

**Annex 2 Terms and Conditions for Distributor**  
**to**  
**Distributorship Agreement (Opplé Lighting International Holding Limited)**

**Article 1** Scope

- 1.1 These Terms and Conditions apply to all agreements entered into by and between Opplé Lighting International Holding Limited (hereinafter referred to as the "Supplier") and Distributor. The provisions of these Terms and Conditions are supplemental to the relevant articles under each distributorship agreement, and both Parties shall be bound by these Terms and Conditions.
- 1.2 These Terms and Conditions also apply to all orders arising out of or in connection with this Agreement made between Supplier and Distributor, regardless of whether these Terms and Conditions have been mentioned in separate orders or not.

**Article 2** Definitions and Interpretation

Capitalized terms used herein shall have the meaning assigned to them in Annex 1. Any capitalized terms in these Terms and Conditions not otherwise defined have the same meaning as in this Agreement.

Unless the context of these Terms and Conditions otherwise requires: (i) the singular includes the plural and vice versa, (ii) the headings and underlines do not affect its interpretation, (iii) the terms "include" and "including" shall be construed as being at all times followed by the words "without limitation", whether or not the words "without limitation" are expressly stated in any particular instance, and (iv) the Annexes or schedules to this Agreement are integral to and form part of this Agreement.

**Article 3** Supplier's Representations and Warranties

Supplier represents and warrants to Distributor that:

- 3.1 it has the full power and authority to enter into and to perform its obligations under this Agreement which when executed will constitute valid and binding obligations on it in accordance with the terms of this Agreement; and
- 3.2 the entry, delivery of, and performance by it of this Agreement will not result in any breach of any provision of its constitutional documents (including but not limited to its articles and memorandum of associations).

**Article 4** Distributor's Representations and Warranties

- 4.1 it is validly incorporated, in existence and duly registered under the laws of the jurisdiction of its incorporation;
- 4.2 it has the capability, experience, resources and expertise to fully perform its obligations under this Agreement;

- 4.3 it has the full power and authority and has obtained all necessary permits and licenses (if required) to enter into and to perform its obligations under this Agreement which when executed will constitute valid and binding legal obligations;
- 4.4 the entry and delivery of, and performance by it of this Agreement will not result in (i) any breach of any provision of its constitutional documents (including but not limited to its by-laws, articles and memorandum of associations), (ii) any claim by a third party against Supplier, or (iii) any breach of applicable law, order, judgment or decree of any authority to which any Party is a party or by which any Party is bound and which is material in the context of the transactions contemplated by this Agreement; and
- 4.5 it is, at the date of the Agreement, solvent and able to pay its debts as and when they fall due.

## **Article 5** Privity

The relationship established between Supplier and Distributor during the term of this Agreement shall be solely that of a seller and a buyer, and Distributor shall, under no circumstances (including but not limited to the receipt of any training or supervision given by Supplier to Distributor under the terms of this Agreement), be construed or considered to be a legal representative, a partner, an agent or an employee of Supplier. Distributor shall not in any event whatsoever have the authority or power to bind Supplier or to contract in the name of or create a liability against Supplier in any way or for any purpose, and shall fully indemnify Supplier for any direct or consequential losses, liabilities or costs which Supplier may incur arising out of the breach of Distributor's foregoing obligations. Distributor shall not in any event whatsoever make claims against any other third party on behalf or in the name of Supplier, save with Supplier's prior written consent.

## **Article 6** Licenses and Permits

Distributor is responsible for obtaining any necessary import licenses or permits necessary for the import and entry of the Products into the Territory or their delivery to Distributor and for any and all customs duties, clearance charges, taxes, brokers' fees or other amounts payable in connection with that importation and delivery.

## **Article 7** VAT and Taxes

- 7.1 All sums set out in this Agreement or otherwise payable by any Party to any other Party pursuant to this Agreement shall be deemed to be exclusive of any GST, VAT or any similar tax or duty ("VAT") which is chargeable on the supply or supplies for which such sums (or any part thereof) are the whole or part of the consideration for VAT purposes.
- 7.2 Where, pursuant to the terms of this Agreement, Supplier makes a supply to Distributor (the "**Recipient**") (whether or not through its Affiliates in the Mainland of China) for VAT purposes and VAT is or becomes chargeable on such supply, the Recipient shall, subject to the receipt of a valid VAT invoice, pay to Supplier (in addition to and at the same time as any other consideration for such supply) a sum equal to the amount of such VAT.

