained by Distributor (the "Compensation"), provided that if Supplier terminates this Agreement pursuant to paragraph (b) above, Supplier may deduct from such Compensation, the amount of damages sustained by Supplier arising directly from the circumstances giving rise to the cause for termination pursuant to paragraph (b).

November 7, 2019
Tokyo



**Tannenbaum Helpern
Syracuse Hirschtritt LLP**




Termination

(c) Compensation


SUPPLIER FRIENDLY (Cont'd)

Distributor recognizes that prices charged by Supplier to Distributor allow Distributor to obtain a reasonable return for its entire services and profit on resale, including costs of establishing and maintaining its organization. Distributor expressly acknowledges any rights to such indemnity afforded to Distributor by law or custom, and to the extent permissible under applicable law, expressly and completely **waives its rights to such indemnity** benefits. Distributor agrees to indemnify and hold Supplier harmless from all losses, damages, amounts, costs and expenses incurred by Supplier as a result of claims or actions brought by employees, agents, or representatives of Distributor for any severance pay, compensation, disability payment or social security payment or compensation.

November 7, 2019
Tokyo




**Tannenbaum Helpern
Syracuse Hirschtritt LLP**

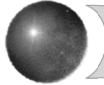


Non-Compete/Restrictive Covenants


November 7, 2019
Tokyo

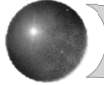



**Tannenbaum Helpern
Syracuse Hirschtritt LLP**




Non-Compete/Restrictive Covenants

<p>SUPPLIER FRIENDLY</p> <p>During the Term and until three (3) years after expiration or termination of this Agreement, Distributor shall not engage in the manufacture, sales or promotion of widgets competitive in any manner with the Products for its own account or for any other supplier of such widgets, shall not enter the employ of, or render any services to, any person engaged in such activities and shall not become interested in any such person as an individual, partner, shareholder, officer, director, principal, agent, employer, employee, trustee, consultant or in any other relationship or capacity.</p> <p style="font-size: small;">November 7, 2019 Tokyo</p>	<p>DISTRIBUTOR FRIENDLY</p> <p style="text-align: center;"><i>[No Non-compete]</i></p> <p style="text-align: center;"><i>or</i></p> <p>During the term of this Agreement, Distributor agrees not to distribute in the Territory any widget which is the same [relevant category, e.g. flavor, purpose] as any Product and is sold by Distributor at a price that is within 25% of Distributor's price for any such Product, or has a name confusingly similar to any Product.</p> <div style="text-align: right; margin-top: 20px;">  <p style="font-size: small; margin: 0;">Tannenbaum Helpern Syracuse Hirschtritt LLP</p> </div>
---	--

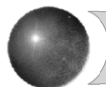



Infringement of IP Rights

November 7, 2019
Tokyo



Tannenbaum Helpern
Syracuse Hirschtritt LLP



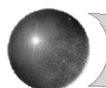
Infringement of IP Rights Ownership

(a) All intellectual property rights relating to the Products and to this Agreement, including all trademarks, copyrights, patents, mask works, trade secrets and other intellectual property rights (together, the "Intellectual Property"), are and shall remain the property of Supplier, and all goodwill associated with such Intellectual Property shall inure to the benefit of Supplier. Distributor shall comply with all instructions of Supplier relating to the use of the Intellectual Property and shall obtain Supplier's prior approval of any such use.

November 7, 2019
Tokyo



Tannenbaum Helpern
Syracuse Hirschtritt LLP



Infringement of IP Rights

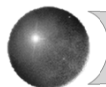
SUPPLIER FRIENDLY

(b) Distributor shall promptly inform Supplier of **any conduct of any person which may infringe** any of Supplier's intellectual property rights. Supplier shall have sole discretion whether to take legal action against any such infringement, and any damages or other monies recovered on account of such infringement, whether by judgment, settlement or otherwise, shall belong exclusively to Supplier. Distributor shall cooperate fully with Supplier in connection with any such legal action by Supplier.

November 7, 2019
Tokyo



Tannenbaum Helpern
Syracuse Hirschtritt LLP



Infringement of IP Rights

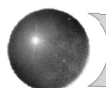
DISTRIBUTOR FRIENDLY

(b) Distributor shall notify Supplier upon discovery of **any use of any trade name or trademark that infringes any of the Trademarks**. Supplier shall have sole discretion whether to take any action against any such infringement. Any damages recovered on account of such infringement, whether by judgment, settlement or otherwise, shall belong exclusively to Supplier, unless expressly designated as compensation for losses of Distributor.

(c) **If Supplier does not take legal action against an infringement, Distributor may do so** in its own name and/or that of Supplier, provided that Distributor bears all costs and expenses of such action. In that event, Distributor shall be entitled to all proceeds of such action.

