



# DISTRIBUTOR AGREEMENT

## (SPAZIO Lighting (Pty) Ltd STANDARD TERMS and CONDITIONS of SALE)

Whereas SPAZIO Lighting (Pty) Ltd wishes to appoint a non-exclusive DISTRIBUTOR for its GOODS, and whereas the party defined in ANNEXURE A to this document as DISTRIBUTOR wishes to become a non-exclusive DISTRIBUTOR for the SPAZIO GOODS, it is herewith agreed as follows:

### 1.0 PARTIES to the AGREEMENT

- 1.1 SPAZIO Lighting (Pty) Ltd Reg No: 2001/019077/07 (SPAZIO) with domicilium citandi et executandi at its address as registered at the Registrar of Companies at the time of the notice and,
- 1.2 DISTRIBUTOR as defined in ANNEXURE A (Credit Application) to this AGREEMENT.
- 1.3 SPAZIO and DISTRIBUTOR also referred to as a PARTY or, in combination as the PARTIES.
- 1.4 Either PARTY may change its domicilium citandi et executandi by written notice sent by registered post or by facsimile or delivered by hand to the other PARTY. Any notice addressed and sent by pre-paid registered post to either PARTY's domicilium citandi et executandi shall be conclusively deemed to have been given to and received on the 10<sup>th</sup> day after the date of posting, or if send by facsimile on the date of transmission or if delivered by hand, on the date of delivery.

### 2.0 ONLY AGREEMENT

- 2.1 The PARTIES declare that they have read and understood the terms and conditions of this AGREEMENT and agree that this AGREEMENT is the only AGREEMENT between them on the subject matter covered in this document and shall be known as "SPAZIO Lighting (Pty) Ltd STANDARD TERMS and CONDITIONS of SALE".
- 2.2 However, the PARTIES agree that SPAZIO can specify additional SPECIAL CONDITIONS on an official SPAZIO QUOTE that shall be valid for that SPAZIO QUOTE only and shall become binding, on DISTRIBUTOR placing a PURCHASE ORDER on SPAZIO for that SPAZIO QUOTE.
- 2.3 Subject to CLAUSE 9 below, any AMENDMENTS to this AGREEMENT must be reduced to writing and signed by both PARTIES.

### 3.0 GOODS

The GOODS and SERVICES covered under this AGREEMENT shall be those in any official SPAZIO QUOTE, SPAZIO INVOICE, SPAZIO CATALOGUE, SPAZIO WEB SITE, SPAZIO BROCHURE, SPAZIO PRICE LIST or SPAZIO LETTER. SPAZIO reserves the right to add, amend or withdraw/discontinue GOODS at any time without prior notice.

### 4.0 PRICES

PRICES in catalogues, price lists, brochures and web sites are indicative only. PRICES are only valid if confirmed in writing in the form of an official SPAZIO QUOTE, SPAZIO ORDER CONFIRMATION or SPAZIO INVOICE and for the quoted validity period. PRICES are ex SPAZIO warehouse. All prices are subject to changes in exchange rates and statutory charges/costs/duties, from confirmation date by SPAZIO (as specified above) to SPAZIO INVOICE date.

### 5.0 FORMATION of SALE

- 5.1 A SALE takes place on either:
  - 5.1.1 SPAZIO accepting a written PURCHASE ORDER from DISTRIBUTOR.
  - 5.1.2 SPAZIO receiving its written QUOTATION back within the specified period, signed by DISTRIBUTOR.
  - 5.1.3 SPAZIO raising an invoice for the GOODS.
  - 5.1.4 DISTRIBUTOR returning the signed written SPAZIO ORDER CONFIRMATION to SPAZIO.
- 5.2 Without derogating from the generality thereof, writing can be in the form of post (paper), facsimile or e-mail, provided it is clear from the content that it is a SPAZIO QUOTE or SPAZIO ORDER CONFIRMATION, or a DISTRIBUTOR PURCHASE ORDER.
- 5.3 The PARTIES agree that documents in the execution of this CLAUSE can be electronically generated, transmitted and stored. The PARTIES agree that electronically generated data substantiating successful or failed transmission by facsimile or e-mail shall be acceptable as evidence and can be submitted by either PARTY. For the purposes of this CLAUSE, transmission shall include both sending and or receiving.

