

MEMORANDUM OF AGREEMENT

entered into between:

Impex Solutions T/A The Crystal Box Company

a company incorporated under the laws of the Republic of South Africa, having its registered office at (address) (hereinafter called “the Company”, which expression shall, where the context allows, include any assigns of the company)

and

(Insert Your Name Here)

having its principal office at (address) (hereinafter called “the Agent”), which expression shall, where the context allows, include any permitted assigns of the agent

1. **PURPOSE**

1.1 the Agent wishes to operate the business and for the purpose to use the Company's business method and intellectual property right.

1.2 The Agent hereby undertakes that it will at all times during the continuance in force of this agreement observe and perform the terms and conditions set out in this agreement.

2. **APPOINTMENT AND DURATION**

The purpose of this Agreement is to set out the terms and conditions on which the Company will appoint The Agent, as its Agent in terms of this agreement and will be effective from date of signature of this agreement until either party terminate such agreement in writing.

3. **DEFINITIONS AND INTERPRETATION**

In this Agreement the following expressions shall have the meanings assigned to them hereunder except where expressly indicated to the contrary elsewhere in this Agreement:

"Agreement" shall mean this agreement and the annexures and schedules thereto, as amended from time to time;

"Bank Account" shall mean the relevant bank accounts of the Company, and the Agent.

"Business Day" shall mean any day other than Saturday, Sunday or any South African public holiday recognized for the purposes of the national business calendar;

"Day/s" shall include Business Days, public holidays, Saturdays and Sundays where a party is or both parties are required in terms of the context of this Agreement and/or applicable legislation to do something and/or to act in a prescribed way within a certain period;

- “Effective Date”** shall mean the date of signature by the party last signing or the date upon which the first initial fees are received by the Company, whichever is the earliest date;
- "Initial Fees"** shall mean an initial fee the sum of **R2 500.00** (TWO THOUSAND FIVE HUNDRED RAND);
- “Intellectual Property”** shall mean:
- copyrights held by the Company in any written material, plans or other work relating to The Company’s products or the business method;
 - designs whether or not registered, devised or acquired by the Company and applied in the manufacture, assembly and sale of The Company’s products and the business method;
 - patents of which the Company is patentee (or licensee) in the territory and which relate to The Company’s products (or their manufacture or brief details of which are set out in Schedule (First) and applications for the grant of any such patents;
 - trade mark(s) (describe) of which the Company is the owner as well as applications pending therefor, together with such future trademarks specified in an addendum to this agreement and signed by both parties;

4. **APPOINTMENT**

From the Effective Date, the Company hereby appoints the Agent as the agent and distributor of the Company for _____
(name of district) (hereinafter called “the Agency District”) for selling goods manufactured by the company of the kind set out in the first schedule hereto (hereinafter called “the Goods”) for the period of (_____ specify years) from the date hereof, (and thereafter from year to year unless terminated by notice in terms of this Agreement on the terms and subject to the conditions hereinafter set out. The Agent operates through its own outlets under the (specify trade name) a business.

5. AGENTS UNDERTAKING

- 5.1 The Agent wishes to operate the business and for the purpose to use the Company's business method and intellectual property right. The Agent hereby undertakes that it will at all times during the continuance in force of this agreement observe and perform the terms and conditions set out in this agreement and in particular (see 5.2).
- 5.2 To promote sales The Agent shall use its best endeavours to promote and extend the sale of the Goods throughout the Agency District to all potential purchasers thereof and work diligently to obtain orders therefor.
- 5.3 The Agent shall in all matters act loyally and faithfully to the Company and obey the Company's orders and instructions and, in the absence of any such order or instructions in relation to any particular matter, will act in such manner as the Agent reasonably considers being most beneficial to the Company's interests.
- 5.4 The Agent shall not engage or be interested either directly or indirectly as principal, agent or employee in selling goods of any description or kind similar to the Goods of the Company or designed to perform the same function as the Goods of the Company or any similar function, whether alone or in conjunction with any other goods, without obtaining the previous consent in writing of the Company.
- 5.5 The Agent shall not sell to any person Goods which the Agent knows or has reason to believe are intended for resale outside the Agency District.
- 5.6 The Agent undertakes to sell the Goods at the prices recorded in the attached second schedule and shall not divert from the selling price for whatsoever reason.
- 5.7 The Agent shall not sell the Goods to any person who the Agent knows or has reasonable cause to believe has sold the Goods of the Company, or any goods of the same or a similar description, at a reduced price for the purpose of attracting customers likely to purchase other goods or otherwise for the purpose of advertising the business of such person, until the expiration of a period of 12 (TWELVE) months from the occasion on which goods were so sold, without the Agent first obtaining the consent in writing of the Company
- 5.8 The Agent shall not sell the Goods on terms other than for cash against delivery unless the consent of the Company in writing to give credit to a particular purchaser

has been in each case first obtained, the Company reserving the right in the case of any such credit sales to stipulate for such increase in the price of the Goods over and above the full list as the Company thinks fit