November 7, 2019
Tokyo


■ ■ ■ ■
Tannenbaum Helpern
Syracuse Hirschtritt LLP



Indemnity

November 7, 2019
Tokyo

■ ■ ■ ■
Tannenbaum Helpern
Syracuse Hirschtritt LLP



Indemnity


SUPPLIER FRIENDLY

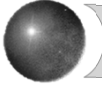
(a) Distributor shall indemnify and save harmless Supplier from and against all losses, claims, damages or other costs of any nature or kind whatsoever arising directly or indirectly out of or relating to **[any allegation of]** **[any third party allegation of]** (i) the breach of any warranty, representation or agreement made by Distributor to Supplier in this Agreement; (ii) the negligence or intentional misconduct of Distributor, its officers, employees, agents or contractors (other than Supplier); (iii) any quality or condition of or inherent **defect introduced into the Products after the time of delivery to Distributor;** (iv) **the conduct of Distributor's business;** or (v) **any claim of any subdistributor or other customer of Distributor other than a claim subject to indemnification by Supplier as set forth below.**

DISTRIBUTOR FRIENDLY

(a) Distributor shall indemnify and save harmless Supplier from and against all losses, claims, damages or other costs of any nature or kind whatsoever arising directly or indirectly out of or relating to **[any allegation of]** **[any third party allegation of]** (i) the breach of any warranty, representation or agreement made by Distributor in this Agreement; (ii) the negligence or intentional misconduct of Distributor, its officers, employees, agents or contractors (other than Supplier); or (iii) any quality or condition of or **defect introduced into the Products as a consequence of the improper storage, warehousing, distribution or sale by Distributor** of Products.

November 7, 2019
Tokyo






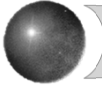
Indemnity

DISTRIBUTOR FRIENDLY

Notwithstanding the foregoing, to the extent that any claim that would otherwise be subject to indemnification by Distributor pursuant to this Section is traceable in whole or in part to: (i) any ingredient supplied by Supplier; (ii) any act or failure required or approved by Supplier; and/or (iii) any matter subject to indemnification by Supplier under this Section; then Supplier shall pay the percentage of all costs, fees, damages, judgments and decrees allocable to such ingredient, act, failure or matter, and Distributor shall pay only for the percentage of the costs, fees, damages, judgments and/or decrees allocable to Distributor's own acts or failure to act.

November 7, 2019
Tokyo





Indemnity


SUPPLIER FRIENDLY

(b) Supplier shall indemnify and save harmless Distributor from and against all losses, claims, damages or other costs of any nature or kind whatsoever arising directly or indirectly out of or relating to *[any allegation of] [any third party allegation of]* (i) the breach of any warranty, representation or agreement made by Supplier to Distributor in this Agreement; (ii) Distributor's use of the Intellectual Property in the Territory **in a manner permitted by this Agreement;** (iii) the negligence or intentional misconduct of Supplier, its officers, employees, agents or contractors; or (iv) the quality or condition of or **defect in the Products at the time of shipment by Supplier.**

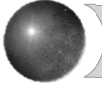
DISTRIBUTOR FRIENDLY

(b) Supplier shall indemnify and save harmless Distributor from and against all losses, claims, damages or other costs of any nature or kind whatsoever arising directly or indirectly out of or relating to *[any allegation of] [any third party allegation of]:* (i) the breach of any warranty, representation or agreement made by Supplier in this Agreement; (ii) Distributor's use of the Intellectual Property in the Territory; (iii) the negligence or intentional misconduct of Supplier, its officers, employees, agents or contractors; (iv) any quality or condition of or **defect in the Products at or before the time they were received by Distributor;**

November 7, 2019
Tokyo



**Tannenbaum Helpern
Syracuse Hirschtritt LLP**



Indemnity


DISTRIBUTOR FRIENDLY

(v) **any wrongful, false or misleading claim, advertising or representation by Supplier or by any agent or representative of Supplier regarding the Products;**


(vi) **any third party's claim that such person or entity has any right, claim or color of right granted or allowed by Supplier to purchase, sell, market or distribute Products in the Territory; or**

(vii) **the conduct of Supplier's business (including the promotional materials and packaging designed, manufactured or approved by the Supplier).**

November 7, 2019
Tokyo



**Tannenbaum Helpern
Syracuse Hirschtritt LLP**



Indemnity
Consequences of Indemnity


MIDDLE OF THE ROAD

The indemnity set forth above shall include, but not be limited to, reasonable expenses, attorneys' fees, court costs and other expenses of investigation, litigation and settlement of any such claim. The Indemnified party shall provide the Indemnifying party prompt written notice of receipt of any such claim.


