



## **CEN/CENELEC Guide 10**

# **Guidelines for the distribution and sales of CEN-CENELEC publications**

The CEN and CENELEC General Assemblies decided to replace the CEN-CENELEC Guide 10 version 2001 with the present Guide with CENELEC General Assembly decision of 26 October 2009 and CEN General Assembly Resolution of 19 November 2009.



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# Guidelines for the distribution and sales of CEN-CENELEC publications

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## 1 Introduction and scope

This Guide sets out the policy for the distribution and sale of all CEN-CENELEC publications in all formats, distributed by all media and in all language versions.

It is applicable to the CEN-CENELEC Management Centre, to CEN-CENELEC Members, to Affiliates, to Partner Standardization Bodies and to any distributors or licensees of these parties.

This CEN-CENELEC Guide 10:2010 replaces all previous versions of Guide 10.

## 2 Terms and definitions

For the purposes of this Guide, the following terms and definitions apply:

### 2.1

#### **CEN-CENELEC**

CEN or CENELEC or CEN and CENELEC jointly

NOTE Depending on the context.

### 2.2

#### **CEN-CENELEC Management Centre**

the central office in Brussels of CEN and CENELEC

### 2.3

#### **Members**

CEN national Members and CENELEC National Committees

### 2.4

#### **copyright**

The claim by CEN and/or CENELEC and their respective Members to the exploitation rights in any CEN-CENELEC publication and its related metadata, including those rights assigned directly by the authors of the CEN-CENELEC publications and those rights assigned by ISO, IEC or other organizations involved in their development

### 2.5

#### **copyright exploitation rights**

rights given by CEN-CENELEC to the Members to exploit the content of the Publications

### 2.6

#### **Publications**

CEN-CENELEC publications defined in the CEN-CENELEC Internal Regulations, Part 2, Clause 2 (including international standards adopted as European standards), together with their national implementations and definitive language versions, ratified texts of publications and any other publications as might from time to time be identified

NOTE See Annex 1.

**2.7****official language versions**

texts prepared in English, French and German in accordance with the CEN-CENELEC Internal Regulations

**2.8****definitive language versions**

Publications translated by a CEN-CENELEC Member, Affiliate or Partner Standardization Body from an official language into its national language, the accuracy of which has been certified in accordance with the CEN-CENELEC Internal Regulations

**2.9****national territory**

territory in which the Member has its principal seat of operations, together with any territories belonging to the same state but outside its primary national borders

**2.10****third countries**

countries in which the national standards body is not a CEN-CENELEC Member, an Affiliate or a Partner Standardization Body

**2.11****national and transnational distributors**

any third party appointed by Members to assist in distribution of Publications in their national territory or in territories outside the CEN-CENELEC Members area

For the purposes of this Guide, a Member acting as a distributor for another Member shall not be regarded as a transnational distributor.

**3 Guiding principles**

The fundamental objective of CEN-CENELEC and their Members is the widest possible dissemination and use of their Publications throughout the world. The CEN-CENELEC Management Centre and the Members have complementary roles in meeting this objective.

The CEN-CENELEC Management Centre is funded primarily through the subscriptions of the CEN and CENELEC Members.

The Members are funded in accordance with their local statutes and rules, but the commercial exploitation of the Publications is fundamental to the maintenance of the CEN-CENELEC system as a whole.

A substantial part of the standardisation work is financed by voluntary and gratuitous participation from businesses, through their participation in committees, financing of projects, etc.

All Members have an obligation to protect the value of these Publications and ensure that they and their national and transnational distributors and licensees are in full compliance with the terms and procedures set out in this Guide.

Any issues that are not covered by this Guide, or by related documents, shall be referred to the CEN-CENELEC Director General.

The laws of Belgium shall be applicable in all matters concerning CEN-CENELEC copyright, exploitation rights and sales and distribution policy.

## **4 Copyright exploitation rights**

Copyright exploitation rights in Publications are assigned to CEN-CENELEC and their Members by all the participants in their drafting.

### **4.1 Protecting CEN-CENELEC copyright**

Exploitation of the copyright in Publications is fundamental to the maintenance of the CEN-CENELEC system.

Members shall ensure that all Publications carry an appropriate copyright statement safeguarding the CEN-CENELEC copyright.

It is a fundamental obligation of Members to take all reasonable measures, and take all such action as may be allowed by their national laws, to prevent the misuse or infringement of the CEN-CENELEC copyright in their national territories.

The CEN-CENELEC Management Centre shall assist Members in these actions.

### **4.2 Members' copyright exploitation rights**

Members have, within their own territory, the right to distribute, sub-distribute, adjust, translate, rent, lend, derive revenue from duplication and loan, communicate to the public in total or in part, in summary or with comments, transfer all exploitation licences and authorize all sub-licences and otherwise exploit the Publications and their national implementations. These exploitation rights cover all languages and all forms of exploitation known at present.

These rights may be shared with other organizations, such as ISO or IEC, in accordance with the agreements that may from time to time exist between CEN-CENELEC and those organizations. CEN-CENELEC shall ensure that the terms of any such agreements do not infringe the sales and distribution rights set out in this Guide, except as may be authorized by their respective Administrative Boards.

Members shall exercise these rights in accordance with the provisions of this Guide and in a way that protects the integrity and value of the Publications, safeguards the interests of other Members and recognizes the value of the intellectual property that they contain and the costs to the CEN-CENELEC system of its development and maintenance.

In particular, Members shall not make Publications, including national implementations and definitive language versions, available free of charge to general users without the specific approval of the Administrative Boards of CEN and/or CENELEC.

## **5 Role of the CEN-CENELEC Management Centre**

### **5.1 Distribution**

#### **5.1.1 Ratified texts**

The primary role of the CEN-CENELEC Management Centre is the distribution of ratified texts of Publications in the three official language versions to the Members for the purpose of national implementation.

