



**EMS (EUROPEAN) LTD
DISTRIBUTOR ENQUIRY
SUPPORT PACK
Version 12 May 2010**



THE CONTENTS OF THIS DOCUMENT ARE IMPORTANT TO YOU AND WE WOULD RECOMMEND THAT YOU READ THE DETAILS CAREFULLY

IT IS OUR INTENTION IN THIS PACK TO PRESENT YOU, IN A SIMPLE MANNER, WITH THE FOLLOWING:

IN SECTION ONE:

QUESTIONS ABOUT YOUR COMPANY THAT WE NEED TO HAVE ANSWERS TO SO THAT WE CAN BEST JUDGE YOUR COMPANY'S SUITABILITY TO BECOME A DISTRIBUTOR.

IN SECTION TWO:

A COPY OF THE CURRENT DISTRIBUTION AGREEMENT, WHICH WE WILL BE ASKING YOU TO SIGN AND AGREE TO, SHOULD WE ESTABLISH AN ACCORD REGARDING YOUR COMPANY BECOMING A DISTRIBUTOR FOR US. WE ALSO INCLUDE A COPY OF OUR TERMS AND CONDITIONS AS THESE ARE USEFUL TO UNDERSTAND.

IN SECTION THREE:

DETAILS OF THE TRAINING PROGRAMME THAT WE PROVIDE, INCLUDING OUR CERTIFICATION PROGRAMME AND THE SUPPORT MATERIALS THAT YOU WILL NEED TO BECOME EFFECTIVE AS A DISTRIBUTOR OF ENVIROSTART PRODUCTS.

PLEASE NOTE THAT IT IS NOT OUR INTENTION TO MAKE THIS DOCUMENT ONEROUS OR COMPLEX AND HOPE THAT, BY OUR SENDING IT TO YOU, THAT YOU ARE BETTER POSITIONED TO MAKE A DECISION REGARDING YOUR INTEREST IN EMS (EUROPEAN) AND YOUR ABILITY TO ACT AS A DISTRIBUTOR FOR US WITHIN A GIVEN REGION.

The route to becoming a Distributor – PLEASE READ CAREFULLY

1. Review the Prospective Distributor's Guide thoroughly, (this document). At this time it is good to raise any questions or concerns that you have with regard to the products or your relationship with EMS (European). We are happy to receive your questions and will answer them as fully as possible.
2. When you have all of your questions answered then complete the questions in Section One. Return the answers to those questions to EMS (European) for their review.
3. If a positive decision is made with regard to your company becoming a Distributor then you will be advised and a specific Distribution Agreement will be sent through to you for countersignature and return to EMS (European).
4. When you return the signed and dated Distribution Agreement and we will issue you with a Username and Password to allow you access to the EnviroStart web site Bulletin Board. There is a great deal of information available here which is useful for you and your engineers to review prior to the training.
5. We will want to establish a date for the training to take place; this must be within three months of your signing the Agreement; the training will be undertaken within your country. This is done because we want to train all of your people, (not just one or two), and we want the training to be on systems and with customers that your people will have to work with not those to be found in the UK. This training will be undertaken at your cost. For further information please also look at Section 4 of the Distributors Agreement, (Section Two of this document), and Section Three of this document.
6. On successful completion of the training we will issue you with a Certificate of Appointment. Until that time your company is a probationary distributor only.
7. Fulfilling the requirements of the training and achieving Blue Certificate Status means we will place your company details on our web site.

Section One

This section contains questions which we would like you to answer in as full a way as possible. We would appreciate your responding to us by e-mail identifying the answer to each question by using the same prefix as we have, that is, the answer to Q1, should be labelled “Q1” in your e-mail, and so on.

Questions about your Company

- Q1. Are you establishing a new company specifically for selling EnviroStart? (If the answer here is “Yes” then please go straight to Question 5).
- Q2. What is the main business of your Company? (What products do you currently sell and what franchises, if any, do you hold)?
- Q3. What market sectors are you trading into mostly, (e.g. Retail, Commercial, Light Industrial, Heavy Industrial)?
- Q4. Are you a registered Company within your country? Please provide basic details including your Company Registration Number and VAT/TVA Number, (if applicable).
- Q5. What is your current annual turnover; please provide this figure in pounds sterling?
- Q6. How many employees does your Company have?
- Q7. What finance do you have in place to support yourself whilst the business is building up? (Unless you are very lucky, it is likely that your “new business” will take up to six months to get running and be self supporting – please also note here the contents of Section 3 of this document and the costs associated with training and becoming “Qualified as a Distributor”).

Questions about your Marketing Plan and Trading

- Q8. How do you plan to sell EnviroStart?
- A Through a dedicated sales team working for your Company
 - B Through sub-distributors
 - C Other methods, (please explain)
- Q9. You must have reviewed the EnviroStart product and established that an opportunity exists in your country. What value of business do you think you can achieve in the first year as an EnviroStart Distributor and what business you think you can achieve in year two as an EnviroStart Distributor. (Please try to be as realistic and practical as possible here).
- Q10. What is the cost of energy per kWh in your country for industrial applications, retail applications and commercial applications? (If you operate a day and night rate please provide a mean value for the 24 hour period).
- Q11. What is the general expectation for payback period within each of the three sectors identified in the question above?
- Q12. Does the Country in which you are working have any foreign payment policy or payment restrictions regarding exchange of monies to the UK for goods supplied? If the answer to this is YES then please provide details of those restrictions as you perceive they will apply to your trading with EMS (European). (Please note the details of our trading terms as defined within Section 3 of our Distribution Agreement).

Questions about Company's Engineering Skills

- Q13. What electrical or electronic experience do you or any of your Company employees have?
- Q14. Do your engineers have experience with electric motors or motor control systems or have they been involved with working in industrial environments as engineers. (Please provide brief information for each person).
- Q15. If you do not have anyone experienced in electrical engineering or electronics within your company how do you plan to support your Customers including installing, commissioning and maintaining EnviroStart products?

Questions about your Communication Systems and IT

- Q16. What are your normal office working hours and working week?
- Q17. Do you provide technical coverage for your Customers through non-office hours?
- Q18. Is your office computerized and are you and your administration staff computer literate? (We expect here that all our Distributors will be able to run Microsoft Office applications including, Word, Excel and PowerPoint and that you will be able to read and print Adobe Acrobat .pdf files).
- Q19. What internet access do you have available? (Dial up, ADSL Broadband, ISDN).
- Q20. What is your office telephone number?
- Q21. What is your mobile number?
- Q22. Do you have a dedicated fax line within your office, if so what is the number of that fax line?
- Q23. How many of your Company employees speak English well enough to take a telephone call if you are not in the office?

Questions for the Distribution Agreement to be Completed

- Q24. What is the full trading address of your company as you would like it to appear on the Distribution Agreement?
- Q25. What is the full name and position of the person who is going to sign the Agreement on your behalf?

Section Two

This section contains the Distributor Agreement as it appears on the EnviroStart web site. This is for reference purposes as a part of this pack. Should we come to an accord and you are going to become a Distributor then we will generate a document specific for your Company.



**EMS (EUROPEAN)
STANDARD TERMS AND CONDITIONS OF
APPOINTMENT OF A DISTRIBUTOR
FOR THE TERRITORY(S) OF**

EMS (EUROPEAN) STANDARD TERMS AND CONDITIONS OF APPOINTMENT OF A DISTRIBUTOR

DEFINITIONS

"EMS (European)"

Means EMS (European) Ltd.

"Agreement"

Means this document setting out the Terms and Conditions of Appointment of a Distributor or Agent for the Product.

"Copyright Material"

Means all Copyright Material, Trade Names, Patents, Know-how and/or Designs now or at any time belonging to or associated with EMS (European) in respect of the Products and the trade of those Products.

"Distributor Agreement"

Means the Distributor Agreement signed by the Distributor or Agent which is subject to these Standard Terms and Conditions of Appointment.

"Distributor or Agent"

Normally means that Company as is identified on Page 19 of this document except as relates to a "Trade Supplier" , (as defined below), of EMS (European) products where the Agreement is not signed, but, excepting the financial targets defined within this Agreement the Trade Supplier is bound by all other aspects of this Agreement.

"Minimum Sales" or "Sales"

Means the minimum sales of EMS (European)'s Products which EMS (European) expects the Distributor or Agent to make in order to maintain and validate this Agreement as defined within this Agreement.

"OEM"

Is an Original Equipment Manufacturer, that is a principal manufacturer of systems selling their systems to a number of customers.