- 7.3 Where any Party is required by the terms of this Agreement to reimburse or indemnify any other Party for any cost or expense, such first Party shall reimburse or indemnify such other Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such other Party is entitled to credit or repayment in respect of such VAT from any relevant tax authority.
- 7.4 All taxes, charges, levies, assessments and other fees of any kind imposed in the Territory in respect of the purchase or importation of the Products shall be the responsibility of and for the account of Distributor.

## **Article 8** Trademark, Trade Name, and Compliance with Manuals

- 8.1 Supplier grants Distributor a non-exclusive, non-assignable right to use the Trademarks in the importation, marketing, advertisement and sale of the Products within the Territory in accordance with the terms of and for the duration of this Agreement.
- 8.2 Distributor shall not, without the prior written consent of Supplier:
- 8.2.1 alter the labelling or packaging of any of the Products displaying the Trademarks;
  - 8.2.2 make any addition or modifications to the Products or to any advertising and promotional material supplied by Supplier;
  - 8.2.3 alter, deface or remove in any manner any reference to the Trademarks, any reference to Supplier or any other name attached or affixed to the Products or their packaging or labelling.
- 8.3 The Trademarks shall remain at all times the sole and exclusive property of Supplier or its Affiliate. Distributor shall immediately bring to the notice of Supplier any improper or wrongful use in the Territory of the Trademarks and Distributor shall on being so requested by Supplier, assist in taking all steps to defend the rights of Supplier including the institution of any actions which it may deem necessary to commence for the protection of any of its rights.
- 8.4 Distributor shall not do or omit to do anything in its use of the Trademarks and /or Trademark Name which may or would adversely affect their validity.
- 8.5 Distributor acknowledges that this Agreement does not operate to vest any right, title or interest in the Trademarks in Distributor and Distributor shall forthwith enter into any document necessary for the recording, registration or safeguarding of the Trademark rights with Supplier in respect of the importation, marketing, advertisement and sale of the Products under the Trademarks in a form satisfactory to Supplier.
- 8.6 Without the prior written approval of Supplier, Distributor is not authorized to use the Trademarks and/or Trade Name in connection with any business activity for the purpose other than as explicitly permitted under this Agreement. Distributor shall not sub-license or otherwise transfer in any way the rights of use of the Trademarks granted under this Agreement.
- 8.7 Distributor agrees that it shall not, at any time during or after the term of this Agreement, do anything which may contradict or negatively affect Supplier's ownership of the Trademarks and /or Trade Name (including but not limited to adopting, using or

registering without the prior written consent of Supplier a word or symbol or a combination of the two similar to the Trademarks) and shall not claim adversely against Supplier, or assist any third party in attempting to claim adversely against Supplier, with regards to such ownership. Distributor agrees that it will not challenge the title of Supplier to the Trademarks and/or Trade Name and the validity of this Agreement. Furthermore, Distributor shall not register, nor attempt to register, any of the Trademarks and/or Trade Name which, in whole or in part, incorporates or is confusingly similar to any Trademark and /or Trade Name in any country for any purpose.

- 8.8 Supplier makes no representation or warranty as to the validity or enforceability of the Trademarks nor as to whether the Trademarks infringe the intellectual property rights of third parties in the Territory.
- 8.9 Distributor agrees to use its best endeavors to comply with the policy of Supplier as expressed from time to time in manuals or such other means of information circulated by Supplier to Distributor. Such manuals and information include but are not limited to service and warranty procedure, parts, attachments, policy and procedure in relation to the Products. In the event of any inconsistency between any such document and this Agreement, this Agreement shall prevail.

## **Article 9** Confidentiality

- 9.1 During the term of this Agreement and after termination or expiration of this Agreement for any reason, the receiving party of the Confidential Information (the "**Receiving Party**"):
- 9.1.1 shall keep the Confidential Information confidential;
  - 9.1.2 may not disclose the Confidential Information to another person except with the prior written consent of the party disclosing the Confidential Information (the "**Disclosing Party**") or in accordance with Articles 9.2 and 9.3 below; and
  - 9.1.3 may not use the Confidential Information for a purpose other than the performance of its obligations under this Agreement.
- 9.2 During the term of this Agreement, the Receiving Party may disclose the Confidential Information to its employees (a "**Representative**") to the extent that it is necessary for the purposes of this Agreement.
- 9.3 The Receiving Party shall ensure that each Representative is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Agreement as if the Representative was a party to this Agreement.
- 9.4 Articles 9.1 to 9.3 above do not apply to Confidential Information which:
- 9.4.1 at the date of this Agreement or at any time after the date of this Agreement, comes into the public domain other than through breach of this Agreement by the Receiving Party or a Representative; or
  - 9.4.2 subsequently comes lawfully into the possession of the Receiving Party from another.