#### **5.1.2 Workshop Agreements**

The CEN-CENELEC Management Centre is responsible for the distribution of those Workshop Agreements which it was contractually agreed should be made available to the general public free of charge.

#### **5.1.3 European standards and other publications**

The CEN-CENELEC Management Centre shall be responsible for the distribution of ratified texts and other publications to the European Commission and to designated pan-European organizations on terms that shall from time to time be agreed by their respective Administrative Boards, on the advice of CEN/SD and CENELEC/COMPOL respectively.

### **5.2 Reproduction by third parties**

#### **5.2.1 Fair use**

If the CEN-CENELEC Management Centre receives a request to reproduce a part of a Publication and determines that it falls within the provisions of "fair use" it may permit the reproduction, subject to an appropriate acknowledgment.

Fair use includes the reproduction of small extracts of Publications for promotion, review, comment, analysis and other similar educational or informational purposes. These extracts shall not exceed 10 % of the text of a Publication.

The CEN-CENELEC Management Centre may define fair use at its own discretion or, in case of doubt, on the advice of CEN/SD or CENELEC/COMPOL.

#### **5.2.2 Other requests**

If the request does not fall within the provisions of "fair use" then the CEN-CENELEC Management Centre will respond as follows:

##### **5.2.2.1 Official language versions**

If the request originates from within the territory of a CEN-CENELEC Member, then the request shall be referred to that Member. If the request originates from any other territory, then the CEN-CENELEC Management Centre Office shall respond on the advice of CEN/SD or CENELEC/COMPOL, as appropriate.

### **5.2.2.2 Definitive language versions**

The request shall be referred to the Member responsible for that language version, irrespective of the territory from which the request originates.

### **5.2.2.3 Adoption by the standards body of a third country**

The CEN-CENELEC Management Centre shall be responsible for authorizing the adoption of European Standards by the standards bodies of third countries, subject to the terms and conditions set out in Annex 3, *Adoption and publication by the National Standards Body of a third country*.

## **6 Role of Members**

### **6.1 Distribution**

The primary role of Members is to promote the use of the Publications in their national territories. They shall maintain an efficient sales service for this purpose or shall inform national customers where such a service may be obtained.

Their secondary role is to promote their use in territories outside the CEN-CENELEC Members' area.

#### **6.1.1 Working drafts and committee drafts**

The distribution of working drafts, committee drafts and other proceedings of CEN-CENELEC technical bodies and Working Groups is generally restricted to the participants and observers in those technical bodies and Working Groups and they shall not otherwise be distributed.

#### **6.1.2 Drafts for public comment**

Draft standards for public comment may be distributed in accordance with local rules and practices.

#### **6.1.3 Ratified texts**

Ratified texts are primarily administrative documents distributed to Members for the purposes of national implementation but they may be sold by Members as an interim measure pending the publication of the national implementation.

#### **6.1.4 European Standards**

Members are obliged to implement European Standards as national standards and withdraw all conflicting national standards in accordance with the CEN-CENELEC Internal Regulations. Implementation may be by the endorsement method or by the publication method. Distribution is dependent on the method of implementation.

#### **6.1.4.1 Endorsement method**

European Standards implemented by endorsement must be announced in the national journal and an endorsement sheet must be prepared in accordance with the CEN-CENELEC Internal Regulations.

European Standards implemented by endorsement may be sold as ratified texts with the endorsement sheet attached, in accordance with local rules and practices, subject to the provisions of this Guide.

#### **6.1.4.2 Publication method**

European Standards implemented by publication of a national standard may be sold in accordance with local rules and practices, subject to the provisions of this Guide.

#### **6.1.5 Other publications**

Other publications, such as Workshop Agreements, where there is no obligation to implement nationally, may still be implemented nationally in accordance with the copyright exploitation rights set out in 4.2 above. They may also be distributed in their original form.

In both cases, Members may distribute these publications without payment of a royalty to CEN-CENELEC.

#### **6.1.6 Considerations of language**

##### **6.1.6.1 Official language versions**

Publications may be implemented nationally in any or all of the three official languages. No royalties shall be paid to CEN-CENELEC on the sale of the national implementations in any language version.

##### **6.1.6.2 Definitive language versions**

Members may translate a Publication into their national language(s), where that language is not one of the three official languages, and certify the accuracy of the translation in accordance with the CEN-CENELEC Internal Regulations. This is then deemed to be the definitive language version of that Publication. There shall only be one definitive language version of any Publication.

Where two or more Members share a common national language, which is not one of the official languages, they shall agree between themselves on their respective responsibilities in producing the definitive language version and inform the CEN-CENELEC Management Centre of their agreement.

If a Member wishes to reproduce or sell a definitive language version prepared by another Member, this shall be subject to an agreement with that Member and may involve payment of a royalty agreed between them. This royalty may be symbolic.

### **6.1.7 National products containing Publications**

Members may prepare their own products containing Publications in accordance with the copyright exploitation rights set out in 4.2 above and sell them, subject to the provisions of this Guide.

### **6.1.8 Distribution in the territories of other Members**

If a Member receives an order for a Publication, a national implementation of a Publication or a product containing Publications, from a customer in the national territory of another Member, then this order must be fulfilled in accordance with European competition law, but Members shall not pursue a policy of active marketing of such Publications or products in the national territory of any other Member.

In particular, they shall not engage in any advertising, whether by print, broadcasting or any other electronic means, specifically aimed at that national territory, or establish any branch or maintain any distribution depot for the distribution and sale of such Publications and products in that territory, except by agreement with the Member concerned. Neither shall they actively approach customers through marketing activity, or customer relations management, whether by email, website push technology, sales force activity or similar, except by agreement with the Member concerned.

For the purposes of this Guide, advertisement on a Member's website shall not be considered "active marketing".

By mutual agreement, one Member may act as a distributor for another Member, selling and actively marketing that Member's national implementations of Publications, or products containing Publications, in its national territory on terms agreed between them.

### **6.1.9 Distribution in third countries**

Members are free to market, distribute and sell Publications, national implementations, or national products incorporating Publications, in any territories outside the CEN-CENELEC Members' area without restriction.

However, Members shall not establish or enter into agreements with distributors in third countries, which would allow these distributors to actively market Publications within the territory of any other Member. See also Clause 7.

### **6.1.10 Electronic distribution to end users**

Publications and their national implementations distributed in electronic format shall only be sold or leased to end users in non-revisable formats (e.g. PDF, HTML), unless the documents are sufficiently protected by DRM or other protection technology.

Delivery may be offered by on-line, secure, closed, point-to-point connections (e.g. fax, email or extranet), via transportable media (e.g. CD-ROM and DVD) or via on-line download from the Members' websites.

All electronic delivery shall be subject to appropriate protection as set out in Annex 2, *Digital Rights Management*, and be subject to a user licence, setting out the terms and conditions of use.

## **6.2 Reproduction by third parties**

### **6.2.1 Internal use (networking licences)**

Members may license the reproduction and networking of Publications to end users in an organization in accordance with their own policies.

All such agreements shall be subject to an appropriate licence setting out the terms and conditions of use.

A specimen outline licence is appended as Annex 4, *Elements of a network licence*.

### **6.2.2 Commercial use**

Members may license the reproduction of Publications in the commercial products of a third party in accordance with their own policies, but the third party may not actively market those products in the territories of other Members, without the agreement of the Members concerned.

Members may supply Publications in a revisable format for this purpose, but because of the possibility of the corruption of their content the reproductions shall not be deemed authoritative.

### **6.2.3 Translation**

Members may license third parties to translate their national implementations of Publications into languages that are not the national languages of other Members, but such translations shall not be deemed definitive and shall carry a disclaimer as to accuracy that references the official or definitive language versions as authoritative in any cases of dispute. Members shall not assign the copyright in these translations to the third party.

## **7 Role of national and transnational distributors**

Members may appoint national or transnational distributors to sell, or reproduce for sale, Publications, national implementations and national products containing Publications in their own national territories or in territories outside the CEN-CENELEC Members' area in accordance with the provisions of this Guide and their own policies.

These distribution arrangements shall be subject to an appropriate contract that protects the CEN-CENELEC copyright and safeguards the interests of other Members.

National and transnational distributors shall be contractually obliged to comply with the relevant provisions of this Guide and Members shall be responsible for monitoring this compliance.

An outline distributor contract is appended as Annex 5, *Elements of a distributor contract*.

## **8 Role of Affiliates and Partner Standardization Bodies**

The rights and obligations of Affiliates and Partner Standardization Bodies are set out in CEN-CENELEC Guide 12 "The concept of Affiliation with CEN and CENELEC" and Guide 13 "The concept of Partner Standardization Body with CEN and CENELEC".

## Annex 1

### CEN-CENELEC publications

CEN-CENELEC publications are those documents defined in the CEN-CENELEC Internal Regulations, Part 2, as reproduced in this Annex, together with such other documents as may from time to time be added by decision of the Administrative Boards of CEN and/or CENELEC.

[Definition numbers as per Clause 2 of the CEN-CENELEC Internal Regulations, Part 2:]

#### 2.5

##### **European Standard (EN)**

standard adopted by CEN/CENELEC and carrying with it an obligation of implementation as an identical national standard and withdrawal of conflicting standards

NOTE The term "harmonized standard" is a term used in the context of the New Approach directives

#### 2.6

##### **Technical Specification (TS)**

document adopted by CEN/CENELEC for which there is the future possibility of agreement on a European Standard, but for which at present

- the required support for approval as a European Standard cannot be obtained,
- there is doubt about whether consensus has been achieved,
- the subject matter is still under technical development, or
- there is another reason precluding immediate publication as a European Standard.

#### 2.7

##### **Technical Report (TR)**

document adopted by CEN/CENELEC containing informative material not suitable to be published as a European Standard or a Technical Specification

NOTE A TR may include, for example, data obtained from a survey carried out amongst the CEN/CENELEC national members, data on work in other organizations, or data on "state-of-the-art" in relation to national standards on a particular subject

#### 2.8

##### **Guide**

document published by CEN or CENELEC giving rules, orientation, advice or recommendations relating to European standardization

NOTE Guides may address issues of interest to all users of documents published by CEN and CENELEC

**2.9****Harmonization Document (HD)**

CENELEC standard that carries with it the obligation to be implemented at national level, at least by public announcement of the HD number and title and by withdrawal of any conflicting national standards

**2.10****CEN-CENELEC Workshop Agreement (CWA)**

CEN-CENELEC agreement, developed in a Workshop, which reflects the consensus of identified individuals and organizations responsible for its contents

**2.11****amendment**

ratified supplementary document to an EN (and HD for CENELEC) already circulated to CEN/CENELEC national members for national implementation, to be read in conjunction with that EN (and HD for CENELEC) and which alters and/or adds to previously agreed technical provisions in that EN (and HD for CENELEC)

**2.12****corrigendum**

supplementary document to one, two or all three versions of a CEN/CENELEC publication, which corrects one or more errors or ambiguities inadvertently introduced in either drafting or printing and which could lead to incorrect or unsafe application of those versions

For the purposes of this Guide 10, corrigenda may be distributed free of charge to end users.

## **Annex 2**

### **Digital Rights Management**

#### **Watermarking**

European Standards and other CEN-CENELEC publications sold in electronic form, as PDF files or similar, or products containing European Standards or other CEN-CENELEC publications, sold in electronic form shall carry a watermark setting out the following details:

Licensed to: (COMPANY)/ (name of user)

Webstore order: (order number)

Downloaded: (date of download)

Single user licence only, copying and networking prohibited.

