



# VESUVIUS

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**DATED** 6<sup>th</sup> OCTOBER 2014

VESUVIUS MALAYSIA SDN BHD.

-and-

PT HALTRACO SARANA MULIA

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## DISTRIBUTION AGREEMENT

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CERTIFICATE NO: KLR 42066

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THIS DISTRIBUTION AGREEMENT is made on the 6<sup>th</sup> day of OCTOBER, 2014

BETWEEN the following parties:

1. **VESUVIUS MALAYSIA SDN BHD** a company established under the laws of MALAYSIA and having its registered office at Lot PT.11693, Jalan Pelabuhan Utara, Kawasan Industri Bandar Sultan Suleiman, 42000 Pelabuhan Klang, Selangor D.E., Malaysia. ("Vesuvius").
2. **PT HALTRACO SARANA MULIA** a company established under the laws of INDONESIA and having its registered office at Grand Slipi Tower 6<sup>th</sup> Floor, Jl. Letjen S. Parman Kav.22-24, Jakarta-11480, Indonesia.  
("PT Haltraco" hereafter referred to as the "Distributor").

### RECITALS

- A. **WHEREAS** Vesuvius desires to appoint a distributor for the Territory to distribute its Products (as defined in this agreement) within the Territory (as defined in this agreement); and
- B. **WHEREAS** the Distributor is willing to accept the appointment by Vesuvius as the exclusive distributor of Vesuvius for the sale of the Products on such terms and conditions contained herein;

IT IS AGREED AS FOLLOWS:

### 1. DEFINITIONS AND INTERPRETATIONS

- 1.1 In this agreement the following terms shall have the following meanings, unless the context plainly requires a different meaning:
  - (a) "Affiliate" of a party means any corporation or person which at any time during the term of this agreement directly or indirectly Controls or is controlled by, or is under common control with a party so long as, in the case of Vesuvius, such corporation remains under the direct or indirect Control of Vesuvius.
  - (b) "Confidential Information" means all technical, commercial or financial information which touches or concerns the Products and/or the business conducted by Vesuvius (including inter alia all formulae and/or methods of manufacture and know-how, price structures, costs, administrative and operational procedures of either party) and which is either designated as confidential or which, by its very nature, is confidential howsoever recorded and disclosed or observed.
  - (c) "Control" means the power to direct or cause the direction of the management and/or policies of a corporation, partnership, firm or other entity or person, whether through ownership of its voting shares or by contract or otherwise. Without limiting the foregoing, for the purposes of this Agreement the ownership of shares comprising more than fifty per cent (50%) of the voting shares of a corporation is deemed to constitute control. "Controls" and "is Controlled by" shall be construed accordingly.



- (d) "Products" means those products set out in Schedule 1 and such other products as may be designated in writing by Vesuvius from time to time.
- (e) "Specification" means the technical specification of each of the Products manufactured by or on behalf of Vesuvius (as amended from time to time by Vesuvius) and provided to the Distributor.
- (f) "Territory" means the territory of Indonesia
- (g) "Industry" means the Aluminium Industry in the Territory.
- (h) "Intellectual Property Rights" shall mean the patents, trade marks and other industrial property right owned by Vesuvius or which Vesuvius has acquired the right to use, used in connection with the sale of the Products.
- (i) ABC Policy shall mean "Anti-Bribery & Corruption Policy" elaborated in clause 12 and appendix 2.

1.2 The headings in this agreement do not affect its interpretation.

1.3 Any reference to any code, decree, regulation or any other legislation of the Territory shall be read to include or constitute a reference to any code, decree, regulation or any other legislation amending or in substitution in whole or in part for that code, decree, regulation or other legislation.

## 2. APPOINTMENT

- 2.1 Vesuvius appoints the Distributor and the Distributor accepts the appointment as the exclusive distributor of Vesuvius for the sale of the Products comprising refractory bricks, monolithic or precast shapes to the Aluminium Industry in Indonesia on the terms and conditions set out below.
- 2.2 The appointment is exclusive and accordingly Vesuvius shall not knowingly supply the Products to any other person in the Territory for his own use or sale in the Territory.
- 2.3 The Distributor shall not appoint any sub-distributors or dealers in the Territory without the prior written consent of Vesuvius. The Distributor shall ensure that any sub-distributors so appointed shall comply with the normal standard expected of such persons and shall be responsible for the acts and omissions of all such appointed sub-distributors.
- 2.4 The rights granted to the Distributor under this agreement shall be subject to any rights of third parties which may subsist or have subsisted at the date of or prior to this Agreement.