"Products"

Means those products marketed by EMS (European) but does not include support materials such as stationary or other promotional goods.

"Stationery"

Means Product information sheets brochures and any other authorised paperwork or promotional materials made available by EMS (European) from time to time to the Distributor or Agent.

"Territory(s)"

Means the geographic area or region as detailed on the front page of this Distributor Agreement. It defines the place where the Distributor is authorised to sell the Product. Should the Distributor wish to make sales outside of the Territory(s) defined within this Agreement then he must obtain written authorisation from EMS (European) prior to his making that sale.

"Trade Supplier"

Means a company who is selling the EMS (European) products within a Territory defined as being that Country in which their principal operating office is registered. A Trade Supplier is not a signatory to this Agreement but is bound by all aspects of it excepting financial targets.

APPOINTMENT

1

EMS (European) hereby grants to the Distributor or Agent the right to purchase the Products at the agreed discounted price from EMS (European), (as is circulated from time to time), for resale within the Territory(s) within which they have lien to operate, that is within the Territory(s) defined by this Agreement or in the case where this Agreement has not been signed but where the Distributor or Agent is bound by this Agreement then within the Territory(s) in which the Distributor or Agent has their principal office.

1.1

The Distributor or Agent has the right, within the Territory(s) as defined by this Agreement, to appoint sub-distributors or other parties in order to promote and sell the Products as it is accepted that this may be necessary to further the business of the Distributor or Agent. EMS (European) must be advised of all such appointments so as to avoid conflict or circumvention of the signatory or other party bound to this Agreement. It is implicit that all such sub-distributors or other parties will be bound by this Agreement, specifically in relation to that sub-distributor or other party being properly trained, but with the exception of placement of orders for Product and Stationary which are the specific responsibility of the appointed Distributor or Agent defined by this Agreement or in the case where this Agreement has not been signed by the bound Distributor or Agent except where the sub-distributor or other party is outside of the Territory(s) as defined within this Agreement or, in cases where this Agreement has not been signed, outside of the Territory in which the principal Distributor or Agent operates. In such cases clause 1.1.2 carries precedent.

1.1.1

If the Distributor or Agent appoints a sub-distributor or another party who does not operate within the Territory(s) as defined by this Agreement then such appointment must be agreed by EMS (European) prior to that appointment being made in so far as it relates to the handling of EMS (European) products.

1.1.1.1

Where the appointment of a sub-distributor or other party is made subject to clause 1.1.1 of this Agreement but outside of the Territory(s) as defined by this Agreement or outside of the Territory(s) within which the Distributor or Agent normally operates, then the sub-distributor or other party will be treated by EMS (European) as though they were an EMS (European) Distributor or Agent and will be subject to the terms of this Agreement in full and will be expected to be signatories to this Agreement.

1.1.1.2

Any sale or promotion of EMS (European) products taking place prior to training of the sub-distributor or other party will be deemed to be a breach of this Agreement and may, but is not absolute, result in the termination of the rights of both the sub-distributor or other party and the introducing Distributor or Agent to sell the EMS (European) product(s).

1.1.1.2

In areas where exclusivity for a Territory(s) has been granted to an existing Distributor or Agent other than the signatory to this Agreement or company bound by this Agreement then such business as is done within that Territory(s) for the Products by an appointed sub-distributor or other party, must be conducted through the Distributor or Agent who holds exclusivity for EMS (European) Products within that Territory(s); this subject to clause 1.1.1

1.1.2

Where an appointment of a sub-distributor or other party is made outside of the Territory(s) of the principal Distributor or Agent, as agreed by EMS (European) according to clause 1.1.1 then that sub-distributor or other party will be treated by EMS (European) as a Distributor or Agent in all respects according to this Agreement. Any commissions, compensation or other remuneration as a result of sales made by that sub-distributor or other person relating to their relationship with the introducing Distributor or Agent will be solely between that overseas sub-distributor or other person and the principal Distributor or Agent who made the introduction.

1.2

Within each of the individual Territory(s) as detailed on the front of this Agreement it is accepted that following the initial period of six months after the date of the signing of the Agreement, (during which time orders should be placed to the value of £1,000 per month), that providing the Product orders, (exclusive of stationary and other support materials such as Demonstration Cases and Test Equipment), from the Distributor or Agent on EMS (European), meets or exceeds £3,000 a month, (at the purchase prices as distributed from time to time by EMS (European)), then EMS (European) will maintain the Distributor or Agent's rights under this Agreement within the Territory(s). Orders will be evaluated on a rolling three month basis, no previous periods' orders' will carry value forward into the current three month period. (The values defined within this clause may be adjusted in separate written communication issued by EMS (European) but will expressly be changed with the Agreement of the Distributor or Agent).

1.2.1

In Territory(s) where the Distributor or Agent does not maintain this level of business EMS (European) reserves the right to vary this Agreement as it applies to that Territory(s).

1.3

It is implicit in this Agreement that EMS (European) are not looking for Distributors or Agents to hold unwanted inventory except where such stock forms a part of the Distributor or Agents Customer support or marketing and sales programmes.

1.4

Exclusivity, where applicable, and only where specifically attributed by EMS (European), is defined as meaning that EMS (European) will not appoint any other Distributors or Agent's within the Territory(s) as defined provided that the conditions of clause 1.4.1 and other general clauses of this Agreement are met.

1.4.1

The period of exclusivity, if applicable within the Territory(s), will be retained for a period limited only by the general conditions of this Agreement for so long as the requirements of Clause 1.2 and any associated written adjustments to the values defined within that clause, are met. In the case where there is a separate letter signed by both parties relating to exclusivity within given Territory(s) then the conditions of that letter should be read in conjunction with this Agreement and in the case where there is a conflict with this Agreement that letter will override the conditions herein.

1.5

It is understood that there may be Customers or OEM accounts within the Territory(s) as defined relating to this Agreement, (registered with EMS (European) as a Customer by the Distributor or Agent as detailed within clause 3.17.2 of this Agreement), who, notwithstanding the efforts or support of the local Distributor or Agent, may want to deal directly with EMS (European) to the exclusion of that local Distributor or Agent.

1.5.1

In all such cases EMS (European), in conjunction with the Distributor or Agent will, proactively seek to avoid this “direct association” however in cases where it is not possible to change the mind of the Customer in this respect the business will be dealt with directly by EMS (European).

1.5.1.1

Should any Customer registered with EMS (European) by the Distributor or Agent in accordance with clause 3.17.2 of this Agreement contact or approach EMS (European) directly with a view to obtaining pricing or in regard to them doing business directly with EMS (European) to the exclusion of the Distributor or Agent then EMS (European) will notify the Distributor or Agent within two business days of that contact. This notification will be in accordance with clause 16 of this Agreement.

1.5.2

In such cases where a Distributor or Agent’s Customer is now dealing with EMS (European) direct, subject to clause 1.5 then EMS (European) and that Distributor or Agent will endeavour to come to an agreement regarding a commission, (or royalty) that is to be paid to that Distributor or Agent as a result of business being done with that Customer.

1.5.2.1

The agreement regarding the commission or royalty to be paid to the Distributor or Agent will take into account the contribution of the Distributor or Agent to the point in time that the business is being done directly with EMS (European) and also the ongoing contribution of the Distributor or Agent in respect of future support for that Customer. In these cases the agreement regarding commissions or royalties to be paid to the Distributor or Agent should be open book in as much as the detail relates to the Distributor or Agent and impacts that Distributor or Agents payments due.

1.5.2.2

In the event that EMS (European) and the Distributor or Agent are unable to come to an amicable agreement regarding the commission (or royalty) to be paid then a resolution will be sought as follows: In Territory(s) other the United Kingdom and Northern Ireland action will be taken in accordance with clause 9 of this Agreement; within the Territory of the United Kingdom and Northern Ireland action will be taken in accordance with clause 10 of this Agreement

1.5.2.3

In the event that an agreement between EMS (European) and the Distributor or Agent cannot be reached regarding commissions or royalties to be paid without recourse to the actions as defined within clauses 9 and 10 of this Agreement then such lack of agreement will not be allowed, by either party, to detriment the business or support of the Customer.

1.5.2.4

In no case would any payment made as a commission, (or royalty), per product item sold, exceed the differential between the Distributor or Trade Account Buy Price, (dependant on the status of the Distributor or Agent at the time of the business starting to be dealt with directly by EMS (European)), and the Recommended Selling Price as is defined within the Price List as issued from time to time by EMS (European).