### 6.0 UNDERTAKING by DISTRIBUTOR

DISTRIBUTOR undertakes to actively promote and sell SPAZIO GOODS. SPAZIO and DISTRIBUTOR will jointly set purchase targets, requirements for INITIAL DISPLAY GOODS for DISTRIBUTOR and develop strategies to promote and increase the sale of SPAZIO GOODS. SPAZIO reserves the right to terminate the AGREEMENT, giving one months notice.

### 7.0 LOAN GOODS

SPAZIO may supply GOODS on loan to DISTRIBUTOR. All loan GOODS shall be INVOICED as if GOODS have been purchased by DISTRIBUTOR. All loan goods must be returned to SPAZIO in terms of the conditions specified on the INVOICE. GOODS not returned, late returned, or returned with any damage, are payable in full by DISTRIBUTOR, after written notification by SPAZIO to DISTRIBUTOR of the damage.

### 8.0 STANDARD PAYMENT TERMS and CONDITIONS

- 8.1 In the event of SPAZIO denying or revoking credit all payments shall be in advance of DELIVERY.
- 8.2 DISTRIBUTOR shall make full payment free of and without any deductions for whatever reason including but not limited to banking charges and settlement discounts. Payment shall be made by either a valid bank cheque made out to SPAZIO Lighting (Pty) Ltd (clearly crossed and marked: Not Negotiable and Not Transferable) or an electronic bank transfer into SPAZIO's bank account designated from time to time in writing, currently being: Standard Bank, Bramley, Branch Code 004005 and Account number 200-136-259.

INITIALS	DISTRIBUTOR	Witness (1)	Witness (1)	INITIALS	Spazio	Witness (1)	Witness (1)
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- 8.3 SPAZIO reserves the right: To prescribe a payment form and or method and or place; Not to release GOODS for DELIVERY before SPAZIO is satisfied with the payment and or the irrevocability of a payment.
- 8.4 SPAZIO shall be entitled to charge interest on any and all outstanding amounts, however arising, from the date of the SPAZIO INVOICE to the date of full settlement, at a rate 5% above the Prime Rate charged by SPAZIO's Bankers, currently STANDARD Bank.
- 8.5 If, for whatever reason, payment is not made on due date, a certificate signed by a Director of SPAZIO, whose office need not be proved, shall be prima facie proof, both as to the existence of the debt as well as the amount owing by DISTRIBUTOR, and that such amount is due, owing and payable.
- 8.6 If DISTRIBUTOR fails to pay to SPAZIO on the due date any sum payable in terms of this AGREEMENT or any other amounts owing by DISTRIBUTOR, or commit a breach of any of its obligations in terms of this AGREEMENT or commit an act of insolvency, or being an incorporated company, or close corporation, be placed under provisional or final liquidation, or judicial management, or effect a compromise with its creditors, or should SPAZIO at any time otherwise have cause to be dissatisfied with DISTRIBUTOR's financial position, SPAZIO may at it's sole discretion, without prejudice to any other rights, to either suspend further DELIVERIES and require payment in advance for all or any DELIVERIES, or terminate a SALE or this AGREEMENT forthwith. SPAZIO shall also have the right to demand and enforce immediate payment for DELIVERIES already made, notwithstanding any earlier agreement for credit. In the event of SPAZIO having to utilise the services of its attorneys for the collection of any monies due to SPAZIO by DISTRIBUTOR, or for any other reason arising from a SALE, DISTRIBUTOR shall be liable for, and herewith agrees to pay, any and all costs so incurred including attorney/client costs and charges.
- 8.7 In the event of any dispute arising between SPAZIO and DISTRIBUTOR on any aspect of the account, or any other dispute or complaint, DISTRIBUTOR shall not be entitled to withhold any payments due and shall continue to pay all amounts due by DISTRIBUTOR to SPAZIO. SPAZIO shall be entitled to recover and accept these payments. The acceptance of the payments by SPAZIO shall be without prejudice to and shall not in any manner whatsoever affect any other rights SPAZIO may have against DISTRIBUTOR.

