

# *Agreement I\**

## *Distributorship Agreement*

THIS AGREEMENT, made in Philadelphia, Pennsylvania, U.S.A. this \_\_\_\_ day of \_\_\_\_\_, 2002, by and between BOILO, INC. (hereinafter "MANUFACTURER"), a company organized and existing under the laws of the State of Pennsylvania U.S.A., and ARGEN, A.G. (hereinafter "DISTRIBUTOR"), a corporation organized and existing under the laws of the Federal Republic of Germany,

### **WITNESSETH:**

WHEREAS, DISTRIBUTOR desires to sell and distribute certain models of the Products hereinafter described in accordance with the terms and conditions hereof;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### **ARTICLE I — DEFINITIONS**

For the purpose of this Agreement:

A. The term "Products" shall mean the products manufactured by MANUFACTURER and catalogued in MANUFACTURER's literature, together with certain service equipment.

B. The term "Person" shall mean any natural person, corporation, company, partnership or other association.

C. The expression "Term of This Agreement" shall mean a period of three and one-half (3-1/2) years beginning on the date first above written and ending three and one-half (3-1/2) years after such date or upon termination of this Agreement in accordance with Article VIII hereof, whichever first occurs.

### **ARTICLE II — GRANT OF RIGHTS**

(2.1) MANUFACTURER hereby grants to DISTRIBUTOR the right

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\* Adapted from Swan & Murphy. Regulation of International Business and Economic Relations (2d. Ed. 1999).

to sell and distribute the Products throughout the Federal Republic of Germany for the Term of this Agreement.

(2.2) DISTRIBUTOR agrees that it shall not, during the Term of this Agreement, manufacture, use or sell any products within the field of this Agreement other than sale or use of the Products to the extent specifically authorized herein.

***ARTICLE III — PERFORMANCE BY DISTRIBUTOR***

(3.1) DISTRIBUTOR hereby agrees to purchase from MANUFACTURER 100 percent of DISTRIBUTOR's requirements for the Products during the Term of this Agreement, provided that DISTRIBUTOR agrees to purchase not less than the following quantities:

First 18 months following  
the date of execution of  
this Agreement: \_\_\_\_\_

Next 12 months: \_\_\_\_\_

Next 12 months: \_\_\_\_\_

(3.2) DISTRIBUTOR agrees to place an initial order for not less than 2,000 units of the Products within thirty (30) days from the date of execution of this Agreement.

(3.3) DISTRIBUTOR agrees to use its best efforts to promote the sale and use of the Products throughout the Federal Republic of Germany.

***ARTICLE IV — PURCHASE OF PRODUCTS***

(4.1) Each order for the Products shall be submitted to MANUFACTURER at its office in Philadelphia, Pennsylvania, U.S.A., or at such other place as MANUFACTURER may direct by notice to DISTRIBUTOR.

(4.2) Each order placed by DISTRIBUTOR shall be for no less than one full container shipment, and shall be placed three months in advance.

(4.3) The prices for the Products shall be MANUFACTURER's price in U.S. dollars as set forth in the attached price list, said prices subject to change by MANUFACTURER on July 1 of each year within the term of this Agreement, beginning July 1, 2002.

(4.4) Payment by DISTRIBUTOR shall be made by bill of exchange, 45 days from date of shipment.

(4.5) Distributor shall take delivery of products F.O.B. at manufacturer's plant in Philadelphia, PA.

#### ***ARTICLE V — SERVICE AND MARKETING ASSISTANCE***

(5.1) MANUFACTURER shall provide to DISTRIBUTOR, at no cost, operating and installation instruction manuals to accompany each unit of the Products sold to DISTRIBUTOR hereunder, which DISTRIBUTOR shall provide to its customers.

(5.2) MANUFACTURER agrees to sell to DISTRIBUTOR, at DISTRIBUTOR's request, spare parts for the Products at MANUFACTURER's published list prices in the Federal Republic of Germany. The provisions of Article IV hereof shall govern shipment of and payment for spare parts.

(5.3) MANUFACTURER shall provide to DISTRIBUTOR, at no cost, sufficient manuals per Contract Year, containing instructions for the maintenance and repair of the Products.

#### ***ARTICLE VI — WARRANTIES AND LIABILITY***

(6.1) MANUFACTURER hereby warrants that the Products which MANUFACTURER sells to DISTRIBUTOR will be free from defects in material and workmanship for a period of twelve (12) months from the date of shipment by DISTRIBUTOR to its customer; provided that this warranty shall not apply to any defects resulting from normal wear and tear, improper or unreasonable use, or improper installation.

(6.2) The sole obligation of MANUFACTURER under this warranty is expressly limited to replacement or repair of defective Products or parts or components thereof.