#### **Other Digital Rights Management**

Members may, at their own discretion, apply additional DRM controls to protect against unauthorized copying or networking of European Standards.

Where one member acts as a distributor for another member, they may be required to implement these additional DRM protections by mutual agreement of the parties concerned.

## Annex 3

### Adoption and publication by the National Standards Body of a third country

#### Adoption of CEN-CENELEC publications by the National Standards Body of a third country

1. If a National Standards Body (NSB) in a third country (i.e. outside the CEN-CENELEC area), whether a member of ISO/IEC or otherwise, wishes to adopt a CEN-CENELEC publication as a National Standard, it should be encouraged to do so, and there are no limitations on the sales of that standard domestically except that third parties' rights and the CEN/CENELEC regulations for implementation shall be respected, and the value of the intellectual property shall be safeguarded.
2. If, for the purposes of national adoption, the NSB translates the CEN-CENELEC publication into a language that is not spoken by a Member or Affiliate of CEN and/or CENELEC, it is free to actively market the national adoption worldwide, subject to payment of a commission on sales outside its territory to the CEN-CENELEC Management Centre.

This commission shall be determined by CEN and CENELEC respectively, on the advice of CEN/SD and CENELEC/COMPOL, and may be substantial.

3. If the NSB publishes the national adoption of the CEN-CENELEC publication in one of the three official languages of CEN and CENELEC, the official language version shall be used, and sales by the NSB outside its territory are subject to a commission payable to the CEN-CENELEC Management Centre.

Such standards shall not be actively marketed in the territories of CEN and CENELEC Members or National Committees.

4. If the NSB publishes the national adoption of the CEN-CENELEC publication in a European language other than one of the three official languages, the definitive language version shall be used, and sales by the NSB outside its territory are subject to a commission payable to the CEN or CENELEC Member or National Committee responsible for preparing the definitive language version. Such standards shall not be actively marketed in the territories of CEN and CENELEC Members or National Committees.
5. All enquiries on these issues shall be handled by the CEN-CENELEC Management Centre in conjunction with the Member(s) or National Committees using that language.

**Publication/sales without adoption by the National Standards Body of a third country**

1. If a National Standards Body in a third country, whether a member of ISO/IEC or otherwise, wishes to publish and sell a CEN-CENELEC publication without adopting it as a national standard, there are two possibilities:
  - a) The NSB wishes to translate into its national language, which is not one spoken by a CEN and/or CENELEC national Member or Affiliate and market domestically for the benefit of informing local industry. This is allowable subject to a commission. Negotiations shall be handled by the CEN-CENELEC Management Centre.
  - b) The NSB wishes to make the CEN-CENELEC publication available in the language of one of the Members or National Committees of CEN and/or CENELEC. In this case, publication is not allowed. However, appropriate sales arrangements may be made with the responsible Member or National Committee as defined in 6.1.6 of this Guide.
2. All enquiries shall be handled by the CEN-CENELEC Management Centre in conjunction with the Member or National Committee responsible for the relevant definitive language version, where appropriate.

## Annex 4

### Elements of a network licence

The licence below is a specimen licence for the guidance of CEN-CENELEC Members in drafting their own multi-user licences. It is not mandatory to conform to the wording or style of this specimen.

#### ANNUAL MULTI-USER LICENCE AGREEMENT

**ORGANISATION:**

**ADDRESS:**

**LICENCE NUMBER:**

**DATE:**

**DOCUMENT(S):**

**ACTIVE USERS:**

**ANNUAL FEE:**

Whereas (MEMBER) is the Licensor and **the above organisation** is hereafter referred to as the Licensee.

The Licensee is hereby granted permission to use the document(s) **specified above by** way of its company intranet/network subject to the following conditions:

**1. Payment**

The Licensee will pay (MEMBER) a fee as stated above per annum. This fee will be invoiced.

**2. Supply of text**

Text supplied in PDF format.

**3. Reproduction**

The Licensee is permitted to reproduce copies in hard copy, limited to internal use only and to include third parties working for the Licensee on any related issues. Such reproduction is limited to one copy per licensed user. Such copies should be destroyed on expiry of this licence, unless renewed.

**4. Acknowledgement**

The Licensee's intranet/network site will incorporate an opening screen when accessing the standard with the following acknowledgement:

*"[DOCUMENT(s) SPECIFIED ABOVE] is (are) reproduced on the [LICENSEE] intranet/network with the permission of (MEMBER) under licence number: [AS STATED ABOVE]"*

**5. Access**

**The document(s) specified above** loaded on the intranet/network site of the Licensee is (are) licensed for up to the **specified active users** across **the specified sites** for the duration of this licence.

**6. External use**

Under no circumstances may copies of **the document(s) specified above**, reproduced under Clause 3 above be loaned, sold or distributed in any way.

**7. Duration of licence**

The terms of this licence will apply for one year from the above date. Renewal will be by mutual consent.

**8. Termination**

This licence may be terminated with 30 days notice if the above terms and conditions are not adhered to and the situation subsequently not rectified to the satisfaction of (MEMBER). Where the licence is terminated, the Licensee is required to immediately remove the licensed document(s) from its internal network and destroy any hard copies.

**Signed for and on behalf of the Licensee****Signed for and on behalf of (MEMBER)**Name: **Please fill in**

Name of signatory

Tel: **Please fill in**

Position in organization

Email: **Please fill in**Date: **Please fill in**

**Please fill in required information, sign, and return by email to:  
(Signatory's email address) or by fax to (Signatory's fax address)**

**Office Use Only**

Form received & entered by		
Employee Name:	Manager's Name and Signature:	Date:

## Annex 5

### Elements of a distributor contract

The contract below is a specimen contract for the guidance of CEN-CENELEC Members in drafting their own distributor contracts. It is not mandatory to conform to the wording or style of this specimen.

#### DISTRIBUTOR RESALE PRINT ON DEMAND (POD) AGREEMENT

##### (A) AGREEMENT DETAILS

<b>CONTRACT NUMBER</b>	<i>(insert contract number below)</i>	
<b>DISTRIBUTOR NAME AND ADDRESS</b>	<i>(insert organization details below)</i>	
<b>COMMENCEMENT DATE</b>	<i>(insert commencement date below)</i>	
<b>TERRITORY</b>	<i>(insert territory below)</i>	
<b>ROYALTY PAYABLE TO (MEMBER) ON STANDARDS SOLD POD</b>	<i>(insert royalty payable to (MEMBER) on Standards as % below)</i>	
<b>ANNUAL ACCESS FEE TO DOCUMENT STORE</b>	<i>(insert fee as (MEMBER)'s currency) below)</i>	
<b>DISCOUNT ON STANDARDS (HARD COPY)</b>	<i>(insert discount as % below)</i>	
<b>DISCOUNT ON OTHER PUBLICATIONS</b>	<i>(insert discount as % below)</i>	
<b>THE TRADE MARK</b>	<i>The (MEMBER)'s Trade Mark logo below must not be used without prior written permission.</i>	
	<i>(Insert trade mark or logo)</i>	
<b>TERMS AND CONDITIONS</b>	<i>This Agreement includes and is subject to the terms and conditions set out in Section B attached hereto</i>	
<b>SIGNATORIES</b>	<i>Signed for and on behalf of the Distributor</i>	<i>Signed for and on behalf of (MEMBER)</i>
	_____	_____
	<i>Name:</i>	<i>Name:</i>
	<i>Position:</i>	<i>Position:</i>

## **(B) TERMS & CONDITIONS**

### **RECITALS**

- I. (MEMBER) holds the exploitation rights in (MEMBER'S national) Standards and publishes, sells and distributes copies of (MEMBER's national) Standards. (MEMBER) sells and distributes international and overseas standards as a distributor of the originating publisher.
- II. The Distributor sells and distributes publications to commerce and industry and the general public via its direct marketing activities and/or its retail outlet.
- III. (MEMBER) desires to expand its sales and distribution outlets and the Distributor wishes to sell (MEMBER)'s Products as (MEMBER)'s Distributor in the Territory.

### **WHEREBY IT IS AGREED as follows:-**

#### **1 Interpretation**

- 1.1 In this Agreement, unless the context otherwise requires the following expressions shall have the following meanings:

"Print on Demand (POD)" shall mean original documents printed from electronic files for the purpose of fulfilling orders as required in clause 3.2 of this agreement.

"Agreement" shall include the Agreement Details and the Terms and Conditions as countersigned by the authorised representative of (MEMBER).

"Commencement Date" shall mean the date set out in the Agreement Details.

"Distributor" shall mean the Organization identified as the Distributor in the Agreement Details.

"Intellectual Property" shall mean any patent, copyright, registered design, trade mark or other industrial or intellectual property right subsisting in the (MEMBER's country) or the Territory in respect of the Products, and applications for any of the foregoing.

"Products" shall mean those publications made available by (MEMBER) for the purposes of this agreement from time to time.

"Hard Copy (HC)" shall mean Products which are ordered from (MEMBER) as required in clauses 3 and 5.8 of this agreement.

"Territory" shall mean that stated in the Agreement Details.

"Trade Marks" shall mean:

- a) The trade marks registered in the name of (MEMBER) of which particulars are given in the Agreement Details; and
- b) Such other trade marks as are used by (MEMBER) on or in relation to the Products at any time during this Agreement.

"working day" shall mean any day from Monday to Friday inclusive which is not a public holiday in (MEMBER's country).

- 1.2 Any reference in this Agreement to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3 The headings in this Agreement are for convenience only and shall not affect its interpretation.

## **2 Appointment**

- 2.1 (MEMBER) hereby appoints the Distributor as the non-exclusive distributor of (MEMBER) to sell the Products in the Territory from the Commencement Date and the Distributor agrees to act in that capacity, subject to these Terms and Conditions and to promote sales within the Territory.
- 2.2 The Products shall carry a copyright statement in such form as shall be determined by (MEMBER).
- 2.3 (MEMBER) reserves the right to make supplies of the Products direct to customers in the Territory or outside the Territory for ultimate delivery within the Territory.
- 2.4 The Distributor shall be entitled to describe itself as (MEMBER)'s "Official Distributor" for the Products, but shall not represent itself as (MEMBER)'s agent for the sales of the Products or as being entitled to bind (MEMBER) in any way.
- 2.5 The Distributor shall not, in selling the Products, make any representation or give any warranty other than those duly authorised by (MEMBER) in writing from time to time and the Distributor shall indemnify (MEMBER) against any liability arising from any unauthorised warranty or representation that may have been made by the Distributor.
- 2.6 The Distributor shall not sell the Products through a sales agent or to a sub-distributor or through a website not controlled by or in the name of the Distributor without the express prior written consent of (MEMBER).
- 2.7 If in any year of this Agreement the Distributor does not achieve net (after discount) sales of the Products of at least (insert appropriate figure) then (MEMBER) shall be entitled to terminate this Agreement by giving not less than three months notice.