- 5.9 The Agent shall not in selling the Goods make any representations or give any warranties other than those contained in the Company's conditions of sale
- 5.10 The Agent shall promptly bring to the notice of the Company any information received by the Agent which is likely to be of use or benefit to the Company in marketing the Goods and shall, in particular, notify the Company forthwith of any use of the Goods, or goods of a similar description to those of the Company, for resale at reduced prices in order to attract custom or for advertising, and any sale of the Goods by any purchaser contrary to the Company's conditions of sale brought to such purchaser's notice.
- 5.11 The Agent shall allow any person authorised by the Company to have access at all reasonable times to the Agent's premises for the purpose of inspecting the said books and records and for the purpose of taking stock of the Company's Goods on those premises.
- 5.12 The Agent shall from time to time, upon the written request of the Company, supply to the Company reports, returns and other information relating to the agency.
- 5.13 The Agent shall not assign, transfer, charge or in any manner make over, or purport to assign, transfer, charge or make over, this agreement or its rights thereunder or any part thereof without obtaining the prior consent in writing of the Company.
- 5.14 The Agent shall not incur any liability on behalf of the Company or in any way pledge or purport to pledge to the Company's credit.
- 5.15 The Agent shall in all correspondence, commercial documents and on the name plate or other signs at the place of business describe itself as a selling Agent for the Company and shall not describe itself as the Company's agent except in conjunction with the word "selling".
- 5.16 The Agent shall at its own expense rent and occupy for the purposes of the agency suitable premises and shall keep insured to their full value against all risks, all Goods entrusted to the Agent by the Company under this agreement and, on request.

- 5.17 The Agent shall defray all expenses of and incidental to the agency.
- 5.18 The Agent has to buy stock from the company on a monthly basis and the minimum that the Agent shall buy is 300 pieces/30 packs per month.

6. DUTIES OF THE COMPANY

The Company hereby agrees with the Agent that it will undertake the following during the continuance of the agreement.

The Company reserves to itself the following rights notwithstanding anything to the contrary herein contained

- 6.1 The Company reserves the right to continue to sell and supply the Goods to the customers in the Agency District listed in the third schedule hereto (in pursuance of contracts currently in force between the Company and those customers), and no right to commission shall accrue to the Agent in respect of any such sale.
- 6.2 To withdraw goods ceasing to be manufactured or to add new classes of goods.
- 6.3 The Company reserves the right to vary the first schedule hereto defining the Goods either by the withdrawal therefrom of a class or classes of Goods named therein in the event of the Company ceasing to manufacture that class or those classes of Goods, or by the addition thereto after consultation with (or with the agreement of) the Agent of a further class or of further classes of Goods of the Company.
- 6.4 If, in the opinion of the Company, the Agent is not at any time producing adequate sales coverage throughout the whole of the Agency District, and without prejudice to any other of its rights under this agreement, the Company reserves the right either to vary the extent of the Agency District so as to exclude from this agreement such part or parts of the Agency District as the Company thinks fit, or to vary the first schedule hereto so as to exclude from the agreement such one or more of the classes of goods therein set out as the company thinks fit, or to take both these courses of action; save that neither such course of action shall be taken without prior consultation with the Agent.
- 6.5 In the event of the Company's business or any part thereof (being a part concerned in the manufacture of the Goods to which this agreement relates or any class of

those Goods) being transferred to any other company, the Company reserves the right to assign its rights and obligations under this agreement to that other company after giving one month's notice of such assignment in writing to the Agent

7. ADDRESSES AND CONTACT DETAILS

- 7.1 The details of the addresses, contact telephone and fax numbers, e-mail addresses, and various contact officials of the Company and The Agent respectively are set out in Annexure B to this Agreement.
- 7.2 If, for any reason whatsoever, the fax or other electronic communication equipment, or the fax number or other addresses of either of the parties should become inoperative, resulting in the inability of such equipment to send or receive messages, then the party whose equipment, number or address is inoperative shall notify the other party by any available means of this fact as soon as possible, and at the same time notify the other party of an alternative means of communication, pending repairs to the inoperative equipment, number or address. Should the responsible party fail to notify the other party in these circumstances, such defaulting party shall be responsible and liable for direct losses or damage which the other party might suffer or incur as a result of such failure to notify the non-defaulting party.
- 7.3 If a party is required in terms of this Agreement to communicate with the other party, such communication shall be to the other party's appropriate contact person in writing, unless otherwise specified in this Agreement.
- 7.4 Each party has chosen the domicillium addresses as indicated in Annexure "B" as the address at which all official notices and other legal communications must be delivered unless otherwise indicated in this Agreement. Any party may by written notice to the other, change its chosen address, provided that the change shall become effective on the fourteenth (14th) day after the receipt of the notice by the addressee.
- 7.5 Any official and legal notice to a party contained in a correctly addressed envelope and sent by prepaid registered mail to the addressee at its chosen address or delivered by hand to a responsible person during normal business hours at the addressee's selected domicillium address shall be deemed to have been received on the seventh (7th) Business Day after mailing it (in the case of registered post) or on the day of receipt if delivered by hand, unless the contrary is proved.