The Indemnified Party shall not settle any claim without the prior knowledge and written consent of the Indemnifying Party, which consent shall not be unreasonably withheld.

Notwithstanding the foregoing, upon written notice to the Indemnified Party that the Indemnifying Party has assumed the defense of any legal action or proceeding, the Indemnifying Party shall not be liable to the Indemnified Party for any legal or other expenses subsequently incurred by the Indemnified Party in connection with the defense thereof, except in the event of a conflict of interest or other matter that prevents counsel for the Indemnifying Party from fully and zealously representing the interests of both the Indemnified Party and the Indemnifying Party.

November 7, 2019
Tokyo




**Tannenbaum Helpert
Syracuse Hirschrift LLP**




Choice of Law

November 7, 2019
Tokyo



**Tannenbaum Helpert
Syracuse Hirschrift LLP**




Choice of Law

Choice of Law. This Agreement and the rights and obligations of the parties shall be governed and construed in accordance with the substantive laws of [***jurisdiction of Supplier's choice / Distributor's choice / New York***], applicable to agreements made and to be performed entirely within such jurisdiction without reference to any conflicts of laws principles. **The provisions of the United Nations Convention on Contracts for the International Sale of Goods (UNCISG) shall not apply to this Agreement.**

November 7, 2019
Tokyo

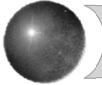
■ ■ ■ ■
Tannenbaum Helpern
Syracuse Hirschrift LLP



Choice of Forum

November 7, 2019
Tokyo

■ ■ ■ ■
Tannenbaum Helpern
Syracuse Hirschrift LLP




Choice of Forum

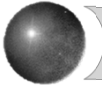
(a) Courts

Choice of Forum. The parties agree that neither shall commence any litigation against the other arising out of this Agreement or the termination thereof except in a court located in [*jurisdiction of Supplier's choice / Distributor's choice / State of New York*]. Each party consents to personal jurisdiction over it by and exclusive venue in such a court.

November 7, 2019
Tokyo



**Tannenbaum Helpert
Syracuse Hirschtritt LLP**



Choice of Forum

(b) Arbitration


SUPPLIER FRIENDLY

Arbitration. All disputes or claims (including third-party claims) arising out of or relating to this Agreement, including the termination thereof, or the parties' relationship, shall be resolved by arbitration under the [*specify rules*] of [*Supplier's choice of arbitral body*]. The seat of the arbitration shall be [*city of Supplier's choice*]. The arbitrators may award only actual money damages, but may not award punitive, exemplary or consequential damages, specific performance, injunctive relief or other equitable relief, except as expressly authorized by this Agreement. Issues determined by arbitration pursuant to this provision shall not be given preclusive or collateral estoppel effect in subsequent arbitration proceedings pursuant to this provision or similar provisions in other agreements.

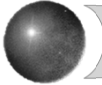
DISTRIBUTOR FRIENDLY

1. **No Arbitration**
2. **Arbitration.** Except as limited by the mandatory law or public policy of the seat of arbitration or provided elsewhere in this Agreement, all disputes arising out of or relating to this Agreement or the rights and obligations of the parties shall be resolved by arbitration under the [*specify rules*] of [*Distributor's choice of arbitral body*]. The seat of the arbitration shall be [*city of Distributor's choice*].

November 7, 2019
Tokyo



**Tannenbaum Helpert
Syracuse Hirschtritt LLP**




Choice of Forum

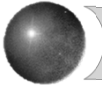
(b) Arbitration

The parties further agree that neither shall commence any litigation against the other arising out of this Agreement or the termination thereof as to any matter not subject to arbitration or with respect to any arbitration proceeding or award, except in a court located in [*choice of forum*]. Each party consents to jurisdiction over it by and exclusive venue in such a court.

November 7, 2019
Tokyo



**Tannenbaum Helpern
Syracuse Hirschtritt LLP**



Thank you

Drew Jaglom - Tannenbaum Helpern Syracuse & Hirschtritt LLP
jaglom@thsh.com

George Ribiero - Ribiero Hui
g.ribeiro@ribeirohui.com

Hernan Pacheco - EY Law
Hernan.Pacheco@cr.ey.com


Michele S. Riley - Columbia University
rileyadr@yahoo.com

Nagako Oe - TMI Associates
noe@tmi.gr.jp

Sofia Serra - Morais Leitão, Galvão Teles, Soares da Silva
sofiaserra@mlgts.pt

Michael Carl - SSEK Indonesian Legal Consultants
michaelcarl@ssek.com

November 7, 2019
Tokyo



**Tannenbaum Helpern
Syracuse Hirschtritt LLP**