## **9.0 CREDIT TERMS**

SPAZIO may in its sole discretion grant, deny, change or revoke credit to DISTRIBUTOR without giving any reasons. Additional terms and conditions for such Credit may be specified at the sole discretion of SPAZIO. No credit will be applicable if not in WRITING and signed by SPAZIO. Once, and for as long as, credit has been approved by SPAZIO, it shall form part of this AGREEMENT as ANNEXURE A and amended at SPAZIO's discretion from time to time and will be of immediate effect. A Deed(s) of Suretyship(s) to SPAZIO's satisfaction may be required and added to this AGREEMENT as ANNEXURE B.

## **10.0 DELIVERIES and COLLECTION**

- 10.1 DELIVERY shall include both delivery and collection by either PARTY from the other PARTY. DELIVERY shall be deemed to have taken place on the recipient's employee or agent signing for receipt of the GOODS on a Delivery Note/Invoice/Waybill or Job Card.
- 10.2 SPAZIO shall attempt to DELIVER GOODS on or as close to agreed dates as possible but does not guarantee any DELIVERY dates and is not liable in any way whatsoever for any direct or indirect damages suffered by DISTRIBUTOR as a result of SPAZIO not DELIVERING the GOODS on time.

## **11.0 RISK and OWNERSHIP**

Ownership of GOODS shall vest in SPAZIO until DISTRIBUTOR has paid for the GOODS in full, but risk shall pass to DISTRIBUTOR on DELIVERY.

## **12.0 PART DELIVERY and INVOICING**

SPAZIO may supply and invoice part of a PURCHASE ORDER and DISTRIBUTOR is obliged to pay for such partial supply as invoiced.

## **13.0 DELAY OR IMPOSSIBILITY OF PERFORMANCE**

SPAZIO shall have the right to suspend the DELIVERY of all or any GOODS to the extent and for as long as such delay is caused by or attributable to acts of God and or circumstances beyond reasonable control, including, but not limited to, war, sanctions, rebellion, strikes, breakdown of machinery, civil commotion or unrest, inadequate supply of trucks or other transport, or labour or raw material, floods, storms, official or unofficial boycotts or acts of State. SPAZIO shall further have the right, if any of the foregoing circumstances persists for a period of 90 (ninety) days or longer, and while these circumstances persist, by written notice to DISTRIBUTOR, to forthwith cancel a SALE in respect of those GOODS not delivered as at the date of cancellation. SPAZIO shall not be liable for any losses or damages suffered by DISTRIBUTOR as a result of such suspension or cancellation, but DISTRIBUTOR shall remain liable for the PRICE of GOODS DELIVERED by SPAZIO up to the date of such suspension or cancellation.

## **14.0 COMPLAINTS and RETURN of GOODS**

- 14.1 SPAZIO reserves the right to refuse to recognize any complaint from DISTRIBUTOR in respect of specification, quantity, faulty GOODS or short delivery of GOODS unless such complaint is lodged in writing with SPAZIO within 5 (five) working days of DELIVERY of the GOODS to DISTRIBUTOR, or such longer periods as may be agreed in writing between DISTRIBUTOR and SPAZIO for certain specific GOODS
- 14.2 DISTRIBUTOR must submit a fully completed SPAZIO GOODS RETURN REQUEST (also referred to as a GRR) with the original or copy SPAZIO INVOICE to SPAZIO and receive a SPAZIO GOODS RETURN AUTHORISATION (also referred to as a GRA) signed by SPAZIO **before** returning any GOODS for whatever reason. No request for substitution, repair or credit shall be considered without compliance with this CLAUSE.
- 14.3 GOODS shall be returned at DISTRIBUTOR's cost if not agreed otherwise by SPAZIO on the GOODS RETURN AUTHORISATION. If DISTRIBUTOR does not pre-pay DELIVERY charges for GOODS returned, SPAZIO

reserves the right to either invoice such charges separately or to deduct it from any amount to be credited. SPAZIO shall also have the right to charge an administration and handling fee for goods returned, up to 20% of the Invoiced value (VAT included) of the returned goods.