8. **BANK DETAILS**

The Bank Accounts that shall apply for purposes of paying or receiving monies are:

8.1 **The Company**

SEE ANNEXURE A

8.2 **The Agent**

SEE ANNEXURE A

9. **FEES AND CHARGES**

9.1 The Company shall levy the Initial fee which shall be payable by the Agent. The initial fee shall be non-refundable.

10. **BREACH OF CONTRACT**

10.1 If any party hereto commits a breach or fails in the observance of any of the terms hereto and fails to remedy such default or breach within fourteen (14) Days of receipt of written notice from the aggrieved party requiring it so to do, then the aggrieved party shall be entitled to terminate this Agreement or to claim immediate payment and/or specific performance by the defaulting party of all of the defaulting party's obligations whether or not the due date for payment and/or performance shall have arrived, in either event without prejudice to the aggrieved party's rights to claim damages.

10.2 The foregoing is without prejudice to such other rights as the aggrieved party may have at law, provided always that, notwithstanding anything to the contrary contained in this Agreement, the aggrieved party shall not be entitled to cancel this Agreement, for any breach by the defaulting party unless such breach is a material breach going to the root of this Agreement and is incapable of being remedied by a payment in money, or if it is capable of being remedied by a payment in money, the defaulting party fails to pay the amount concerned within 14 (fourteen) Days after such amount has been determined by the aggrieved party.

10.3 Should this Agreement be terminated under the provisions of this clause 11, the provisions of clause 16 shall apply.

11. **GOVERNING LAW**

This Agreement shall be construed and interpreted in accordance with the laws of the Republic of South Africa.

12. **ARBITRATION**

12.1 Any dispute arising out of this Agreement or the interpretation thereof, both while in force and after its termination, shall be submitted to and determined by arbitration. Such arbitration shall be held in Johannesburg unless otherwise agreed to in writing by the parties and shall be held in a summary manner with a view to it being completed as soon as possible, it being the intention that, if possible, it shall be held and concluded within twenty business (20) days after it has been demanded.

12.2 There shall be one arbitrator who shall be, if the question in issue is:

12.2.1 primarily an accounting matter, an independent chartered accountant;

12.2.2 primarily a legal matter, a suitably qualified person; and

12.2.3 primarily a technical matter, a suitably qualified person; and

12.2.4 any other matter, a suitably qualified person.

12.2.5 The appointment of the arbitrator shall be agreed upon between the parties, but failing agreement between them within a period of fifteen (15) days after the arbitration has been demanded, either of the parties shall be entitled to request the chairman for the time being of the Arbitration Foundation of Southern Africa to make the appointment and, in making his appointment, to have regard to the nature of the dispute.

12.2.6 The arbitrator shall have the powers conferred upon the arbitrator under the Arbitration Act, 1965, as amended, or re-enacted in some other form from time to time, but shall not be obliged to follow the procedures described in that Act and shall be entitled to decide upon such procedures as he may consider desirable for the speedy determination of the dispute, and in particular he shall have the sole and absolute discretion to determine whether and to what extent it shall be necessary to file pleadings, make discovery of documents or hear oral evidence.

12.2.7 The arbitrator shall further have the power to make any award regarding direct damages suffered by the non-defaulting party and how and when such damages are to be paid, as well as any other award that would normally be available pursuant to a civil judgment of the High Court of South Africa.

12.2.8 The decision of the arbitrator shall be final and binding on the parties and may be made an order of any court of competent jurisdiction. Each of the parties hereby submits itself to the jurisdiction of the Witwatersrand Local Division of the High Court of South Africa should the other party wish to make the arbitrator's decision an order of that Court.

13. **COSTS**

Each party shall be responsible for its own costs in connection with the preparation, negotiation and execution of this Agreement and for the costs of any arbitration, provided that the arbitrator has the discretion to make an appropriate order as regards costs, by which the parties shall (in the absence of manifest error or bad faith) abide.

14. **GENERAL**

14.1 This Agreement, together with any Annexures hereto, contains the entire agreement between the parties.

14.2 No failure by a party to enforce any provision of the Agreement shall constitute a waiver of such provision or affect in any way a party's right to require performance of any such provision at any time in the future, nor shall the waiver of any such breach nullify the effectiveness of the provision itself.