1.6

In the event that sales by EMS (European) to an OEM is for ongoing supply to a Customer, (registered by a Distributor or Agent in accordance with clause 3.17.2 of this Agreement), then such business would attract a commission, (or royalty), to that Distributor or Agent,

This commission, (or royalty) would be determined according to the level of involvement that the Distributor or Agent had in creating the need for the EMS (European) product within the OEM and how much support was being provided to both the OEM and also to the end Customer of the OEM. based on the level of support that was being provided to that OEM.

1.6.1

Such payment would be subject to all the terms detailed within clause 1.5.2 and all of it's sub clauses 1.5.2.1 through 1.5.2.4

1.6.1

In such cases as an OEM is multinational then EMS (European) standard criteria regarding "support and service" within any Territory(s) that are outside of the Territory(s) of the Distributor or Agent, come into force as are outlined within clause 1.1.1.1 of this Agreement.

COMMENCEMENT OF APPOINTMENT

2

The Distributor or Agent appointment shall commence following exchange of signed copies of this Distributor Agreement and subject to all the terms having been met as defined from time to time by EMS (European) and shall continue until such time as terminated within the constraints of Clause 9 of this Agreement or as a result of material or incidental breach of any other Clause within this Agreement.

2.1

The Distributor or Agent shall be entitled to describe itself as an EMS (European) "Authorised Distributor or Agent" for the Products, but does not have the authority to bind EMS (European) in any way and shall indemnify EMS (European) against all claims and other liabilities incurred by EMS (European) due to the Distributor holding itself out as the EMS (European) Distributor or Agent.

2.2

The Distributor or Agent shall have the right to terminate this Agreement at any time after the Commencement Date by giving three months prior written notice to the EMS (European). In such an event the Distributor or Agent will provide EMS (European) with all details relating to the sale and installation of such Products as have been sold by the Distributor. (See also section 10 of this Agreement).

THE DISTRIBUTOR OR AGENT'S OBLIGATIONS

3

The Distributor or Agent shall:-

3.1

Purchase and pay for the Products in accordance with EMS (European) ordering procedure and Terms and Conditions of Sale from time to time in force. Orders placed must be in accord with the conditions defined within Clause 1.2 and/or any associated written adjustments to the values defined within that Clause.

3.1.1

For a period of six months from the date of appointment or until the commitments of the first six months of trading as agreed within Clause 1.2 of this Agreement and/or any associated written adjustments to the values defined within that Clause. are met, (whichever takes the longer), all product and carriage apportioned to any order will be paid for, (funds cleared), prior to the shipment of that order.

3.1.1.1

Following this initial period, as defined by Clause 3.1.1 and assuming that payments have been received against invoices submitted, in a timely manner, EMS (European), will relax their expectation of cleared payment prior to shipment and will allow shipments to be made on the understanding that payment will be made and cleared to EMS (European) within fourteen calendar days of the date of invoice. Note that an invoice is generated against a received order in acknowledgement of that order and that payment is therefore expected within fourteen calendar days of the order being acknowledged and the invoice being generated and not when the goods are shipped or delivered; consistent with EMS (European) obligations as defined under Clause 5.4.

3.1.1.1

The Distributor or Agent will pay any taxes due in the Territory(s) on the importation of the Products, including Customs duties and Goods and Services Tax. Such taxes are not transferable to EMS (European).

3.1.1.2

Shipping charges are applicable to all orders placed that are not “collected” by the Distributor or Agent or the Distributor or Agent’s representative customer. Charges for carriage are varied from time to time and are detailed within our Standard Terms of Trading as issued from time to time. (Generally carriage charges are simply those passed on from EMS (European) carriers. In this EMS (European) are quite happy to have Distributors or Agent use their own carriers should this be more cost effective).

3.1.2

For Extended Warranty Registration purposes the Distributor or Agent will advise EMS (European) of the Serial Number of the Product and Customer to which that Product has been shipped at the time that the Product is sold by the Distributor or Agent. (In this see also Clause 5.5 of this Agreement).

3.2

Ensure that the Products are installed and fitted by persons who are adequately qualified, trained and equipped to install such Product in accordance with all local requirements as may be in force within the Territory(s).

3.2.1

Ensure that such persons who are selling and installing the Product are provided with adequate training and information so as to ensure their competence and capability. This training must be provided by EMS (European) and will be conducted within the Distributor or Agent’s Territory(s). (In this see also Section 4 of this Agreement).

3.2.1.1

In accordance with clause 3.2.1 above the Distributor or Agent’s appointment will not be ratified until such time as training has been completed. Such training must be conducted within three months of the appointment of the Distributor or Agent. If not completed in this time then the Distributors appointment may be placed on suspense and no further business will be conducted with that Distributor or Agent until such time as the training has been given.

3.3

In all ways act loyally to EMS (European) and his endeavour's to promote and extend the sale of the Products, and use due diligence and good professional judgment to ensure that equipment is properly surveyed and the Products are installed only on suitable applications.

3.4

Not make any promises representations warranties or guarantees with reference to the Products except such as are consistent with EMS (European)'s published information.

3.5

Bring promptly to the notice of EMS (European) any information received by him that is likely to be of use or benefit to the EMS (European) in relation to the marketing of the Products including the results of all tests and monitored installations.

3.6

Not assign, transfer, charge or in any manner make-over this Agreement or its rights under it or any part of it without the prior written consent of EMS (European), which will not be unreasonably withheld.

3.7

Pay for all Stationery as is required to meet the needs requirements of clause 3.3 at prices as published by EMS from time to time.

3.8

EMS (European) and the Distributor or Agent will take such measures as may be reasonably necessary to prevent the disclosure to any third party of any financial, technical or commercial confidential information of EMS (European) or the Distributor or Agent except for the purpose of any arbitration or litigation or as required by law. The obligations of the parties under this clause will apply during the term of this Agreement and at all times following the termination of this Agreement; and following the termination of this Agreement, neither party will use or seek to use for its own benefit or for the benefit of any other person, any financial technical or commercial confidential information received by it from the other party during the term of the Agreement. This notwithstanding the contents of Clause 1.5 and/or the need for EMS (European) to support any Customers within the Territory(s) as defined by this Agreement.

3.9

Immediately bring any improper or wrongful use of EMS (European) Copyright Material, Emblems, Designs, Models or other similar industrial or Intellectual Property Rights and/or assets which come to his notice to the attention of EMS (European) and, in and about the execution of his duties, use every commercially reasonable effort to safeguard such rights and interest of EMS (European) and assist EMS (European) at the request and cost of EMS (European) in taking all steps to defend the rights of EMS (European) should such action be necessary.

3.10

Sell the Products in the same condition as they are received by him and not deface or alter the Product or its packaging remove or modify any labels instructions Copyright Material or identifying insignia applied to or furnished in connection with the Product or affix to the Product or packaging any labels or signs not previously approved in writing by EMS (European).

3.11

Not in any way during or after the termination of the Agreement make any use of or claim any right in any Copyright Material, Name, Logo, Trademark, Pattern or Design owned by EMS (European) or any

Name, Logo, Trademark, Pattern or Design resembling them without the prior specific written approval and consent of EMS (European).

3.12

Not to sell the Products under any Trademark, Brand or Name other than as specified by EMS (European), unless agreed in writing by EMS (European).

3.13

Indemnify and keep indemnified EMS (European) from and against any and all loss, damage and all liability, (whether criminal or civil), suffered and legal fees and costs incurred by EMS (European) resulting from any breach of the Agreement by the Distributor and any act neglect or default of the Distributor or Agent's sub distributors, employees or representatives.

3.14

Seek professional advice on potential liability and maintain comprehensive public and product and employers liability insurance to the degree necessary given the size and extent of the Distributor or Agent's business within the Territory(s) in which that Distributor or Agent is operating.

3.15

Not use, in the course of his business, any promotional or technical literature relating to the Products other than that published and supplied by EMS (European), nor reproduce any of EMS (European) Copyright Materials, Written Material, Trade Marks or Product Branding for use in the advertising promotion or sale of the Products without the prior written approval of EMS (European).

3.16

Not advertise or promote EMS (European) and/or its Products in any way on the Internet, otherwise known as the World Wide Web, without the prior written approval of EMS (European).

3.17

Provide EMS (European) with any information, which is necessary in order to enable EMS (European) to fulfil the order and to comply with all labelling, marketing and other applicable legal requirements in the Territory(s) as defined by this Agreement.

3.17.1

Provide on a regular monthly basis a rolling three month forecast of expected sales and indication of previous months activity. This will be on the form automatically issued by EMS (European) during the course of the third week of the month, such information will be provided back to EMS (European) by the 1st day of the following month.

3.17.2

In territories where multiple Distributors or Agents are in place it is important that the Distributors or Agents within that Territory provide EMS (European) with regular updates of their Customers and their Customer contact such that those accounts can be registered against that Distributor or Agent and that Distributor or Agent can then be protected from poaching or undercutting by another Distributor or Agent working in the same Territory. (In this the appropriate EMS (European) form should be used). In no way is this activity designed to undermine or stop reasonable or fair competition between Distributors or Agents but is in order to ensure that continuity and proper support for Customers is maintained. Failing to provide this information and maintain the data held will result in that Customer being seen as being unregistered and a fair target for any other Distributor or Agent including in this context EMS (European).

3.18

Obtain any necessary import licenses, certificates of origin or other requisite documents, and pay all applicable customs, duties and taxes in respect of the importation of the Products into the Territory(s) and their resale in the Territory(s). (This to include the provision, by the Distributor or Agent, of any qualifications and or approvals that may be required over and above those already obtained by EMS (European) in order to allow the Products to be sold within the Territory(s) as defined by this Agreement or any other region into which that Distributor or Agent may choose to sell the Products even if outside of the definition of Territory(s) as given within this Agreement).

3.19

Comply with all legal requirements, from time to time in force, within the Distributor or Agent's Territory(s), (as defined by this Agreement), relating to the storage and sale of the Products.

3.20

Any sales made by the Distributor or Agent within the Territory(s), defined by this Agreement, must be capable of being supported by the Distributor or Agent; such that a quick, on-site, response to any issues that arise is possible.

3.21

Notwithstanding the details of Clause 1.3, maintain such stock of the Products, within the Territory(s), as defined by this Agreement, as may be necessary to meet its Customer requirement within the Territory(s). (This stock holding to include spares as recommended from time to time by EMS (European)).

3.22

At the request of EMS (European), provide copies, for information, of such sales aids as are used by the Distributor or Agent, including (without limiting the foregoing), Catalogues, Sales Brochures and Sales Manuals, as relate to the Product.

3.23

Accept that each order for the Products shall constitute a separate contract, and any default by EMS (European) in relation to any one order shall not entitle the Distributor or Agent to treat this Agreement as terminated.

3.24

Accept that all quotations made to the Distributor by EMS (European) are net of any Value Added or any other sales Taxes and/or Shipping Charges for which the Distributor or Agent shall be additionally liable.

3.25

Accept that risk of damage to, or loss of Goods, shall pass to the Distributor or Agent, at the time when EMS (European) notifies the Distributor or Agent that the Goods have been handed to a recognised carrier for shipment. (This notwithstanding any responsibilities or liabilities as held by the carrier prior to their delivery of such items as have been shipped whether commissioned by the Distributor or Agent or by EMS (European)).

3.26

Accept that title to the property manifested in the Products shall not pass to the Distributor or Agent until EMS (European) has received payment in full of the price of any Products supplied and that such payment is due on order placement. (Such variation as may be agreed from time to time with regard to this will be by separate and written agreement between the Distributor or Agent and EMS (European)).

3.27

In the event that the Distributor or Agent wants to have Product, as ordered, shipped to his nominated address, the Distributor or Agent accepts such costs associated with shipment as may in force from time to time by the carrier nominated for such carriage by EMS (European). Such shipping costs will be subject to the same payment terms detailed in 3.1.1 and associated clauses.

TRAINING AND LOCAL SUPPORT FOLLOWING APPOINTMENT

4

It is a condition of appointment of a Distributor or Agent by EMS (European) that full training will be provided to that Distributor or Agent by EMS (European) so that they be able to fully support the Products to the mutual benefit of all parties.

4.1

Sub-distributors or other parties appointed by the Distributor or Agent in accordance with Clause 1.1 are subject to the terms of this Agreement and are therefore subject to the terms of Section 4 of this Agreement

4.2

Training must be conducted by EMS (European) within three months of the appointment of the Distributor or Agent, (or Distributor or Agents' sub-distributor or other party). Training will be undertaken in the geographic region where the Distributor or Agent or that Distributor or Agent's sub-distributor or other party is operating. Until such time as the training is completed in full, (details of the programme are available within the current version of the Prospective Distributors Guide), the Distributor or Agent or their sub-distributor or other party, will be on probation. Following completion of the Training the position of the Distributor or Agent will be validated and a Certificate of Training issued to that Distributor or Agent, (no such certificate will be issued by EMS (European) to any sub-distributor or other party appointed by the Distributor or Agent).

4.1.1

In the event that a Distributor or Agent, their sub-distributor or other party appointed by that Distributor or Agent, successfully undertakes the training and subsequently validates his appointment through sales, according to the requirements of Clause 3.1, but then has his business with EMS (European) lapse for a period of greater than nine months, (for whatever reason), then EMS (European) reserve the right to require that the Distributor or Agent, the sub-distributor or other person appointed by the Distributor or Agent, undertake further training in accordance with Section 4 of this Agreement.

4.1.2

Should training not be undertaken within six months of signing the Agreement, despite the best efforts of EMS (European) to have that training take place, then the Distributor or Agent will be placed on suspension and may be deemed to be in violation of this Agreement and liable to immediate termination without notice.

4.2

When EMS (European) personnel travel for the purposes of providing business support, (for whatever purpose) then the Distributor or Agent will be responsible for the costs of such travel and the out of pocket expenses associated with that trip. (Hotel accommodation, meals et cetera). No charge is made by EMS (European) for the time and resource committed to such support. When the trip is for initial training it is essential that this training be comprehensive and extensive and as such it is necessary that the training be conducted by two people. In the matter of subsequent support rather than training the most

effective person(s) will be sent to support the Distributor in the best possible way. The decisions as to who will attend will be agreed with the Distributor or Agent at the time.

4.2.1

It is expected that on any flight of greater than two hours duration undertaken by EMS (European), the flight will be Business Class or better. As a result of insurance issues it is necessary that EMS (European) book and make payment for all flights that their personnel undertake. Flights, (or other travel), will not be booked without the prior approval of the Distributor or Agent. In all cases travel will be undertaken using the most cost effective, reasonable carrier, for a given route. In order to ensure that effective rates on air carriers are obtained, such flights must be booked at least three weeks ahead of the date of travel, EMS (European) will invoice and expect payment in full from the Distributor or Agent for such agreed travel prior to the booking being made.

4.2.2

In the matter of accommodation during the course of any support trip, this is to be commensurate with reasonable local standards and should, wherever practical, be no less than the equivalent of U.K. Three Star.

EMS (EUROPEAN)'S OBLIGATIONS

5

EMS (European) shall:-

5.1

In accordance with the specification of clauses 3.2.1 and 3.2.1.1 of this Agreement make available to the Distributor or Agent or its representatives, such instruction and training as EMS (European) considers necessary to advise and assist the Distributor or Agent in the proper provision of an efficient marketing, sales, installation and after sales service and make themselves available, commensurate with sensible business practice, for support as required by the Distributor or Agent. In the pursuit of their business growth. Such support is at the discretion of EMS (European) but will not unreasonably be withheld subject the requirements of clauses 3.2, 3.2.1 and 3.2.1.1

5.2

Provide comprehensive technical information including full specifications and installation guidelines for the Products for use by qualified installers recruited by the Distributor or Agent.

5.3

Deliver the Products as ordered by the Distributor or Agent ex-works at EMS (European)'s premises. Unless agreed otherwise, EMS (European) shall, at the expense of the Distributor or Agent, automatically arrange for the Products to be transported and insured, to the Distributor or Agent's premises.

5.4

Use its reasonable endeavours to supply to the Distributor or Agent as promptly as is possible such reasonable and adequate supplies of the Products as are ordered by the Distributor or Agent from time to time at EMS (European)'s current list prices on EMS (European)'s conditions of sale from time to time in force.

5.5

Provide a warranty for the Product, in favour of the Distributor or Agent, in a form as agreed from time to time, which will run for a period of one year beginning on the day of shipment of the Product to the

Distributor and subject to the return to EMS (European) of the completed Warranty Registration Document, enclosed with each unit supplied, this period will be extended as is shown in the table below:

Product Type	Basic Warranty	Warranty Extension on Submission of Registration Form	Total Warranty
Single Phase MEC (SPMEC)	One Year	One Year	Two Years
Single Phase MEC (ACMEC)	One Year	Two Years	Three Years
Three Phase Soft Start	One Year	Two Years	Three Years
Three Phase MEC	One Year	Two Years	Three Years
Three Phase DVPR	One Year	Two Years	Three Years
Three Phase SS Switch	One Year	One Year	Two Years
Reactive Power Compensation	One Year	One Year	Two Years

5.5.1

Not provide a warranty implied or otherwise in any Territory where there is no effective, resident, EMS (European) trained technical support.

5.5.2

Only provide a warranty where the product(s) are installed and commissioned by a qualified engineer with the appropriate skills and understanding of the systems to ensure their safe operation.

5.6

Represent and warrant that the Distributor's use or sale of the Products pursuant to this Agreement will not infringe any intellectual property rights of any third party, and, if such use or sale of the Products by the Distributor does infringe the intellectual property rights of any third party, indemnify and hold harmless the Distributor or Agent.

5.7

To make available to the Distributor or Agent, such brochures and technical guides as EMS (European) considers sufficient to market and promote the Product. Such documents will be available to the Distributor or Agent at a cost as is to be advised from time to time.

5.8

Not supply and/or make a charge against the Distributor or Agent for any items which the Distributor or Agent has not expressly ordered, should such charge not be defined within this Agreement.

5.9

Except where necessary to protect its Company or Brand Image or where directly requested to do so by the end Customer for the Product, EMS (European) will not communicate or work directly with any Customer except with the agreement of the Distributor or Agent. The same applies in the matter of appointed Sub-Distributors as allowed under section 1.1 of this Agreement.

RIGHTS RESERVED TO EMS (EUROPEAN)

6

EMS (European) reserves, (to itself), the following rights, notwithstanding anything to the contrary contained in this Agreement or elsewhere:-

6.1

To vary the prices charged to the Distributor or Agent for the Product and to vary its conditions of sale by giving twenty-eight days notice in writing, to the Distributor or Agent, but, for the avoidance of doubt the Distributor or Agent shall remain at all times entitled to resell the Products to its customers at such prices as the Distributor or Agent shall see fit.

6.2

To make changes in the design, production style or finish of any specific product within the range or discontinue its manufacture. (Generally EMS (European) shall endeavour to make any Distributor or Agent aware of such intended change or discontinuation, however there is no absolute obligation to do so).

6.3

In the event of its business, or any part of it, (being a part concerned in the manufacture or sale of the Product or any range of those Product), being transferred to any other company, EMS (European) can assign its rights and obligations under the Agreement to that other company after giving one months notice of such assignment in writing to the Distributor or Agent.

COPYRIGHT MATERIAL

7

EMS (European) hereby authorizes the Distributor or Agent to use the Copyright Material in the Territory(s) on or in relation to the Product for the purposes only of exercising its rights and performing its obligations under this Agreement.

7.1

The Distributor shall ensure that each reference to, and use of, any of the Copyright Material by the Distributor or Agent, is in a manner from time to time approved by the EMS (European).

7.2

The Distributor or Agent shall not, on/or in relation to the Product; or validity or the goodwill of the EMS (European) therein:-

7.2.1

Use in relation to the Product, any other Copyright Material other than the Copyright Material provided without obtaining the prior written consent of the EMS (European); or

7.2.2

Use in the Territory(s), any other Copyright Material or Trade Names so resembling any Copyright Material of EMS (European) as to be likely to cause confusion or deception.

7.3

Except as specifically provided in this Agreement, the Distributor or Agent shall have no right in respect of any Copyright Material used by EMS (European) in relation to the Product, or of the goodwill associated therewith, and the Distributor or Agent 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 EMS (European).

7.4

The Distributor or Agent shall take all such steps as EMS (European) may reasonably require to assist EMS (European) maintain the validity and enforceability of the Copyright Material of EMS (European) in the given Territory(s), during the term of this Agreement.

7.5

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

FORCE MAJEURE

8

If either party is affected by circumstances beyond its control (including, without limitation, any act of God, strike, lockout or other form of industrial action), it shall notify the other party of the nature and extent thereof.

8.1

Neither party shall not be deemed to be in breach of this Agreement, or otherwise be liable to the other party by reason of any delay in performance, or non-performance, of any of its obligations hereunder to the extent that such delay or non-performance is due to circumstances beyond its control and of which it has notified the other party. In such cases the time for performance of that obligation shall be extended.

8.2

If the circumstances beyond either party's control prevail for a continuous period in excess of eight weeks, the parties shall enter into bona-fide discussions with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable.

DISPUTE RESOLUTION

9

This clause relates to those Distributors or Agents who are based outside of the United Kingdom and Northern Ireland

9.1

In the event of any dispute between the Distributor or Agent to which this Agreement relates and any of EMS (European) other Distributors or Agents, wheresoever based. or with EMS (European) as to any of the provisions of these terms and conditions of appointment or such other part of this Agreement, then such dispute shall be openly discussed in a face to face meeting, in the UK, with senior Directors of both EMS (European) and the Distributor or Agent(s) involved in the dispute, and, by mutual agreement, any other relevant parties, with the objective of amicably resolving the issues. However, in the event of their being no mutual agreement reached then the matter will be determined by EMS (European) whose decision shall be final and binding upon the parties concerned .

10

This clause relates to those Distributors or Agents who are based within the United Kingdom and Northern Ireland

10.1

In the event of any dispute between the Distributor or Agent to which this Agreement relates and any of EMS (European) other Distributors or Agents, wheresoever based. or with EMS (European) as to any of the provisions of these terms and conditions of appointment or such other part of this Agreement, then such dispute shall be openly discussed in a face to face meeting with senior Directors of both EMS (European) and the Distributor or Agent(s) involved in the dispute, and, by mutual agreement, any other relevant parties, with the objective of amicably resolving the issues. However, in the event of their being no mutual agreement reached then the matter may be referred by either party for determination by an arbitrator who, in default of an agreement, shall be appointed by the President of the Law Society and who must determine the dispute in accordance with the Arbitration Act 1996 or any amendment or statutory enactment thereof. The cost of such arbitration will be borne by the Distributor or Agent in this case.

TERMINATION

11

Either party shall at any time have the right, at its discretion, by giving written notice to the other party to suspend its performance or terminate this Agreement if the other party:

11.1

Commits any breach of this Agreement and such breach, (if capable of being remedied), remains unremedied for seven days after being called to its attention, in writing, by the party not in default.

11.1.1

Enters into liquidation whether compulsory or voluntary becomes bankrupt has a receiver appointed for all or any part of its business becomes insolvent compounds or makes any arrangement with its creditors or takes or suffers any similar action in consequence of debt.

11.2

EMS (European) shall at any time have the right, at its discretion, by giving written notice to the Distributor or Agent to terminate this Agreement if.

11.2.1

EMS (European) ceases to manufacture or deal in the Products for reasons beyond its control unless the rights and obligations of the EMS (European) under it are assigned in accordance with clauses 6.2 and 6.3.

11.2.2

The Distributor or Agent commits any act of dishonesty or omission which in the reasonable opinion of the EMS (European) may adversely affect its interest or presence within the market.

11.3

This Agreement shall automatically lapse in the event that the minimum sales as have been defined within this Agreement in clause 1.2 are not being maintained and have not been maintained for a period of no less than three full calendar months. Notification need not necessarily be given to the Distributor by EMS (European) in this event.

11.4

During and after the termination of this Agreement, neither party will defame the other in any way.

CONSEQUENCES OF TERMINATION

12

The Distributor or Agent shall immediately remove from its premises all signs relating to the Products and to being a Distributor in the Products and shall discontinue any previously permitted use of any trade mark name or logo of the EMS (European) and shall cease all forms of advertising in connection with the Products.

12.1

Upon the expiration or termination of this agreement EMS (European) Ltd may, but is not obliged, to purchase from the Distributor or Agent any or all of the products then owned by the Distributor or Agent at Distributors Buy Price as defined by the Price List under which the goods were originally purchased by the Distributor less a reasonable deduction for any damage or deterioration of the products.

12.2

The Distributor or Agent shall promptly cease to use commercially all samples photographs price lists and supplies of the Stationery or other material or documents of whatever kind prepared by or supplied to the Distributor in connection with the distributorship.

12.3

Save as above expressly provided the Distributor or Agent shall on the termination of this Agreement have no right to any compensation for goodwill customers profits expenses or for any other loss or damage arising as a result of the expiration or termination of this Agreement for any other cause.

WAIVER ENTIRE UNDERSTANDING AND VARIATION

13

The waiver by the EMS (European) of any breach of any term of this Agreement shall not prevent the subsequent enforcement of that term and shall not be deemed a waiver of any subsequent breach

13.1

This Agreement and the standard terms and conditions of appointment embody the entire understanding of the parties in respect of the matters contained or referred to in them and there are no promises terms conditions or obligations oral or written express or implied other than those contained in this Agreement and the standard terms and conditions of appointment.

13.2

Nothing within the terms agreed constitutes a 'Franchise'. The Distributor or Agent must accept full responsibility, taking professional advice where appropriate to ensure he has the necessary experience, ability and resources to succeed within this business. EMS (European) accepts no responsibility for the success or failure of the Distributor or Agent due to incompetence or indeed to any cause of failure whatsoever created by the Distributor or Agent or that business operation.

13.3

All previous agreements and arrangements if any relating to the sale of the Products made between the Distributor or Agent and EMS (European) are superseded.

13.4

No modifications or waiver of any of the terms of this Agreement shall bind either party unless in writing signed by duly authorized representatives of all parties who are signatories to this Agreement.

LAW AND CONSTRUCTION

14

This Agreement and the Standard Terms and Conditions of Appointment and Trade shall be governed by English Law and the Distributor or Agent consents to the non-exclusive jurisdiction of the English Courts.

14.1

The headings of conditions are for convenience of reference only and shall not affect their interpretation.

CONFIDENTIALITY

15

Under the terms of this Agreement it is understood that the Distributor or Agent, (and therefore their appointed sub-distributors and/or other parties), will not divulge any technical or commercial information about EMS (European), (deemed under general construction to be of value or of interest to a third party), where that third party is in any way a business competitor or could be deemed to be a business competitor of EMS (European).

15.1

This limitation extends to the passing on of any materials or documents of any sort that may be deemed by EMS (European) to be of technical or commercial value to that competitor including but not exclusively, pricing, product specification, product performance details, marketing information and communications exchanged between EMS (European) and the Distributor or Agent and/ or their sub-distributors and other appointed parties.

15.1.1

The above does not extend to any details which have been made freely available to the market by EMS (European) and can be deemed to be documents in the public domain. This would include, but is not exclusive of, all information available on the public areas of the EMS (European) web site.

NOTICES

16

Any notice to be given under this Agreement or Standard Terms and Conditions of Appointment and Trade shall be in writing and electronically transmitted or forwarded by first class prepaid registered or recorded delivery letter post to the receiving party at its business address, as last notified in writing to the

other party, and shall be deemed to have been given on the date of the e-mail, telex or facsimile transmission or five days following the date on which the notice was posted.

SIGNATURES

17

Signing this Agreement indicates the full acceptance of all of the terms and conditions laid out herein.

17.1

This Agreement may, (notwithstanding the details of clause 12.3), be changed by EMS (European), from time to time as is seen reasonable by them and may, by exchange of letters, faxes or e-mail, (in accordance with clause 16 of this Agreement), be accepted as being changed, without exchange of new signed documents as indicated in clause 12.4. (No change will be detrimental to the general promises and commitments made by EMS (European) within section 5 of this Agreement).

17.2

This Agreement is signed by both parties on the understanding that the signatories are lawful and competent representatives of their companies. In the event that such is found not to be the case then the Agreement will be deemed null and void and the Distributor will forthwith considered his Agreement to be terminated under clause 11.2.2.

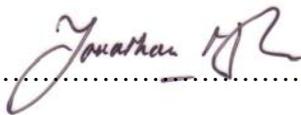


The following signatures bear witness to the acceptance of this Agreement by all defined parties.

For and on behalf of:

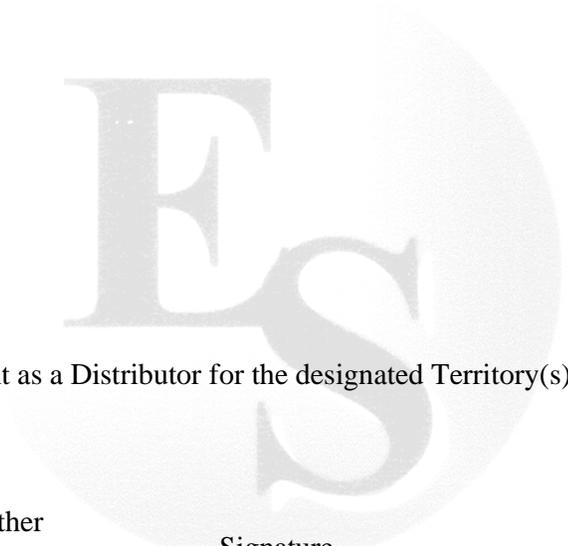
EMS (European) Ltd

Unit 1, 67 Nairn Road,
Bloxwich, Walsall
West Midlands. WS3 3XB

Dr. Jonathan Hughes
Name:.....Signature.....


For and on behalf of:

A. N Other Ltd
Somewhere Street
Anywhere
AN Land



With regard to their appointment as a Distributor for the designated Territory(s)

Mr. A. N. Other
Name:.....Signature.....

Date:.....

THIS IS THE FINAL PAGE OF THIS AGREEMENT

Standard Terms and Conditions of Trade

1. If the buyer defaults on any of these terms then payment in respect of all goods delivered by the seller to the buyer whether before or after the default shall become due and payable forthwith.
2. In such circumstances the seller may withhold further deliveries to the buyer.
3. The seller shall be entitled to charge interest on all outstanding amounts at the rate of 2½% per calendar month compounded monthly from the date of the invoice to the date of payment, interest to run as well after as before Judgement and as well after as before any order resolution or appointment for the liquidation, winding-up, receivership or Bankruptcy of the buyer in the event that the conditions of Clause 12 and/or Clause 13 of these Terms and Conditions are not met.
4. Any payment by the buyer after default may be applied at the option of the seller to any outstanding invoice or to interest before capital.
5. The buyer shall not be entitled to withhold payment of any amount payable by reason of any dispute or claim by the seller in connection with any sale and in the case of any short delivery or delivery of damaged goods shall remain liable to pay the full invoice of all other goods delivered or available for delivery.
6. Payment terms may be revised as a result of information received from relevant credit checks.

DELIVERY

7. Changes to specification may affect delivery lead times.
8. Delivery of the goods shall be made by the seller causing the goods to be delivered either to the place stipulated in the buyer's order or if no such place is stipulated then to the address of the buyer as shown in the order or to an agreed location for storage purposes.
9. Any dates quoted for delivery of the goods are approximate only and the seller shall not be liable for delay in delivery of the goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the seller in writing. The goods may be delivered by the seller in advance of the quoted delivery date upon giving reasonable notice to the buyer.
10. Where the goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the seller to deliver any one or more of the instalments in accordance with these conditions or any claim by the buyer in respect of any one or more instalments shall not entitle the buyer to treat the contract as a whole as repudiated.
11. If the seller fails to deliver the goods for any reason other than for a reason which is cause beyond the seller's reasonable control or which is the buyer's fault then the seller is accordingly liable to the buyer and the seller's liability shall be limited to the excess (if any) of the cost to the buyer (at the cheapest available market) of similar goods to replace those not delivered over the price of the goods.
12. If the buyer fails to take delivery of the goods or fails to give the seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the buyer's reasonable control or by any reason of the seller's fault) then without prejudice to any other right or remedy available to the seller the seller may store the goods until actual delivery and charge the buyer for the reasonable costs (including insurance) of storage.

RISK AND PROPERTY

13. Risk of damage to or loss of the goods shall pass to the buyer at the time of delivery (or at the time of storage under Clause 22 above) or if the buyer wrongfully fails to take delivery of the goods the time when the seller has tendered delivery of the goods.
14. Notwithstanding delivery and the passing of risk in the goods or any other provision of these conditions the property in the goods shall not pass to the buyer until the seller has received in cash or cleared funds payment in full of the price of the goods and all other goods agreed to be sold by the seller to the buyer for which payment is then due.
15. Until such time as the buyer has paid the seller in full for the goods and all other goods which the seller has supplied to the buyer:-
16. The buyer shall hold the goods as the seller's fiduciary agent and bailee for the seller.
17. If the buyer sells the goods the buyer shall hold the proceeds of sale on trust for the seller in a separate bank account.
18. The seller may trace the proceeds of sale that the buyer receives into any bank or other account that the buyer maintains.
19. If the buyer sells the goods the seller may by written demand require the buyer to assign to the seller the buyer's rights to recover the price from its purchaser.
20. The buyer shall not assign to any other person any rights arising from the sale of the goods without the seller's written consent until such time as the buying price is paid in full (see Clause 30)
21. The buyer shall store the goods separately from any other goods until they become the buyer's property or until the buyer sells the goods and shall keep the goods properly stored, protected, insured and identified as the seller's property.
22. The buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of the seller but if the buyer does so all money owing by the buyer to the seller shall (without prejudice to any other right or remedy of the seller) forthwith become due and payable.