- 2.8 Nothing in this agreement shall entitle the Distributor to:
- 2.8.1 any priority of supply in relation to copies of the Products for resale against (MEMBER's other distributors or customers; or
  - 2.8.2 any right or remedy against (MEMBER) if any of the Products are sold in the Territory by any person, firm or distributor other than (MEMBER).
- 2.9 The Distributor shall not:
- 2.9.1 obtain the Products for resale from any person, firm or company other than (MEMBER);
  - 2.9.2 be concerned or interested, either directly or indirectly, in the production or distribution in the Territory of any goods which compete with (MEMBER)'s Intellectual Property;
  - 2.9.3 seek customers outside the Territory or undertake active promotions of the Products (advertise in any medium, conduct dedicated mailings, etc.) aimed wholly or substantially at an area outside the Territory or establish any branch or maintain any distribution depot for the Products in any country which is outside the Territory. For the purposes of this agreement passive advertising solely through availability on a website controlled by and in the name of the Distributor shall not be construed as active promotion.
  - 2.9.4 seek customers, establish any branch or maintain any distribution depot for the Products in any country which is outside the Territory but within the European Economic Area; or
  - 2.9.5 sell the Products to any customer in any country which is:
    - 2.9.5.1 outside the Territory and outside the European Economic Area; or
    - 2.9.5.2 within the Territory if to the knowledge of the Distributor that customer intends to resell the Products in any country which is outside the Territory and outside the European Economic Area.
  - 2.9.6 place any advertisement directed wholly or substantially at an area outside the Territory.
- 2.10 (MEMBER) shall be under no liability to the Distributor for the sales of the Products within the Territory by third parties.

### **3 Supply of the Products**

- 3.1 (MEMBER) shall give password access to the complete collection of the Products held in (MEMBER)'s electronic depository, for reproduction rights only, to such designated officers of the Distributor as shall from time to time be agreed between the parties. The Distributor undertakes to (MEMBER) to ensure that the passwords given to such designated officers are not transferred to any other persons and shall not otherwise be misused. The Distributor shall notify (MEMBER) immediately upon a designated officer leaving its employment or otherwise ceasing to fulfil the role of designated officer.
- 3.2 The designated officers of the Distributor shall be entitled to download an electronic file of a Product to generate a watermarked licensed copy in paper format to fulfil a customer's order. Such electronic files shall only be used for this purpose and shall be entirely deleted on fulfilment of the order.
- 3.3 For hardcopy products, (MEMBER) shall provide a direct facsimile line and e-mail address for order entry. Subject as provided in clauses 2.8.1 and 3.4, (MEMBER) shall use its reasonable endeavours to supply the Products in hard copy to the Distributor in accordance with the Distributor's orders.
- 3.4 (MEMBER) shall not be under any obligation to continue the production of all or any of the Products, and shall be entitled to make such alterations to the Products as it may think fit.
- 3.5 Each order for the Products shall constitute a separate contract, and any default by (MEMBER) in relation to any one order shall not entitle the Distributor to treat this Agreement as terminated.
- 3.6 The Distributor shall, in respect of each order for the Products to be supplied hereunder, be responsible for:
- 3.6.1 ensuring the accuracy of the order;
  - 3.6.2 obtaining any necessary import licences, certificates of origin or other requisite documents, and paying all applicable customs, duties and taxes in respect of the importation of the Products into the Territory and their resale in the Territory.
- 3.7 (MEMBER) shall use all reasonable endeavours to meet any delivery date, but time shall not be of the essence and accordingly (MEMBER) shall have no liability to the Distributor if, notwithstanding such endeavours, there is any delay in delivery.
- 3.8 Subject to clause 3.7 (MEMBER) shall provide a service to Distributors under which it will use its reasonable endeavours to ensure that (insert appropriate percentage) of orders received before 12.00 hours GMT on a working day are despatched the same day to (MEMBER's country) delivery addresses, including to a designated (national) freight forwarder. Postage and packing will be charged at prevailing rates. Postage, packing and courier charges may be subject to change by (MEMBER) and will be available on the (MEMBER) Distributors' website which may be found at (MEMBER's URL).

3.9 From the (national) freight forwarder the onward shipping to the Distributor's required destination is the responsibility of and at the expense of the Distributor. If no designated (national) freight forwarder is advised the entire cost of despatch from (MEMBER)'s Distribution Centre to the Distributor's required destination will be invoiced to the Distributor at current overseas postage and courier charges. Postage, packing and courier charges may be subject to change by (MEMBER) and will be available on the (MEMBER) Distributors' website which may be found at (MEMBER's URL).

3.10 (MEMBER) will only accept the return of Products if they are defective or have been incorrectly supplied subject always, in the case of damage, to (MEMBER) being satisfied that the damage occurred in transit.

#### **4 Marketing**

4.1 The Distributor shall use its best endeavours to promote its distributorship and the sale of the Products to local or targeted audiences in the Territory.

4.2 The Distributor shall submit all promotional material (except price lists comprising solely titles, number and price) and other statements intended for publication relating to the sale of the Products for (MEMBER)'s express prior approval in writing. Such approval to be given by (MEMBER) within calendar days of its receipt by either the (Sales Manager or Marketing Manager) of (MEMBER)

4.3. In connection with the promotion and marketing of the Products the Distributor shall make clear, in all dealings with customers and prospective customers, that it is acting as distributor of the Products and not as an agent of (MEMBER).

#### **5 Terms of Trade**

5.1 The Distributor shall pay to (MEMBER) the Annual Access Fee for (access to MEMBER's depository), for reproduction rights only, set out in the Agreement Details payable in monthly instalments in advance. The Annual Access Fee may be varied by (MEMBER), from time to time, on giving to the Distributor not less than three months prior written notice.

5.2 The Distributor shall pay to (MEMBER) the royalty percentage stated in Agreement Details of (MEMBER)'s current list price for all licensed copies of the Products sold. (MEMBER) may vary such royalty from time to time on giving to the Distributor not less than six months prior written notice.

5.3 VAT shall be added to invoices where appropriate.

5.4 To enable (MEMBER) to calculate the correct royalty to be paid, the Distributor shall keep an accurate record of all sales of licensed copies of the Products coming under the scope of this Agreement and shall render a sales statement in writing to (MEMBER) each month, detailing the products sold and the royalty payable.