## Article 10 Liability

- 10.1 Except as set out in this Agreement, all conditions, warranties and representations, expressed or implied by (i) statute, (ii) common law or (iii) otherwise, in relation to the Products are excluded.
- 10.2 Supplier shall not be held liable to Distributor, whether for negligence, breach of contract, misrepresentation or otherwise, for:
  - 10.2.1 loss or damage incurred by Distributor as a result of third party claims;
  - 10.2.2 loss of profit, goodwill, business opportunity or anticipated saving suffered by Distributor; or
  - 10.2.3 indirect or consequential loss or damage suffered by Distributor.
- 10.3 The entire liability of Supplier under or in connection with this Agreement whether for negligence, breach of contract, misrepresentation or otherwise, is limited, in respect of each event or series of connected events, to the total amount of the payments to be made by Distributor to Supplier under this Agreement.

## Article 11 Termination Provisions

- 11.1 Either Party may terminate this Agreement in reliance on a material breach of a material obligation under this Agreement by the other Party after the non-defaulting Party has given the defaulting Party written notice specifying the nature of the breach, and allowing the defaulting Party no more than thirty (30) calendar days starting on the day after receipt of such notice to rectify and remedy the breach, except as otherwise expressly permitted to be terminated under the terms of this Agreement.
- 11.2 If the defaulting Party fails to perform its obligation in the Agreement, and fails to rectify and remedy such breach within thirty (30) calendar days following the receipt of the notice as mentioned in Article 11.1 above, the non-breaching Party shall be entitled to terminate this Agreement by written notice to the breaching Party with immediate effect.
- 11.3 Notwithstanding the provisions in Article 11.1 and Article 11.2 above, a non-defaulting Party may by notice in writing to the defaulting Party terminate this Agreement with immediate effect upon the occurrence of any of the following events:
  - 11.3.1 the defaulting Party passing a resolution for its winding up or a court of competent jurisdiction making an order for the defaulting Party's winding up or dissolution;
  - 11.3.2 the making of an administration order in relation to the defaulting Party or the appointment of a receiver over, or an encumbrancer taking possession of or selling, all or a substantial portion of assets of the defaulting Party; and
  - 11.3.3 the defaulting Party making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally.
- 11.4 Notwithstanding Articles 11.1 and 11.2 above, Supplier may by notice in writing to Distributor terminate this Agreement with immediate effect upon the occurrence of any of the following events;

- 11.4.1 any amount which is due and payable by Distributor to Supplier in accordance with an invoice issued by Supplier remains not fully paid for a period of thirty (30) calendar days or more from the date on which Supplier first notifies Distributor of nonpayment of such invoice;
- 11.4.2 there is a change of Control of Distributor;
- 11.4.3 Distributor failing in any Year to meet the Minimum Annual Purchase Target for that Year;
- 11.4.4 Distributor changing its organization or methods of business in such a way as in the opinion of Supplier leading Distributor to less effectively carry out its duties under this Agreement;
- 11.4.5 Notwithstanding Article 11 of the Agreement and Article 17 of the Terms and Conditions, if Distributor, the management, the shareholders (direct or indirect), or any employee of Distributor is found to have made any misrepresentation or material non-disclosure when applying for appointment as a distributor of Supplier which has been relied upon by Supplier in entering into this Agreement, or any subsequent statement made by Distributor and relating to the legal or beneficial ownership or management or business organization of Distributor is found to be inaccurate.

## **Article 12** Consequences after Cancellation or Termination Provision

- 12.1 Each Party's further rights and obligations cease immediately on termination of this Agreement, but termination does not affect:
  - 12.1.1 a Party's accrued rights and obligations at the date of termination; and
  - 12.1.2 the continued existence and validity of the rights and obligations of the Parties under this article and those articles which are expressed to survive termination or any provisions of this Agreement necessary for the interpretation or enforcement of this Agreement.
- 12.2 Upon termination, Distributor shall:
  - 12.2.1 not represent or hold itself out to be an authorized distributor of Supplier;
  - 12.2.2 refrain from taking any further actions in relation to the sale or distribution of the Products, including without limitation any promotional or advertising activities relating to the Products or expressing or implying that it is authorized to sell, service, distribute or otherwise deal in Products or their ancillary parts; and
  - 12.2.3 at its own cost and expense, promptly return to Supplier (at such address as set out in this Agreement) or otherwise dispose of as Supplier may instruct all samples, instruction books, technical pamphlets, catalogues, advertising materials, specifications and other materials, documents or papers whatsoever sent to Distributor and relating to Supplier's business (other than correspondence which has passed between the Parties) which Distributor may have in its possession or under its control.
- 12.3 The termination of this Agreement does not of itself give rise to any liability on Supplier

to pay any compensation or reimbursements or damages to Distributor, including but not limited to, for loss of profits (including but not limited to prospective or anticipated profits, anticipated sales, any expenditures, investments, leases or other commitments of Distributor, arising from loss of investments on marketing, advertisements, distributions or customer relationship developments) or goodwill.