(6.3) THIS WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, WITH RESPECT TO ANY PRODUCT SOLD BY MANUFACTURER UNDER THIS AGREEMENT.

(6.4) Neither MANUFACTURER nor DISTRIBUTOR shall make any agreements, representations or warranties in the name of or on behalf of the other, and neither MANUFACTURER nor DISTRIBUTOR shall be obligated by or have any

liability under any agreements, representations or warranties made by the other, nor shall MANUFACTURER be obligated for any damages to any person or property directly or indirectly arising out of the use or sale of the Products by DISTRIBUTOR or any other person.

#### **ARTICLE VII — ASSIGNMENT, SUBLEASE AND TRANSFER**

(7.1) No assignment or sublicensing of this Agreement, either in whole or in part, or of any of the rights or obligations hereunder, may be made by DISTRIBUTOR without the prior consent of MANUFACTURER, which consent may be withheld by MANUFACTURER in its absolute discretion.

#### ***ARTICLE VIII — TERMINATION***

(8.1) This Agreement shall continue in force from the date hereof for a period of three and one-half (3-1/2) years, unless sooner terminated pursuant to the provisions of this Article, and shall be automatically renewable provided that DISTRIBUTOR has fully performed all of its obligations hereunder.

(8.2) During the initial three and one-half (3-1/2) years, this Agreement may be terminated at any time during such period by either party without cause upon the expiration of ninety (90) days after written notice to the other party.

(8.3) If DISTRIBUTOR shall default in the performance or observance of any of its obligations under this Agreement, including purchase of the Products under Article III or timely payment therefor under Article IV hereof, and such default shall continue for sixty (60) days after notice specifying such default has been sent to DISTRIBUTOR by MANUFACTURER, MANUFACTURER may terminate this Agreement, at its option, by notice in writing to DISTRIBUTOR, such termination to take effect upon expiration of the sixty (60) day period.

(8.4) If MANUFACTURER shall default in performance or observance of any of its obligations under this Agreement, and such default shall continue for sixty (60) days after notice specifying such default has been sent to MANUFACTURER, DISTRIBUTOR may terminate this Agreement by notice in writing to MANUFACTURER, such termination to take effect on expiry of the sixty (60) day period.

(8.5) MANUFACTURER may terminate this Agreement at any time by written notice to DISTRIBUTOR, if DISTRIBUTOR shall discontinue business or become bankrupt or insolvent, or apply for or consent to the appointment of a trustee, receiver, or liquidator of its assets, or seek relief similar to the foregoing under the laws of the Federal Republic of Germany; or if shares representing a majority of the voting power of

DISTRIBUTOR or substantially all of the assets of DISTRIBUTOR are transferred to or acquired by any person or persons other than the present shareholders of DISTRIBUTOR.

(8.6) Termination of this Agreement for any cause shall not release DISTRIBUTOR from its obligations to pay MANUFACTURER for any Products sold to DISTRIBUTOR prior to such termination nor from any other obligations incurred as a result of operations conducted under this Agreement.

#### ***ARTICLE IX — ARBITRATION***

(9.1) All disputes arising in connection with this Agreement shall be finally settled by arbitration in New York under the Rules of the American Arbitration Association.

#### ***ARTICLE X — NOTICE***

(10.1) Any written notice or statement required or desired to be given by either party to the other shall be by airmail postage prepaid or by telex, telegram or cable.

(10.2) Notice given by airmail shall be effective upon receipt. Notice given by telex, telegram or cable shall be effective upon the dispatch or transmission of same.

#### ***ARTICLE XI — MISCELLANEOUS***

(11.1) No delay or omission of MANUFACTURER to enforce any of the covenants, terms or stipulations contained in this Agreement shall be construed as a waiver thereof. No waiver by MANUFACTURER of any breach of this Agreement shall be effective unless it be in writing and signed by an authorized officer of MANUFACTURER. No waiver of any breach shall be construed or deemed to be a waiver of any other or subsequent breach.

(11.2) If any provision of this Agreement shall be determined to be void by any court of competent jurisdiction, such determination shall not affect any other provision of this Agreement, all of which provisions shall remain in full force and effect: Provided, however, that in the event of any such court determination which materially affects MANUFACTURER's rights hereunder, MANUFACTURER shall have the right to terminate this Agreement by written notice to DISTRIBUTOR.

(11.3) Neither party hereto is to be considered the agent of the other party, for any purpose whatsoever, and neither party has any authority to enter into any contracts or

assume any obligations for the other party or make any warranties or representations on behalf of the other party.

(11.4) This Agreement shall be governed by and construed in accordance with the laws of the State of Pennsylvania, U.S.A. The English language text of this Agreement shall be the authorized text for all purposes.

In witness whereof, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**BOILO, INC.**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**ARGEN, A.G.**

By: \_\_\_\_\_

Date: \_\_\_\_\_