- 5.5 The statement shall be posted no later than thirtieth day of the month following operations completed during the previous month and the Distributor shall pay to (MEMBER) the sum due within thirty days of an invoice being rendered by (MEMBER) in respect of the sales statement.
- 5.6 (MEMBER) will provide the Distributor with credit facilities for settlement of all invoices raised by (MEMBER) by the thirtieth day following the date of the invoice.
- 5.7 The Distributor shall make all payments of the sums payable hereunder to (MEMBER) without any deduction other than such amount (if any) as it is required to deduct by law. If the Distributor is required to make such a deduction, it shall do all things within its power which may be reasonably necessary to enable or assist (MEMBER) to claim exemption therefrom under provisions that are from time to time in force and shall give to (MEMBER) proper evidence as to the deduction made and its payment over to the relevant body.
- 5.8 (MEMBER) shall supply to the Distributor Standards for resale in hard copy at a discount as stated in the Agreement Details off (MEMBER)'s current list price, books and CD-ROMs at a discount as stated in the Agreement Details off (MEMBER)'s current list price. (MEMBER) reserves the right to remove any such discount or to set any such discount at such other levels as (MEMBER) shall determine from time to time subject to giving to the Distributor not less than six months prior written notice or earlier by agreement between (MEMBER) and the Distributor. Additional bulk discounts shall be agreed with (MEMBER)'s Sales Manager.
- 5.9 If the Distributor fails to pay the price for any Products in accordance with these terms of trade, (MEMBER) shall be entitled (without prejudice to any other right or remedy it may have) to:
- 5.9.1 cancel or suspend any further delivery to the Distributor under any order; and/or
  - 5.9.2 withdraw password access to (MEMBER)'s depository); and/or
  - 5.9.3 suspend all discounts for future trading; and/or
  - 5.9.4 charge the Distributor interest on the outstanding debt of 3 % above the (national Central Bank) base rate or the base rate of the Central Bank in the Territory (whichever is the higher) from the date payment became due until actual payment is made (irrespective of whether the date of payment is before or after any judgement or award in respect of the same).
- 5.10 The Distributor shall, if so requested by (MEMBER), within ninety (90) days after the end of any year of this Agreement, at its own expense, provide to (MEMBER) a report from its external auditors as to the accuracy of the information submitted by it in respect of that year pursuant to clauses 5.4 and 5.5. (MEMBER) further reserves the right, at its own discretion, to inspect the relevant part of the Distributor's books, either directly or by means of a qualified agent as necessary.

## **6 Intellectual Property**

- 6.1 (MEMBER) hereby authorises the Distributor to use the Trade Marks in the Territory in relation to the Products for the purposes only of exercising its rights and performing its obligations under this Agreement.
- 6.2 The Distributor shall ensure that each reference to and use of any of the Trade Marks by the Distributor is in a manner from time to time approved by (MEMBER) and accompanied by an acknowledgement, in a form approved by (MEMBER), that the same is a trade mark (or registered trade mark) of (MEMBER).
- 6.3 The Distributor shall not:
- 6.3.1 make any modifications to the Products;
  - 6.3.2 alter, remove or tamper with any Trade Marks, numbers, or other means of identification used on or in relation to the Products;
  - 6.3.3 download any Products except as permitted in clause 3.2;
  - 6.3.4 use any of the Trade Marks on business cards or letterheads or in any way which might prejudice their distinctiveness or validity or the goodwill of (MEMBER) therein;
  - 6.3.5 use in relation to the Products any trade marks other than the Trade Marks without first obtaining the prior written consent of (MEMBER);
  - 6.3.6 use in the Territory any trade marks or trade names so resembling any trade mark or trade names of (MEMBER) as to be likely to cause confusion or deception.
- 6.4 The Distributor shall acknowledge all (MEMBER)'s rights in the Intellectual Property and that it shall have no rights whatsoever in respect of any trade names or Trade Marks used by (MEMBER) in relation to the Products or the goodwill associated therewith except as provided in this clause 6, and the Distributor hereby acknowledges that, except as expressly provided in this Agreement, it shall not acquire any rights in respect thereof and that all such rights and goodwill are, and shall remain, vested in (MEMBER).
- 6.5 The Distributor shall, at the expense of (MEMBER), take all such steps as (MEMBER) may reasonably require to assist (MEMBER) in maintaining the validity and enforceability of the Intellectual Property of (MEMBER) during the term of this Agreement.
- 6.6 Without prejudice to the right of the Distributor or any third party to challenge the validity of any Intellectual Property of (MEMBER), the Distributor shall not do or authorise any third party to do any act which would or might invalidate or be inconsistent with any Intellectual Property of (MEMBER) and shall not omit or authorise any third party to omit to do any act which, by its omission, would have that effect or character.

- 6.7 The Distributor shall promptly and fully notify (MEMBER) of any actual, threatened or suspected infringement in the Territory of any Intellectual Property of (MEMBER) which comes to the Distributor's notice, and of any claim by any third party so coming to its notice that the importation of the Products into the Territory, or their sale therein, infringes any rights of any other person, and the Distributor shall at the request and expense of (MEMBER) do all such things as may be reasonably required to assist (MEMBER) in taking or resisting any proceedings in relation to any such infringement or claim.

## **7 Liability and Force Majeure**

- 7.1 The Distributor shall fully and effectively indemnify (MEMBER) from and against any damage, losses, costs, charges, claims and expenses that (MEMBER) might suffer or incur as a consequence of the failure of the Distributor to comply with the terms of this Agreement.
- 7.2 The liability of (MEMBER) to the Distributor is limited to taking reasonable steps to supply the Products ordered. (MEMBER) shall be under no liability whatsoever for any losses that the Distributor may suffer as a consequence of the Products not being delivered either at the time required, or at all.
- 7.3 Neither party shall be liable to the other for any failure to meet its obligations to the other where the failure is due to an event or events beyond the control of the party claiming relief ("force majeure"). Where a party claims force majeure it shall notify the other party as soon as it becomes aware of such event(s) and shall take all reasonable steps to mitigate such failure. The failure shall in any event be remedied as soon as reasonably practicable following the cessation of the event of force majeure. In the event of one party being affected by force majeure, the other party shall be entitled at its absolute discretion to suspend performance of its obligations but only until such time as the cessation of the force majeure event occurs. If the event(s) of force majeure continues for a period of three months this Agreement will thereupon terminate unless the parties shall agree otherwise and the provisions of clauses 8 and 9 shall take effect.