SELLER'S WARRANTY AND LIABILITY

23. Subject to the conditions set out below the seller warrants that the goods will correspond with their specification and are of merchantable quality at the time of delivery.
24. The above warranty is given by the seller subject to the following conditions:
25. It is the buyer's responsibility to ensure that all goods specified in the quotation conform to all relevant performance requirements.
26. The seller shall be under no liability in respect of any defect arising from fair wear or tear, wilful damage, negligence and normal working conditions failure to follow the seller's instructions mis-use or alteration or repair of the goods without the seller's approval.
27. Subject as expressly provided these conditions and except where the goods are sold under consumer sale (as defined by The Sales of Goods Act 1979) all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
28. Any claim by the buyer which is based on any defect in the quality or condition of the goods or their failure to correspond with specification (whether or not delivery is refused by the buyer) be notified to the seller within seven working days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused and the buyer does not notify the seller accordingly the buyer shall not be entitled to reject the goods and the seller shall have no liability for such defect or failure and the buyer shall be bound to pay the price as if the goods had been delivered in accordance with the contract.
29. If any defect of workmanship or material in the goods supplied is reported to the seller within one years from the date of delivery or within such period during which the goods are covered by any warranty, guarantee or indemnity obtained by the seller from the manufacturer thereof, whichever shall be the shorter period, and the defective part of the goods in question returned to the seller at the buyer's risk and expense immediately upon discovery of such defect, the seller will at its own cost and its own option arrange for the replacement or repair of the defective part.
30. All warranties are valid only when the equipment supplied are installed and used within the conditions and operational specifications as defined at the time of quotation and as defined by the manufacturer.
31. Except in respect of death or injury caused by the seller's negligence, the seller shall not be liable to the buyer by reason of any representation or any implied warranty condition or other term or any duty of common law or under the express terms of the contract for any consequential loss or damage (whether for loss of profit or otherwise) costs expenses or other claims for consequential compensation whatsoever and whether caused by the negligence of the seller its employees or agents or otherwise which arise out of or in connection with their supply of the goods or their use or re-sale by the buyer except as expressly provided in these conditions.
32. The seller shall not be liable to the buyer or be deemed to be in breach of the contract by reason of any delay in performing or any failure to perform any of the seller's obligations in relation to the goods if the delay or failure was due to any cause beyond the seller's reasonable control.

INSOLVENCY OF THE BUYER

33. This clause applies if the buyer make any voluntary arrangements with creditors or becomes subject to an administration order or (being an individual firm) becomes bankrupt or (being a company) goes into liquidation (other wise that for purposes of amalgamation or reconstruction); or an encumbrance takes possession or a receiver is appointed of any of the property or assets of the buyer; or the buyer ceases or threatens to cease to carry on in business; or the seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the buyer and notifies the buyer accordingly.
34. If this Clause applies then without prejudice to any other right or remedy available to the seller the seller shall be entitled to cancel the contract or to suspend any further deliveries under the contract without any liability to the buyer and if the goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

COPYRIGHT

35. All drawings and technical documents by either of the parties to the other party remain the property of the delivery party and the receiving party may not improperly use them reproduce them or bring them to the knowledge of a third party.
36. The buyer shall indemnify the seller against all damages penalties costs and expenses to which the seller may become liable as a result of any work done in accordance with the buyer's requirements under the contract involving infringement or alleged infringement of any patent copyright or registered design.

FORCE MAJEUR

37. The seller shall be under no liability if it shall be unable to carry out any provision of the contract for any reason beyond its control including (without limiting the foregoing), act of God, legislation, war, fire, flood, drought, failure of power supply, lock-out, strike or any other action taken by employees in contemplation or furtherance of a dispute or owing to any inability to procure materials required for the performance of the contract.
38. During the continuance of such contingency the buyer may by written notice to the seller elect to terminate the contract and pay for work done and materials used but subject thereto shall otherwise accept delivery when available.

CANCELLATION

39. The seller may at its sole discretion accept or reject the cancellation of any order once such an order has been placed by the buyer.
40. In the event of a cancellation being accepted by the seller all goods delivered pursuant to the cancelled order must be returned in unused re-saleable condition at the buyer's expense within four days from the date on which the seller accepted the cancellation.
41. Any goods that do not comply with the requirements of Clause 56 must be collected by the buyer from the seller's premises within four days of the seller dispatching notice to this effect to the buyer's last known place of business. In default the buyer is deemed to have failed to accept the delivery.
42. The buyer will be liable to a reasonable handling charge payable to the seller in respect of the cancelled order.
43. The buyer may be liable at the seller's discretion to a charge in respect of the work done and materials obtained pursuant to the cancelled order prior to the date on which the seller accepts such cancellation.

SEVERANCE

44. If any provision (or part thereof) in these conditions of sale is found to be invalid, ineffective or unenforceable, the invalidity, ineffectiveness or unenforceability of such provision (or part thereof) shall not effect any other provision or the remainder of the partly invalid, ineffective or unenforceable provision.
45. All provisions (or part thereof) not affected by such invalidity, ineffectiveness or unenforceability as referred to in Clause 67 shall remain in full force and effect.

WAIVER

46. Failure of the seller to enforce at any time or for any period of any time any of the terms herein contained shall no operate as a waiver of such terms or of any rights contained herein.
47. The seller shall at all times be entitled to enforce each and every term contained herein.

ASSIGNMENTS

48. The buyer may not assign any contract made or rights arising hereunder in whole or in part without the seller's prior written consent.

MODIFICATION

49. Notwithstanding that any item of goods has at any time been shown to the buyer this contract does not constitute a sale by sample.
50. The seller may modify without notice; existing designs and specifications from time to time as it may in its 'sole discretion considered expedient'.

CURRENCY FLUCTUATIONS

51. Invoices not settled within thirty (30) days will be subject to additional charges to reflect any change in the exchange rate that is adverse to the seller.
52. The official rate of exchange shall be the closing rate of exchange in the London Market as published in the Financial Times.

NOTICES

53. Any notice required to be given by either party to the other under these conditions shall be in writing and addressed to that party at its registered office or principle place of business or such other address as may at the relevant time have been notified pursuant to the provisions of the party giving notice.

LAW

54. The laws of England shall govern these Terms and Conditions and each party hereby submits to the non exclusive jurisdiction of the English Courts

May 2008

Section Three

This section contains details of the training that we will expect you to undertake within three months of your signing the Distribution Agreement, including an outline agenda for that training. We also provide details of the EMS (European) Distributor Certification Programme and information about the support materials and systems that you will generally need to be effective as a Distributor for us.

Part One: Training:

We want you to succeed as a Distributor for EMS (European) and have established that the only way that this can happen is if you are properly trained in our Products, their capabilities and technical specification, how they are used and how to install and commission them. We recognise that even though we provide a twenty four hour technical support service it is essential that you and your engineers be capable of dealing with the day to day issues that arise and, of course, it is necessary that you have the appropriate knowledge in order to be able to effectively sell the products.

Through experience we have also identified that the only effective place to conduct the training is in the country in which you are going to be operating as a Distributor, this is because we can then work with all of your people, (not just the few that can be sent to the UK), and more importantly, when doing the practical training of conducting audits and installation, we will be doing so in the conditions in which you will have to operate.

Training is of course a continuous process undertaken as your understanding and capabilities grow and you raise questions and seek support from us; however we undertake the basic training in two parts, the initial “in depth” coverage of all of the products and their applications, (outlined below), followed some six months to a year later by a second visit, (normally one person only required then), to re-enforce the initial training and to correct mis-direction and problems arising.

We have two people conduct the primary training as the work involved in such a condensed training session is beyond that which one person can handle.

We have established a training programme that we will want to follow when we are with you; this is not fixed in stone but should follow the general outline below:

Day One:

Morning: Introduction to the EnviroStart Three Phase Soft Start, this including basic operation, capabilities, customers and marketing.