- 12.4 Supplier shall be entitled (but not obliged) to cancel all orders placed by Distributor under which the ordered Products have not been delivered without any liability of whatsoever nature to Supplier.
- 12.5 Distributor will provide to Supplier a full and detailed list of all outstanding orders for Products for which deposits have been paid by Distributor to Supplier as of the date of termination of this Agreement, within three (3) days from such date of termination, following which it shall be deemed that there are no such deposits being held by Supplier.
- 12.6 Notwithstanding Article 12.2 above, Supplier shall in its sole discretion upon the termination of this Agreement permit Distributor for a period of six (6) months following termination to sell and distribute those stocks of the Products as Distributor may at the time have in store or under its control, at a reasonable price to be agreed between both Parties. At the end of that period, Distributor shall dispose of all remaining stocks of the Products in a manner or save as shall be otherwise agreed between the Parties.

### **Article 13** Audit and Inspection Right

Supplier shall have the right to, either itself or through a third party appointed by it, access the premises/warehouse of Distributor and audit the books of accounts of Distributor upon provision of two (2) business days prior written notice. Distributor shall fully cooperate with Supplier and any third party appointed by Supplier in this regard, for completion of such audit or inspection to the satisfaction of Supplier.

### **Article 14** Retention of Title

- 14.1 Title to the Products shall not be automatically transferred from Supplier to Distributor at the time that the Products are delivered to Distributor and shall occur only upon the satisfaction of the following conditions:
  - 14.1.1 Distributor has paid the price of the Products in full in accordance with the terms of this Agreement and any invoice issued by Supplier to Distributor for the supply of the Products; and
  - 14.1.2 no other amount which is due and payable by Distributor to Supplier pursuant to this Agreement is outstanding.
- 14.2 Prior to the title of the Products transferring from Supplier to Distributor, Distributor shall pay to Supplier all amounts which are due and payable under the Agreement upon the demand of Supplier. If Distributor fails to make such payment within ten (10) business days upon receipt of such demand, upon Supplier's request, Distributor shall immediately return the Products to Supplier at the cost of Distributor. In the event that Distributor fails to return such Products, Distributor hereby consents to Supplier, or any third party appointed by Supplier, entering the premises of Distributor to repossess such

Products.

## **Article 15** Assignment and Changes by Distributor

- 15.1 Either Party may not assign or transfer or purport to assign or transfer a right or obligation under this Agreement without having first obtained the other Party's written consent. Each Party is entering into this Agreement for its benefit and not for the benefit of another person.
- 15.2 A Party may not subcontract the performance of any of its obligations under this Agreement without the prior written consent of the other Party.

## **Article 16** Force Majeure

- 16.1 If either Party ("**Affected Party**") to this Agreement is prevented, hindered or delayed from or in performing any of its obligations under this Agreement by an event beyond the reasonable control of the Affected Party including, without limitation, war, civil commotion, malicious damage, compliance with a law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, flood and storm, difficulty or increased expense in obtaining workers, materials or transport, fire, earthquake, embargo, strike, mutiny, riot or any other events affecting the supply of goods or services ("**Force Majeure Event**"),
- 16.1.1 the Affected Party's obligations under this Agreement shall be suspended while the Force Majeure Event continues and to the extent that it is prevented, hindered or delayed;
- 16.1.2 the Affected Party shall as soon as reasonably possible after the time of the occurrence of the Force Majeure Event notify the other Party of the Force Majeure Event, the date on which the Force Majeure Event started and the effects of the Force Majeure Event on its ability to perform its obligations under this Agreement, and provide the other Party with materials which can reasonably evidence such Force Majeure Event;
- 16.1.3 if the Affected Party does not comply with Article 16.1.2, it forfeits its rights under Article 16.1.1;
- 16.1.4 the Affected Party shall make all reasonable efforts to mitigate the effects of the Force Majeure Event on the performance of its obligations under this Agreement; and
- 16.1.5 as soon as reasonably possible after the end of the Force Majeure Event, the Affected Party shall notify the other Party that the Force Majeure Event has ended and resume performance of its obligations under this Agreement.
- 16.2 If a Force Majeure Event lasts more than sixty (60) calendar days starting on the day the Force Majeure Event started, the Parties hereto may negotiate whether to perform or terminate this Agreement. If the Parties fail to reach a consensus within ninety (90) calendar days after the date when such Force Majeure Event started, either Party may terminate this Agreement by giving not less than thirty (30) calendar days prior notice in writing to the other Party. If this Agreement is terminated in accordance with this Article 16, each Party shall bear the expenses on its own and shall not claim any

compensations arising out of the termination of this Agreement against the other Party.