## 3. TERM

- 3.1 The appointment shall commence on the date of this agreement and shall continue for a period of 12 months unless and until terminated by either party giving the other three (3) months written notice to expire at any time. In the event that the agreement



is not so terminated it shall continue until terminated by either party giving the other three (3) months written notice to expire at any time.

#### **4. PRICE PAYMENT AND DELIVERY**

- 4.1 The Products shall be sold to the Distributor at Vesuvius's trade price as shall be notified to the Distributor from time to time. All Prices quoted by Vesuvius shall be exclusive of any value added tax or similar tax which may be payable by reference thereto.
- 4.2 Unless otherwise agreed in writing by Vesuvius all payments shall be made in such currency as Vesuvius shall quote for the Products without set off or counterclaim and free and clear of all taxes, deductions, withholdings and other charges.
- 4.3 Payment shall be made by the Distributor within 60 Days of the date of invoice without any delays. In case of 3 consecutive delays in payments Vesuvius has the right to reduce the payment credit term to 30 Days till Vesuvius in its discretion considers that the payments are stabilized. In case payment is made against an invoice within 30 Days Vesuvius would provide 1.20 % discount. Also if payments are done upon issue of invoice prior to shipments Vesuvius would provide 2.50% discount on invoice value. The discount shall be accounted by issuance of a credit note depending upon the condition of payment whether 30 days or prior shipment of value 1.20 % or 2.50% respectively. Discount is excluding the transport costs (sea freight, any local transport etc.) and is only valid for net value of Ex-Works goods.
- 4.4 All Products supplied hereunder shall be subject to Vesuvius's standard terms and conditions of sale. In the event of a conflict between the terms and conditions of this Agreement and Vesuvius's standard terms and conditions of sale the terms and conditions of this agreement shall prevail.
- 4.5 Title to the Products shall remain with Vesuvius and shall not pass to the Distributor until payment in full for the same has been received by Vesuvius.
- 4.6 The Distributor shall notify Vesuvius of any alleged damage or short delivery within fourteen (14) days. In the absence of any such notification the order for the Products shall be and be deemed to have been correctly and completely fulfilled.

#### **5. OBLIGATIONS OF THE DISTRIBUTOR**

- 5.1 The Distributor at its own cost and expense shall vigorously promote and increase sales of the Products throughout the Territory and on a contract being concluded for the sale of any of the Products in the Territory shall ensure efficient and timely delivery of the Products.
- 5.2 The Distributor shall maintain in the Territory such stocks of the Products as shall be agreed between the parties as being adequate to meet the initial requirements of the Territory.
- 5.3 The Distributor shall continue in full force and effect all registrations, consents, approvals and government state or municipal filings necessary or advisable in connection with the agreement and shall make or obtain any additional filings or registrations as may be required by the applicable laws, regulations, and policy of



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the Government of the Territory. The Distributor shall at all times comply with all relevant national, state or municipal legislation including but not limited to environmental legislation.

- 5.4 The Distributor will ensure that its staff concerned with the Products are suitably trained and qualified to carry out their duties in an efficient and competent manner and that they are aware of the obligations of the Distributor under this agreement.
- 5.5 The Distributor undertakes to draw to the attention of any persons handling or using the Products (or having access to the Products) whilst in the Distributor's possession or to persons to whom the Distributor sells the Products any warnings, information or suggestions as to how the Products should be used, handled or stored which are contained or referred to in Vesuvius's health and safety data sheets. The Distributor further undertakes to ensure compliance by such persons with such warnings, information or suggestions.
- 5.6 The Distributor shall indemnify Vesuvius against all liabilities proceedings damages costs and expenses arising out of or in connection with a breach of its obligations under this agreement and shall at all times maintain adequate insurance to cover its liabilities hereunder.