14.3 No agreement to vary, add or to cancel this Agreement shall be of any force or effect unless reduced to writing and signed by or on behalf of the parties to this Agreement, unless otherwise indicated in this Agreement.

14.4 The Company may assign, cede or delegate any of its rights or obligations under this Agreement to another person without the written consent of the other party.

14.5 The Agent warrants that it is acting as a principal and not as an agent for an undisclosed principal.

- 14.6 None of the provisions of this Agreement shall be deemed to constitute a partnership between the parties and neither of them shall have any authority to bind the other in any way.
- 14.7 To the extent that any provision of this Agreement is or may become unenforceable for any reason it shall be severable from the remainder of the Agreement which shall remain in force.

15. **INTERPRETATION**

- 15.1 For the purposes of this Agreement, unless the context requires otherwise:
- 15.1.1 the singular shall include the plural and vice versa;
 - 15.1.2 a reference to any one gender, whether masculine, feminine or neuter, includes the other;
 - 15.1.3 any reference to a natural person includes a juristic person and vice versa.
- 15.2 All the headings in this Agreement are for convenience only and are not to be taken into account for the purposes of interpreting it.
- 15.3 The clause headings in this Agreement have been inserted for convenience only and will not be taken into account in its interpretation.
- 15.4 Any term defined in the context of any particular clause in this Agreement will bear the meaning so ascribed to it for all purposes of this Agreement, notwithstanding that it has not been defined in clause 2.
- 15.5 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect will be given to it as if it were a substantive clause in the body of this Agreement, notwithstanding that it is only contained in clause 2.
- 15.6 Subject to clause 2 ("Day/s"), if any period is referred to in this Agreement by way of reference to a number of days, the days will be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day which is not a Business Day, in which case the day will be the next Business Day.
- 15.7 Any reference to legislation or subordinate legislation in this Agreement includes that legislation or subordinate legislation as amended, substituted or re-enacted.

16. **TERMINATION**

- 16.1 Either party may terminate this Agreement under normal circumstances by giving at least one (1) calendar month (or such shorter period to which the parties may agree) prior written notice of termination to the other parties.
- 16.2 If reasonably possible, existing Clients of the Company should not be prejudiced by the termination of this Agreement by the parties hereto.
- 16.3 Upon the termination of this agreement for any cause, or at any time prior to such termination at the request of the Company, the Agent shall promptly return to the Company, or otherwise dispose of as the Company may instruct, technical pamphlets, catalogues, advertising material, specifications and any other materials, documents and papers whatsoever sent to the Agent and relating to the business of the Company (other than correspondence between the Company and the Agent) which the Agent may have in its possession or under its control.

17. **CONFIDENTIALITY**

- 17.1 The parties agree that all information regarding:
- 17.1.1 transactions concluded between them in terms of this Agreement;
 - 17.1.2 their respective clients;
 - 17.1.3 the Company's Intellectual property;
 - 17.1.4 the terms of this Agreement itself;
- Unless:
- 17.1.5 such disclosure is required in terms of a lawfully issued subpoena, order of court or discovery process in terms of the rules of the High Court or Magistrate's Court;
 - 17.1.6 such disclosure is required in terms of any law or order of court, or otherwise in terms of the rules of the High Court or Magistrates Court;
- 17.2 The duty of confidentiality in terms of clause 17.1 shall continue notwithstanding the termination of this Agreement.

18. ACCEPTANCE

The Company:

SIGNED AT _____ ON THIS _____ DAY OF _____ 2009

AS WITNESSES

1. _____
_____ Duly Authorised Signatory
For:

2. _____
_____ Duly Authorised Signatory
For:

The Agent:

SIGNED AT _____ ON THIS _____ DAY OF _____ 2009

AS WITNESSES

1. _____
_____ Duly Authorised Signatory
For:

2. _____
_____ Duly Authorised Signatory
For:

FIRST SCHEDULE

Ladies clear plastic shoe boxes

SECOND SCHEDULE

Ladies clear plastic shoe boxes

Gauteng & Pretoria R135 per pack of 10 ladies clear shoe boxes

Outside Gauteng & Pretoria R145 per pack of 10 ladies clear shoe boxes

ANNEXURE A - BANKING DETAILS

The Agent

Name of Account	
Name of Bank	
Name of Branch	
Branch Code	
Account Type	
Account Number	

The Company

Name of Account	
Name of Bank	
Name of Branch	
Branch Code	
Account Type	
Account Number	

ANNEXURE B - CONTACT OFFICIALS, ADDRESSES, TELEPHONE AND FACSIMILE NUMBERS

1. CONTACT OFFICIALS

1.1. The Company

1.1.1. Business Relationship Manager

Name : _____

Phone no. : _____

e-Mail address : _____

Physical Address:

1.2. The Agent

1.2.1. Business Relationship Manager

Name : _____

Phone no : _____

e-Mail address: _____

Physical Address: