



Ingersoll-Rand

Ingersoll-Rand International Sales Inc.

Agreement N°: 407/034

DISTRIBUTOR AGREEMENT

21 FEB 1995

AGREEMENT made this _____ day of _____, 19____
by and between INGERSOLL-RAND INTERNATIONAL SALES INC., with offices at 9, route des Arsenaux,
CH-1700 Fribourg, Switzerland ("Company"), and NEO - AIR ENGINEERING CO., LTD.
with offices at No. 30, 277 Nong, 68 Alley, sue Yuan
Road, Fong Yuan, Taichung, TAIWAN R.O.C. ("Distributor").

1995年授權為中部獨家代理

THE APPOINTMENT

- 1. (a) The Company appoints Distributor and Distributor accepts the appointment as a non-exclusive distributor of equipment, parts and accessories ("Products") included within Schedule "A", attached hereto and made part hereof.
- (b) The Company shall sell to Distributor and Distributor shall purchase Products from the Company at the prices and upon such terms and conditions as may from time to time be established by the Company.
- (c) The Distributor shall pay for Products in strict accordance with the terms of payment specified within Schedule "B", attached hereto and made a part hereof.

TERRITORY

- 2. (a) Distributor shall, during the term of this Agreement, have a non-exclusive right to sell Products in *CENTRAL OF TAIWAN* ("Territory").
- (b) This Agreement and the rights conferred on Distributor hereunder relate solely to the purchase and sale of Products and do not restrict in any manner the Company's right to otherwise engage in business enterprises within Territory.

TERMS AND CONDITIONS OF SALE

- 3. (a) All orders for Products placed by Distributor with Company shall be subject to acceptance by an authorized representative of the Company.
- (b) Unless otherwise agreed in writing all orders for Products shall be shipped in accordance with the terms and conditions of this Agreement and at prices FAS port of shipment (nearest port to the supplying location) in effect at the time the order is acknowledged; provided, however, the Company expressly reserves the right to change selling prices to those in effect at the time of shipment upon seven (7) days' written notice to Distributor.
- (c) Except as provided within paragraph (b) above, the Company reserves the right to change prices, terms of payment and terms and conditions applicable to the sale of Products at any time upon written notice to Distributor given fifteen (15) days prior to the effective date thereof.

PAYMENT

- 4. (a) Distributor agrees to pay the Company the purchase price of Products in accordance with billing and payment procedures existing at the time of the acceptance of its order by the Company.
- (b) Distributor agrees it shall obtain written permission from the Company before it shall return Products for credit or exchange.
- (c) Distributor agrees that it shall make no deduction or set off against sums due to the Company on the sale of Products to Distributor unless the Company has issued a credit memorandum in the amount of such deduction or set off.
- (d) Payment shall be in U.S. Dollars, or any other currency acceptable to the Company.

USE OF TRADEMARKS AND TRADENAMES

- 5. Distributor shall not use any word, phrase, tradename or trademark likely to be confused with the business of the Company or its parent, or any subsidiary or affiliate of the parent of the Company without the express written consent of the Company. The Company reserves the right to review such materials used by the Distributor in order to assure compliance herewith.

DISTRIBUTOR'S OPERATING REQUIREMENTS

- 6. (a) Distributor shall use its best efforts and all reasonable means to develop the market for Products within the Territory and give satisfactory service to the owners and user thereof.
- (b) Distributor shall carry such inventory of complete Products and genuine Ingersoll-Rand parts and accessories as is required to properly perform its sales and service obligations.
- (c) Distributor shall establish and maintain adequate service personnel capable of servicing and installing Products and performing Product warranty obligations approved by the Company.
- (d) Distributor and Company shall, at the time of executing this Agreement, establish sales objectives for the initial term of this Agreement. On subsequent anniversaries of this Agreement, similar objectives will be established for the succeeding year. Failure of Distributor to satisfy these objectives shall be considered a material breach of this Agreement.
- (e) Distributor shall permit the Company to conduct an audit of the Distributor's financial books and records on an annual basis or at such other times that the Company considers it necessary. Such audit may be conducted by representatives of the Company or by a certified public accounting firm selected by the Company.
- (f) Special service work requested by the Company to be performed on equipment not sold by Distributor shall be the subject of reimbursement to Distributor as mutually agreed upon in writing between the parties.