## 6. RESTRICTIONS ON THE DISTRIBUTOR'S ACTIVITIES

- 6.1 The Distributor shall not during the continuance of this agreement outside the Territory (a) advertise the Products or canvas or solicit for orders for the Products or (b) open branches for the sale of the Products or (c) maintain distribution depots for the Products.
- 6.2 All Products purchased by the Distributor from Vesuvius shall be sold and disposed of in the same condition and in the same sealed receptacles as they shall be received from or on behalf of Vesuvius.
- 6.3 The Distributor shall not, without the prior written consent of Vesuvius, sell or enter into any agency or distribution agreement for the agency or distribution of products similar to the Products or which in any way compete with the Products in the Territory.
- 6.4 The Distributor shall not engage directly or indirectly as agent, shareholder, through subsidiaries, partnerships, joint ventures, nominees, Affiliates, or others in the manufacture or reproduction of the Products or render any services incidental to them, or any part of them without the prior written consent of Vesuvius.
- 6.5 The Distributor shall not represent, or purport to represent, Vesuvius in any contract negotiation and shall not execute documents or give binding commitments in the name of Vesuvius under any circumstances whatsoever, without the prior written consent of Vesuvius.
- 6.6 The Distributor undertakes and agrees to not to apply to register any trade marks of Vesuvius or to apply to register any trade mark that is identical or confusingly similar to any of the trade marks of Vesuvius.



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6.7 The Distributor will use any equipment loaned by Vesuvius for the installation of Vesuvius products solely for the purpose of installing Vesuvius products. The Distributor will also ensure that such equipment is maintained and stored in its premises in good condition and will take responsibility for the repair or replacement of any such equipment that is damaged or lost. The Distributor agrees that the equipment loaned by Vesuvius will always be owned by Vesuvius and that Vesuvius holds rights to bring back or to relocate such equipment anywhere and at any time at Vesuvius' discretion.

## 7. INTELLECTUAL PROPERTY RIGHTS

7.1 Vesuvius hereby grants to the Distributor a non-assignable non-exclusive licence to use the Intellectual Property Rights on or in relation to the Products.

7.2 The Distributor undertakes if so requested by Vesuvius to take and execute in conjunction with Vesuvius all necessary steps and documents to enable the Distributor to be registered as a permitted user or to be recorded as a licensee of the patents and trade marks of Vesuvius in the Territory in relation to the Products the cost of such registration to be borne by Vesuvius.

7.3 Vesuvius shall have the right to terminate this agreement forthwith in the event of any action being taken by the Distributor which in Vesuvius's opinion would endanger the reputation or validity of the trade marks of Vesuvius or damage in any manner the goodwill symbolised by such trade marks.

7.4 The Distributor acknowledges Vesuvius's title to the trade marks of Vesuvius and shall not represent at any time that it has any right or title in or to such trade marks. Any rights or interests of the Distributor in the trade marks of Vesuvius arising under the laws of Indonesia from Distributor's sale, possession, or use of the Products in the Territory shall automatically accrue to and be for the benefit of Vesuvius. The Distributor hereby undertakes to assign to Vesuvius all right and interest of the Distributor in such trade marks at the request and expense of Vesuvius, and the Distributor undertakes and agrees that it shall do all such acts and things as may be necessary to give legal and practical effect to the provisions of this Clause 7.4.

7.5 The Distributor agrees not to use the rights derived under this agreement to contest or to aid others in contesting directly or indirectly during the life of this Agreement or thereafter the validity of or title of Vesuvius to the patents and/or trade marks of Vesuvius. On termination of this Agreement the Distributor shall not make any further use of the Intellectual Property Rights.

7.6 The Distributor shall not alter, obliterate, add to or otherwise interfere with the trade marks of Vesuvius.

7.7 The Distributor undertakes to notify Vesuvius immediately of any and all matters which are likely in any manner whatsoever to have an adverse bearing on the goodwill of the trade marks or the patents of Vesuvius or in the event that the Distributor has reasonable cause to believe that there is an infringement or passing off of any of such trade marks or distinctive colour schemes of Vesuvius in the Territory. The Distributor further undertakes to make available to Vesuvius all documents, records, employees and information necessary for Vesuvius to evaluate



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any effect of such infringement or passing off on the goodwill of such trade marks or distinctive colour schemes or patents.

- 7.8 The Distributor agrees that all advertising, promotion and use in whatever form or way of the trade marks of Vesuvius shall be subject to the prior written direction or approval of Vesuvius and that all materials not provided by Vesuvius shall be submitted to it for review and approval prior to any use by the Distributor. Any usage specifically objected to by Vesuvius (whether or not previously approved) shall be immediately discontinued by the Distributor.
- 7.9 Upon the termination of this Agreement, the Distributors shall immediately cease use, either directly or indirectly, of the Intellectual Property Rights.