Early Afternoon: Completion of the EnviroStart Three Phase Soft Start, including, installation, commissioning and problem solving.

Late Afternoon: Introduction to the EnviroStart Three Phase Motor Energy Control, this including detailed operation, capabilities, customers and marketing as well as how to conduct audits and identify and predict motor energy savings in particular systems

Day Two:

Morning: Completion of the EnviroStart Three Phase Motor Energy Control, including, installation, commissioning and problem solving.

Early Afternoon: Introduction to the EnviroAC Single Phase Motor Energy Control, this including basic operation, capabilities, customers and marketing as well as how to conduct audits and identify and predict motor energy savings in particular systems. This with particular emphasis to refrigeration and air conditioning systems.

Late Afternoon: Completion of the EnviroStart Single Phase Motor Energy Control, including, installation, commissioning and problem solving.

Day Three

Morning: Introduction to the EnviroVAr Pf Correction systems including the EnviroSwitch solid state contactor assembly

Afternoon: Conclusion of the EnviroVAr Pf Correction systems including the EnviroSwitch solid state contactor assembly

(During these days we will also cover the details of set up and adjustments for each of the systems as well as covering the default settings on each unit. We will additionally use the Single Phase Demonstration Case to show you how the systems operate and also how to use the Demo Case to best effect with your Customers).

Days Three Afternoon, Day Four and Five Morning

We would want to use these days to visit customers, take measurements, use the formats and processes covered and demonstrated in the theory training in Days One, Two and Three to convert those measurements into savings predictions. We would then want to supervise your engineers conducting an installation and measuring the results of that installation. (These installations to be on at least one three phase system preferably wiring into a system with an existing Star – Delta starter and also onto a single phase system, preferably a refrigeration system).

Undertaking the above activities with you we can demonstrate the predictive nature of the processes we use to establish savings and then, having completed an installation and taken measurements, to show those savings in actuality. This not only provides confidence for you and your engineers in the process of installing and commissioning but also substantiates the savings claims of the MEC units in, hopefully a number of different applications.

There is a secondary benefit of such installations and measurement in that, although most of the systems may only be on site for a few hours, they will have been installed and will provide hard evidence of installations and savings within your Country. This can be very important when you are subsequently talking with other Customer sites.

The format for these “field” days and the duration and number of the site visits is very dependant on the environment in which you are based, travelling times, openness of the customer base and so on. We recognise these issues and would just want to work with you to ensure that at the end of the training period we were satisfied that you were fully conversant with and had capability to support EnviroStart through all of its “sales process” of introduction to installation.

Within this overall time period we are very happy to work with you in meeting with key accounts and also, if required, “launching the product” within your region through means of our supporting you at a launch seminar or similar. (Arrangements for such actions are of course up to you and your local knowledge of “what will work best”).

Day Five Afternoon

Early Afternoon: Introduction to the EnviroStart Digital Voltage and Power Regulator, this includes basic operation, capabilities, customers and marketing as well as installation, commissioning and problem solving.

Mid Afternoon: Test of knowledge gained through an interactive Question and Answer Session.

Prior to our coming to visit you we will send you an additional short questionnaire so that we can be certain to have enough support documentation for all of the training attendees as well as establishing whether there are any conditions associated with the flights, the need to obtain visas and so on.

It is our general policy, because of insurance considerations, that we make the flight arrangements and book the flights within the UK. In order for this to be possible we want to have the flights booked and paid for a full four weeks ahead of the time of flying, this to ensure that we can obtain the best possible flight costs for you and also to fit in with our very tight schedules.

Our process in this matter is to get quotations for flight from various travel organisations and via various routes and then submit those to you for your approval, on your agreement with regard to a particular flight we will then invoice you for the trip, and we cannot book the flight until payment in full is received in full.

We appreciate that this may seem a harsh approach however we have to cover the cost of the flights with our agents as the tickets are booked and therefore cannot wait for your payment to be processed after booking.

Part Two: Certification Levels:

We recognise that it is important that both Distributors and Customers can establish who is a “qualified EnviroStart Distribution Company” and who is not. (We post the details on the EnviroStart web site). We also recognise that Distributors themselves want the recognition that certification brings and as such we have established the following Qualification Levels:

Blue Certification

This level is achieved following EMS (European) providing the basic training at, or shortly after, a Distributor’s appointment. This Certificate is awarded when we believe that the Distributor, and all of his key personnel, (including all sub Distributors), have gained an effective understanding of how to identify applications suitable for EnviroStart products, how to sell the concept of the EnviroStart products, how to commission EnviroStart products and also to have a basic capability in fault finding and resolving Customer issues with EnviroStart products following installation. This is the base level of capability required to retain Distribution rights following appointment, failure to obtain this certificate within an agreed period of time, (usually within three months of a Distributor being appointed), will result in that Distributor being placed on suspension until such time as the qualification has been achieved. (The award of the Blue Certificate does not limit or change any existing contractual obligations).

Silver Certification

This level is achieved following a Distributor proving and maintaining his effectiveness within all areas of capability required by the Blue Certificate and also having been operating as an EMS (European) Distributor for a minimum of one year and having achieved the originally agreed business goals as defined within the Agreement with EMS (European). Additionally the level of capability with EnviroStart products will be agreed to be of a level where the Distributor is, in effect, self sufficient within their market, operating pro-actively in maintaining and growing business as well as supporting the identification, installation and commissioning of products within their Customer base.

Gold Certification

This is the highest level of certification that can be achieved by an EMS (European) Distributor. It would be unlikely to be awarded to anyone with less than three years experience in selling, installing and supporting EnviroStart products and would be primarily awarded to those Companies who have demonstrated outstanding support for their Customer base and outstanding growth of business within their market.

Part Three: Support Materials Required:

As a part of your training, which we detailed above, you will have seen that we want to undertake installations to ensure that the classroom theoretical understanding can be translated into field practical understanding and implementation. In order to do this “field work” it is necessary that you have a small

amount of product available. This will then not only serve to provide training support but will also be available to show your Customer base as you open discussions with them.

We are not rigid in the products that you will have but do specify that it be a minimum of:

Two off 22kW Three Phase MEC (400-TPMECG6-22) at £420/unit

One off 37kW Three Phase MEC (400-TPMECG6-37) at £615/unit

One off 55kW Three Phase MEC (400-TPMECG6-55) at £870/unit

Two off 10A Single Phase MEC's (220/110-SPMECG6-10A-50/60 at £89/unit

One of Single Phase Demonstration Case (Demonstration Case) £500/unit (Inclusive of motor)

Total Cost of Initial Inventory £3,003 (Exclusive of shipping and relevant taxes if applicable)

The above products need to be at your company location prior to our arriving to undertake the training and therefore they should be ordered at the time that we agree the training dates and we invoice for the flights; this should allow sufficient time for funds to be transferred and for the goods to reach your offices.

As part of the training we are expecting your engineers, under our guidance, to install both three phase and single phase systems. For this they will require appropriate electricians tools and general installation materials such as cabling suitable for the size of EnviroStart and crimps, (terminations), suitable for that cable. These tools should be available at the time of training.

Additional to the above it is necessary that your Company be positioned to take accurate measurement of motor current and power factor figures, so as to be able to complete audit details prior to making any quotation, and also to be able to take measurements of motor systems after EnviroStart installation so as to be able to show Customers that savings in energy consumption are being achieved. There are many test equipments suitable for this purpose however we would recommend that you consider:

- The Elcomponents NanoVip for conducting pre sale testing as it is both small, easy to carry and relatively inexpensive. (Details of this system can be found at <http://www.elcomponents.co.uk>).
- The Circutor AR5 Three Phase Analyser for conducting post installation examination of the motor system. This is a more comprehensive test equipment which is able to overcome the complications caused by the waveform distortions generated by the EnviroStart in energy save mode. Please note that the NanoVip is not suitable for this "post install" testing. (Details of the Circutor AR5 can be found at <http://www.circutor.com>).

Should you wish we are able to source these systems for you; the prices do vary, however at the date of this document they are £690 for the NanoVip Standard, £950 for the NanoVip with Memory and £2,950 for the Circutor. These are complete kits with all the necessary CT's and probes etcetera.

We hope that the detail in this document has helped you to understand a little more about how we operate and what we expect of our Distributors. This does not remove the expectation that you will have more questions however we hope that it answers many of the more basic queries that you have.

Please review our web site for details of the EnviroStart products; the product information is all available from the Products Page whilst the Installation and Commissioning Guides for the products are available from the Downloads Page.