## **8 Commencement and Termination**

- 8.1 This Agreement shall come into force on the Commencement Date and shall continue unless terminated by either party giving six months notice in writing to the other party.
- 8.2 Without prejudice to any remedies which (MEMBER) may have against the Distributor for breach or non-performance of this Agreement, this Agreement may also be terminated by (MEMBER) forthwith if at any time:-
- 8.2.1 the Distributor fails to make any payment to (MEMBER) after the same shall have become due and such failure shall continue for a period of thirty days after written demand by (MEMBER); or
- 8.2.2 the Distributor commits any other breach of this Agreement which breach (if remediable) shall not be remedied within thirty days of the receipt of a notice specifying the breach and calling upon the Distributor to remedy it; or

- 8.2.3 the Distributor shall go into liquidation (not being a voluntary liquidation, for the purpose only of a bona fide reconstruction or amalgamation) or commit any act of bankruptcy or shall enter into any composition or arrangement with its creditors or a receiver of its assets shall be appointed; or
  - 8.2.4 there is a material change in the ownership or control of the Distributor; or
  - 8.2.5 the Distributor at any time misuses or otherwise challenges the validity of any Intellectual Property of (MEMBER); or
  - 8.2.6 the Distributor ceases, or threatens to cease, to carry on business.
- 8.3 Any waiver by either party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision thereof.
- 8.4 Termination of this Agreement shall not be construed as a waiver in respect of either party of its rights, claims (including claims for damages) or obligations that have accrued up to and including the date of termination.
- 8.5 It is expressly agreed that neither party shall be liable to pay any compensation to the other party for loss of profits or loss of goodwill or for any loss or damage howsoever arising as a result of the termination of this Agreement for any cause whatsoever.

## **9 Consequences of Termination**

Upon the termination of this Agreement for any reason:

- 9.1 the Distributor may sell Products for which it has accepted orders from customers prior to the date of termination and for those purposes and to that extent the provisions of this Agreement shall continue in full force and effect;
- 9.2 the Distributor shall at its own expense within 30 days send to (MEMBER) or otherwise dispose of in accordance with the directions of (MEMBER) any advertising, promotional or sales material relating to the Products then in the possession of the Distributor;
- 9.3 the Distributor shall render a statement of all sales of the Products made and all royalties payable since the last sales statement.
- 9.4 (MEMBER) shall render an invoice in respect of the final sales statement which shall become immediately payable by the Distributor;
- 9.5 the Distributor shall cease to promote, market or advertise the Products or to make any use of the Trade Marks other than for the purpose of fulfilling orders under clause 9.1 above;
- 9.6 the Distributor shall remove any electronic files of the Products then in the possession of the Distributor and shall certify to (MEMBER) that it has no such files on its systems and shall not sell or copy these files.

- 9.7 the Distributor shall immediately remove all references to the Trade Marks from any location in which they have been used and if necessary destroy all materials and/or documents on which the Trade Marks have been placed.

## **10 Nature of Agreement**

- 10.1 (MEMBER) shall be entitled to perform any of the obligations undertaken by it and to exercise any of the rights granted to it under this Agreement through any other company which at the relevant time is its subsidiary (as defined by (relevant national law)) and any act or omission of any such company shall for the purposes of this Agreement be deemed to be the act or omission of (MEMBER).
- 10.2 (MEMBER) may assign this Agreement and the rights and obligations thereunder at its sole discretion, without the prior consent of the Distributor.
- 10.3 This Agreement is personal to the Distributor, which may not assign, mortgage, charge (otherwise than by floating charge) or dispose of any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder.
- 10.4 Nothing in this Agreement shall create, or be deemed to create, a partnership or the relationship of principal and agent or employer and employee between the parties.
- 10.5 This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, supersedes all previous agreements and understandings between the parties with respect thereto, and may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties.
- 10.6 Each party acknowledges that, in entering into this Agreement, it does not do so on the basis of, and does not rely on, any representation, warranty or other provision except as expressly provided herein, and all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.
- 10.7 If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or in part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.

## **11 Proper Law**

- 11.1 This Agreement shall be governed by and construed in all respects in accordance with the Laws of (Country), and each party hereby submits to the non-exclusive jurisdiction of the (National) Courts.

## **12 Notices and Service**

- 12.1 Any notice or other information required or authorised by this Agreement to be given by either party to the other may be given by hand or sent (by first class pre-paid post, facsimile transmission or comparable means of communication) to the other party at the address referred to in clause 12.4 below.

- 12.2 Any notice or other information given by post pursuant to clause 12.1. which is not returned to the sender as undelivered shall be deemed to have been given on the second working day after the envelope containing the same was so posted; and proof that the envelope containing any such notice or information was properly addressed, pre-paid, registered and posted, and that it has not been so returned to the sender, shall be sufficient evidence that such notice or information has been duly given.
- 12.3 Any notice or other information sent by facsimile transmission or comparable means of communication shall be deemed to have been duly received on the working day next following the date of transmission, provided that a confirming copy thereof is dispatched by first class pre-paid post to the other party at the address referred to in clause 12.4 within 24 hours after transmission.
- 12.4 Service of any legal proceedings concerning or arising out of this Agreement shall be effected by causing the same to be delivered to the Secretary of the party to be served at its principal place of business (in the case of (MEMBER)) or its registered office (in the case of the Distributor), or to such other address as may from time to time be notified in writing by the party concerned.

### **13 Survivability**

- 13.1 The following clauses shall survive the termination of the Agreement 2.5, 2.6, 6.3, 6.4, 7.1.