DELIVERY

- 7. Shipment dates are understood to be estimated and the Company shall not be liable for loss, damage, detention, delay or completion of an order due to acts of God, war, riots, civil insurrection, strikes, work stoppages, fires, accidents, acts of civil or military authority including governmental laws, orders, priorities, or regulations, delay in transportation, car shortages, delay by suppliers of materials, acts of Distributor, or any other causes whatsoever beyond the reasonable control of the Company. Acceptance of delivery shall constitute a waiver of all claims for damages by reason of delay in deliveries or for damage or loss in transit.

DIRECT CUSTOMER ORDERS

- 8. In the event that the Distributor transmits an order for Products to the Company from a customer in the Distributor's Territory, which order is placed directly on the Company and which is accepted by the Company, the Distributor may be entitled to a commission as mutually agreed between the parties in writing, prior to acceptance of the order by the Company.

TITLE AND RISK OF LOSS

- 9. The legal title, right to possession and control, beneficial ownership, risk of loss and all other incidents of ownership shall remain in Company until the shipment arrives ex-ship port of discharge country of destination or arrives at the first port of entry for customs purposes in the country of destination in the event of air express, rail, road or parcel post shipments. Terms such as FOB, FAS, CIF and C & F are intended only as price terms and any presumption as to the intention respecting the passage of title to the Equipment otherwise than expressed in this Article, which might arise from the use of such terms, is hereby specifically negated.

PAYMENT OF TAXES

- 10. Unless otherwise stated, the Company's prices do not include sales, use, excise or similar taxes levied on the Products in the Territory. Consequently, any such taxes applicable to the sale of the Products hereunder shall be paid by the Distributor.

WARRANTY

- 11. (a) The Company agrees to pass on to Distributor the manufacturer's warranty, which is in effect regarding Products at the time delivery is made FAS port of shipment. Such warranty is set forth within Exhibit "I" of this Agreement. Distributor shall be required to promptly notify Company in writing of every alleged defect in workmanship and/or material of Products.
- (b) Distributor's exclusive remedy under this warranty or other warranty claim shall be limited to application of the manufacturer's policy insofar as same relates to the repair, replacement, installation or furnishing of parts or rendering of services or labor connected with the correction of the alleged defect.
- (c) The Company reserves the right to modify its warranty policy upon ten (10) days' written notice to the Distributor.

REMEDIES

- 12. (a) The remedies of the parties are as set forth under this Agreement.
- (b) With respect to the Distributor's sale of Products or with respect to the Distributor's own use of such Products, the liability of the Company to the user or Distributor shall not exceed the purchase price of the Product upon which such liability arises, whether the claim is based on contract, warranty, negligence, indemnity, strict liability or otherwise.
- (c) In no event shall either party be liable to the other for any consequential, incidental, indirect, special or punitive loss or damage arising out of this Agreement, whether or not such loss or damage is based on contract, warranty, negligence, indemnity, strict liability or otherwise.
- (d) The provisions of this clause shall survive the termination of this Agreement.

RELATIONSHIP OF THE PARTIES

- 13. The legal relationship existing between the parties shall be that of seller and purchaser and Distributor shall not represent that it is the agent, servant or employee of the Company, nor make any representation or warranty binding upon the Company greater in scope or duration than provided for herein. The Company expressly reserves the right to appoint one or more non-exclusive distributors of the Products in the Territory.

INDEMNIFICATION

- 14. The Distributor acknowledges that any sum received by it from the Company shall be attributed solely to services rendered or derived from sales made by it of Products in accordance with the terms of this Agreement; that no portion of such sums will be applied by it directly or indirectly for the purpose of soliciting or inducing the sale and purchase of Products by any party and that it shall indemnify and hold the Company harmless from any claim, expense or demand which might arise because of its application of such sums in violation of this paragraph.