## **8. CONFIDENTIAL INFORMATION**

- 8.1 The Distributor shall not and shall ensure that its employees shall not directly or indirectly disclose, communicate, divulge or furnish to or use for the benefit of any third party any Confidential Information which may be communicated to the Distributor by Vesuvius or any of its Affiliates or which the Distributor may learn by virtue of its activities under the agreement.
- 8.2 The Distributor undertakes and agrees to use any and all Confidential Information in connection with the performance of its obligations under this Agreement and for no other purpose whatsoever.
- 8.3 The obligation not to disclose Confidential Information shall survive expiration/termination of this Agreement.

## **9. REPRESENTATIONS AND WARRANTIES OF THE DISTRIBUTOR**

The Distributor hereby warrants and represents to Vesuvius as follows:-

- 9.1 It is a limited liability company duly organised, validly existing and in good standing under the laws of the Territory and is fully qualified and empowered to own its assets and carry on its business in the Territory.
- 9.2 It has power to enter into this agreement and to perform its obligations under it and has taken all necessary corporate or other actions to authorise the execution, delivery and performance of the Agreement.
- 9.3 The execution, delivery and performance of the agreement will not exceed the powers granted to it by, or violate (a) any applicable law, regulation, order, decree, policy or circular letter of any governmental agency or tribunal in the Territory; or (b) the Articles of Association of the Distributor; or (c) any agreement to which the Distributor is a party.
- 9.4 It is duly authorised to act as distributor for the Products and that it has the necessary licence(s) and the commercial, technical and financial resources necessary to import and market the products effectively throughout the Territory.

## **10. REPRESENTATIONS & WARRANTIES OF VESUVIUS**



Vesuvius warrants and represents to the Distributor as follows:

- 10.1 It is a corporation duly organised, validly existing and in good standing under the laws of Malaysia and is fully qualified and empowered to own its assets and carry on its business in Malaysia.
- 10.2 The execution, delivery and performance of the agreement will not exceed the powers granted to it by, or violate (a) any applicable law or regulation of Malaysia or (b) the Articles of Incorporation of Vesuvius.
- 10.3 Subject to clause 2.4 Vesuvius is alone entitled to authorise the Distributor to import and sell the Products in the Territory.
- 10.4 The Products will, on delivery to the Distributor, meet Vesuvius's standard Specifications for these Products. The parties agree that in relation to the Products, any other warranty or condition, expressed or implied, by statute, trade practice or otherwise, is expressly excluded.
- 10.5 The warranty of furnishing the free replacement shall be the only warranty, either express implied or statutory, upon which the Products are to be sold to third parties, all other warranties for merchantability and fitness for purposes being expressly excluded. Nothing contained herein shall require the Distributor to exclude or restrict any liability that cannot be so excluded or restricted under the laws of the Territory.
- 10.6 Vesuvius shall not be liable for any defects of the Products nor any part thereof caused by any failure of the Distributor or any purchaser to follow the normal handling procedures specified in its product literature, details of which have been provided to the Distributor.

## **11. TECHNICAL SUPPORT AND TRAINING**

- 11.1 Vesuvius shall provide the Distributor with any relevant technical information on the Products to enable the Distributor to promote and market the Products.
- 11.2 Vesuvius shall, and in co-operation with the Distributor, assist in providing training to the Distributor's employees in relation to the Products on terms and conditions to be agreed by the parties on a case by case basis.

## **12. Compliance to ABC Policy**

- 12.1 The Distributor shall:
  - (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
  - (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

- (c) comply with Vesuvius's Ethics, Anti-bribery and Anti-corruption Policies (current versions annexed to this agreement at schedule 2) as Vesuvius may update them from time to time (**Relevant Policies**).
  - (d) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and clause 12, and will enforce them where appropriate;
  - (e) promptly report to Vesuvius any request or demand for any undue financial or other advantage of any kind received by the Agent in connection with the performance of this agreement;
  - (f) immediately notify Vesuvius (in writing) if a foreign public official becomes an officer or employee of the Agent or acquires a direct or indirect interest in the Agent (and the Agent warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this agreement);
  - (g) within 3 months of the date of this agreement, and annually thereafter, certify to Vesuvius in writing signed by an officer of the Agent, compliance with this clause 12 by the Agent and all persons associated with it under clause 112.2. The Agent shall provide such supporting evidence of compliance as Vesuvius may reasonably request.
- 12.2 The Distributor shall ensure that any person associated with the Distributor who is providing goods in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Distributor in this clause 12 (**Relevant Terms**). The Distributor shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Vesuvius for any breach by such persons of any of the Relevant Terms.
- 12.3 Breach of this clause **Error! Reference source not found.2** shall be deemed a material breach incapable of remedy for the purposes of clause 13.1.
- 12.4 For the purpose of this clause 12, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause **Error! Reference source not found.2** a person associated with the Distributor includes but is not limited to any subcontractor of the Distributor.