## **Article 17** Miscellaneous

- 17.1 These Terms and Conditions, the Distributorship Agreement and any document referred to in this Agreement constitutes the entire agreement, and supersedes any previous agreement, between the Parties relating to the subject matter of this Agreement.
- 17.2 These Terms may be amended by Supplier by posting an updated version on its website, provided that in respect of this Agreement the version of the Terms and Conditions applicable as of the effective date of this Agreement will apply. .
- 17.3 Except as expressly provided in this Agreement, the rights and remedies contained in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.
- 17.4 The failure of a Party to exercise or delay in exercising a right or remedy provided by this Agreement (including but not limited to its right to terminate this Agreement under the terms of this Agreement) or by law does not constitute a waiver of the right or remedy or a waiver of its other rights or remedies. No single or partial exercise of a right or remedy of a Party under this Agreement shall prevent any further exercise of the right or remedy or the exercise of its other right or remedy.
- 17.5 If any provision of this Agreement is held to be invalid, illegal or unenforceable, it will be severed and the remainder of this Agreement will remain in full force and effect. In such event, the Parties shall, to the extent possible, substitute for such invalid provision a valid provision corresponding to the spirit and purpose thereof.

## **Article 18** Notices

18.1 A notice, demand, certification, or other communication under this Agreement and these Terms and Conditions (collectively, "**Notices**") shall be given in writing.

### 18.2 Method of Delivery

Unless there is evidence that it was received earlier, a Notice is deemed to have been duly given if:

- 18.2.1 delivered personally (if delivered personally, a Notice is deemed given when left at the addresses of the relevant Party referred to in Article 10 of the Agreement);
- 18.2.2 sent to the Party's address referred to in Article 10 of the Agreement by pre-paid ordinary or air post (if sent by ordinary post, except air mail, a Notice is deemed given three (3) calendar days after posting it; if sent by air mail, a Notice is deemed given seven (7) calendar days after posting it); and
- 18.2.3 sent by electronic mail to the Party's electronic mail address referred to in Article 10 of the Agreement.

## **Article 19** Applicable Laws

The existence, validity, interpretation and implementation of this Agreement and the arbitration agreement contained in Article 20 below shall be governed by the applicable laws of the People's Republic of China (excluding, solely for the purposes of this Agreement, Hong Kong, Macau and Taiwan).

## **Article 20** Arbitration

Any dispute, controversy or claim arising in any way out of or in connection with this Agreement, or the breach, termination or invalidity thereof (whether contractual, pre-contractual or non-contractual) (a "Dispute") shall be settled through friendly consultation between authorized senior management representatives of each Party ("Management Consultation Process") commencing within ten (10) calendar days of either Party notifying the other of the existence of a Dispute. In the event that the representatives of the Parties have not settled the Dispute within thirty (30) calendar days upon either Party notifying the other in writing of the Dispute, the Dispute shall be submitted to the China International Economic and Trade Arbitration Commission ("CIETAC") for arbitration which shall be conducted in accordance with the CIETAC Arbitration Rules in effect at the date of this Agreement ("Rules"), which Rules are deemed to be incorporated by reference into this Article and as may be amended by the rest of this Article 20. The Parties agree that no arbitral proceedings shall be commenced without the completion of the Management Consultation Process. The arbitral award is final and binding upon both Parties. The seat of the arbitration shall be Beijing and the place of hearing shall be Shanghai.

The arbitration tribunal shall consist of three (3) arbitrators. Supplier shall select one (1) arbitrator and Distributor shall select one (1) arbitrator. The third arbitrator, who shall be the presiding arbitrator, shall be appointed by the two arbitrators so selected. If either Supplier or Distributor fails to select an arbitrator or the two arbitrators selected by the Parties fail to agree on the choice of the third arbitrator, the Chairman of CIETAC shall have the right to appoint such an arbitrator. The third arbitrator shall not be a national of the country of either Party. The Parties agree that the arbitrators can be selected from outside CIETAC's panel(s) of arbitrators.

The language to be used in the arbitral proceedings shall be English. Nothing in this Article 20 shall be construed as preventing any Party from seeking conservatory or interim relief from any court of competent jurisdiction. Any award shall be final and binding upon the Parties. The Parties undertake to carry out each and every arbitral award without delay.