TERMINATION

- 15. (a) This Agreement, unless otherwise terminated as hereinafter provided, shall remain in effect for a period of one year from the date first above written and shall automatically be renewed thereafter subject, however, to the following provisions. This Agreement may be terminated by either party, with or without cause, on sixty (60) days' written notice to the other party.
- (b) This Agreement may be terminated by either party upon one (1) day's written notice to the other party upon the occurrence of any material breach of any provision hereof, as a result of the insolvency or bankruptcy of the other party or if the financial conditions of either party becomes so impaired in the opinion of the other party as to endanger its ability to perform its obligations in accordance with this Agreement.
- (c) This Agreement may at the option of the Company, be terminated upon one (1) day's notice to Distributor if Distributor ceases to conduct its operations in the normal course of business or if Distributor defaults in any payment due the Company for a period of fifteen (15) days.
- (d) This Agreement is personal between the Company and the present owners and management of Distributor. Any change in the ownership, control or management of Distributor which is unacceptable to the Company for any reason shall be sufficient basis for the Company to terminate this Agreement upon one (1) day's notice.
- (e) This Agreement may be terminated by the Company at any time upon one (1) day's notice to Distributor in the event the Company determines that the Distributor or any of its employees, agents or representatives makes any direct or indirect payment to any employee, agent or representative of a customer or prospective customer or government official for the purpose of causing or inducing such employee, agent or representative or official to influence the customer's or prospective customer's purchase of the Company's Products.
- (f) In consideration of the appointment by the Company of Distributor and the benefits to be derived therefrom, Distributor to the extent it is permitted to do so, expressly waives whatever right it might otherwise possess arising from any statute, law, regulation, custom or the like, to obtain indemnification or judicial relief of any sort from the Company due to the termination of this Agreement.
- (g) Upon termination, the Distributor will immediately return to the Company all pricebooks, manuals, catalogs, record cards, sales data, literature, forms and any other sales or administrative aids supplied by the Company.

AMENDMENT

- 16. This Agreement shall not be amended or changed in any fashion or degree except in writing signed by an authorized representative of each party.

ASSIGNMENT

- 17. This Agreement may not be assigned or transferred by Distributor without the prior written consent of the Company.

APPLICABLE LAW

- 18. (a) The parties hereby understand and agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from and will not in any way be applicable to this Agreement.
- (b) This Agreement shall be governed by and interpreted in accordance with the laws of Switzerland.
- (c) The parties agree that for the purposes of interpreting the terms, determining the obligations and rights of the parties and enforcing the performance thereof, to deliver themselves and the subject matter of this Agreement into the jurisdiction of the courts of the Canton of Fribourg.

This Agreement cancels and supersedes any and all agreements for Products as specified in Schedule "A" within the Territory, written or oral, heretofore existing between the parties hereto, subsidiary companies owned or controlled by them, or predecessors of either party, whether individuals, partnerships or corporations.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first mentioned above.

NEO-AIR ENGINEERING CO., LTD.

(Distributor)

By: Charles Chiu
Title: General Manager

Witness: Alex Yu Sales Manager

INGERSOLL-RAND INTERNATIONAL SALES INC.
(Company)

By: J.F. Skinner E.R. Stern
Title: Van Chrus [Signature]

Witness: I. Benigener

- Attachments:
- Schedule A - Products
- B - Terms of Payment
- Exhibit 1 - Product Warranty



Distributorship Agreement with :
NEO-AIR ENGINEERING CO., LTD. / TAIWAN, R.O.C.

ADDENDUM NO 1

DISTRIBUTORSHIP AGREEMENT AMENDMENT

This Addendum replaces and modifies Article 2(a) of the above-referenced Agreement, to read as follows :

TERRITORY

1997年起正式授權為台灣中南部獨家代理

→ 2(a) Distributor shall during the term of this Agreement have a exclusive right to sell Products in *Central and South of Taiwan*.

All other articles of this Agreement remain unchanged.

IN WITNESS WHEREOF, the parties have caused this amendment to be executed by their duly authorized representatives, this 24th day of April 1997.

DISTRIBUTOR :

INGERSOLL-RAND INTERNATIONAL SALES INC.

By : Charles Chiu 邱榮興
Title : General Manager

By : [Signature] [Signature]
Title : P.M. Maternini E.R. Stern

Attest : Alex Yu Sales Manager 于國

Attest : [Signature]