#### 15.0 CANCELLATION of ORDERS

Once a SALE has taken place in terms of CLAUSE 5.0 above, the order cannot be cancelled without the written consent of SPAZIO.

#### 16.0 WARRANTY and WARNING

16.1 GOODS are guaranteed for a period of 1 (one) year from date of DELIVERY, against mechanical and electrical defects only. On return of GOODS, with original invoice, SPAZIO shall inspect the GOODS and if deemed defective by SPAZIO, at their sole discretion, GOODS may either be replaced, repaired or the invoiced PRICE credited. SPAZIO's maximum liability under this WARRANTY shall never be more than the Net Payment received by SPAZIO for the GOODS.

16.2 This WARRANTY excludes consumables (i.e. lamps), GOODS tampered with or altered, (normal wear and tear excepted), DISTRIBUTOR's/installers/user's assembly, installation, consequential or accidental losses/costs or damages and Common Law warranties are expressly excluded.

16.3 **WARNING: Electricity is dangerous and can cause injury and or death. The SPAZIO GOODS WARRANTY is only valid if GOODS are installed according to the SABS wiring code "SABS 0142" as amended from time to time, by a Qualified electrician and if the SPAZIO sticker has not been removed. SPAZIO assumes no responsibility for incorrect installation/usage or any labour costs incurred by DISTRIBUTOR/installer/user. DISTRIBUTOR shall bring this warning and requirement to the attention of its staff and customers.**

#### 17.0 TRADEMARKS and COPYRIGHT

17.1 DISTRIBUTOR shall not infringe on any Trademark or Copyright belonging to SPAZIO or its suppliers.

17.2 Where DISTRIBUTOR uses any GOODS for any further processing, the use of any of such Trademarks or Copyrights in connection with all such processing stages shall be subject to SPAZIO's and its suppliers' express prior written consent. In the event that such consent is granted, DISTRIBUTOR shall comply with all applicable Trademark and Copyright Laws and process the GOODS in a manner approved by SPAZIO or its suppliers.

#### 18.0 JURISDICTION AND COSTS

18.1 For the purpose of any action arising herefrom DISTRIBUTOR hereby consent to the jurisdiction of the Magistrate's Court notwithstanding the fact that such proceedings may otherwise be beyond its jurisdiction. This clause shall be deemed to constitute the required written consent conferring jurisdiction upon the said court pursuant to the provisions of the Magistrate's Court Act (Act No. 32 of 1944) or any amendment or re-enactment thereof, provided that SPAZIO shall be entitled at its entire discretion to institute proceedings in any other court which may otherwise have jurisdiction in respect of such action.

18.2 This AGREEMENT shall in all respects be governed by and construed in accordance with the laws of the Republic of South Africa, and all disputes, actions and other matters in connection herewith shall be determined in accordance with such laws.

#### 19.0 INDULGENCES

No indulgences granted by SPAZIO shall constitute a waiver, novation and/or abandonment of any of SPAZIO's rights under this AGREEMENT. SPAZIO shall not be precluded, as a consequence of having granted such indulgence, from exercising any legal right against DISTRIBUTOR.

#### 20.0 SEVERABILITY OF CLAUSES

Each CLAUSE of this AGREEMENT is severable, the one from the other and if any CLAUSE is found to be defective or unenforceable for any reason by any competent Court, the remaining CLAUSES shall be of full force and effect and continue to be of full force and effect.

#### 21.0 SIGNATORIES to AGREEMENT (Please complete all white areas)

	For and on behalf of: (DEALER-Name)	For and on behalf of: SPAZIO LIGHTING (Pty) Ltd
	Who warrants that he is duly authorised hereto	
SIGNED AT		
DATE		
Name: Authorised Signatory		
Capacity: Authorised signatory		
SIGNATURE		
WITNESS (1)		
WITNESS (2)		

#### 22.0 ANNEXURES to SPAZIO STANDARD TERMS and CONDITIONS of SALE

**ANNEXURE A:** CREDIT APPLICATION and ADDITIONAL TERMS and CONDITIONS for CREDIT

**ANNEXURE B:** DEED(S) of SURITYSHIP(S)