- 12.5 The Distributor has to ensure the following points in compliance to Vesuvius' ABC policy:
- (i) All payments to the Distributor shall be by wire transfer to the bank account specified in the Distributorship agreement (i.e. no payments may be made in cash or bearer instruments);
  - (ii) No payments may be made payable to any party other than the Distributor at the Distributor's normal place of business;
  - (iii) No payments may be made to an account outside of the country where the Distributor performs services;
  - (v) The Distributor shall not assign or sub-contract work under the contract without the prior approval of Vesuvius;
  - (vi) The Distributor shall maintain accurate books and records;
  - (vii) The Distributor shall permit Vesuvius to have reasonable access to the Distributor's books and records and the right to audit them on a periodic basis.

### 13. TERMINATION

- 13.1 The appointment may be terminated forthwith by notice in writing on the occurrence of any of the following events (each an "Event of Default"):
- (a) failure by either party to perform any of its respective promises, undertakings, obligations, or covenants contained in the agreement and (if the breach is capable of remedy) has not remedied such breach within 30 days of written notice being given requiring this to be done;
  - (b) should any of the representations or warranties contained in the agreement be or be shown to be untrue, inaccurate or misleading;
  - (c) should the Distributor show any tendency to deliberately and negatively influence its relationship with Vesuvius or slow down the positive development of the distribution and promotion of the Products or commit conduct or action prejudicial to Vesuvius's interest;
  - (d) should the Distributor (i) make an application for declaration of bankruptcy; or (ii) have any action brought against it for bankruptcy which is not dismissed within sixty (60) days from the commencement of the hearing; or (iii) make composition with its creditors; or (iv) suffer any execution to be levied on the Products; or (v) become the subject of a receiver appointed for the Distributor; or (vi) be dissolved; or (vii) cease its business; or (viii) transfer or attempt to transfer its rights under the agreement; or



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- 13.2 In the event of any Event of Default the provisions of clause 14 will apply.
- 13.3 The obligations of the parties contained in clauses 5.6, 7.3 to 7.8, 8, 12, 13 and 14 shall survive the termination or expiration of the agreement.



#### **14. EFFECTS OF TERMINATION**

- 14.1 If the agreement is terminated, the Distributor shall, at the option of Vesuvius on notice to the Distributor not more than thirty (30) days after termination, sell to Vesuvius or its designee(s) at Distributor's net cost the Distributor's inventories of the Products at the time of termination provided the Products which are returned are not over one (1) year old (from date of invoice) and still in good and marketable condition. If any of these Products are over one (1) year old and still in first class and marketable condition and should Vesuvius decide in its discretion to purchase them, these Products shall be paid for by Vesuvius or its designee(s) less all reasonable costs of transportation (including without limitation loading, unloading, and shipping charges) to transport the Products to the location(s) specified by Vesuvius.
- 14.2 On termination all invoices shall become immediately due and payable.
- 14.3 On the expiration or the termination of the agreement for whatever reason, the Distributor shall immediately deliver to Vesuvius all documents, designs, Specifications and other Confidential Information deemed by Vesuvius to be its property.
- 14.4 On termination of this Agreement for whatsoever reason the Distributor hereby unconditionally and irrevocably waives any and all rights that it may have to receive compensation for loss of office or otherwise.
- 14.5 Termination shall be without prejudice to any antecedent right breach or liability.

#### **15. ARBITRATION**

- 15.1 Any and all disputes, conflicts, and controversies in connection with this agreement (including but not limited to when an Event of Default specified under clause 13 above has occurred) shall, so far as is possible, be settled amicably between the parties.
- 15.2 Failing an amicable settlement, all disputes, conflicts, and controversies arising in connection with the agreement shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with these rules. The arbitration shall take place in Singapore, and shall be conducted in English.
- 15.3 The decision of the board of arbitration shall be final, binding, and incontestable and may be used as a basis for judgement in the Territory or elsewhere. It shall include a determination as to which of the parties shall pay the costs of the arbitration.
- 15.4 There shall be no appeal to any court or other authority (government or private) from the decision of the arbitrators, and the parties shall not dispute nor question the validity of such award before any regulatory or other authority in the jurisdiction in which an enforcement action is taken by the party in whose favour the award was rendered.
- 15.5 Neither party shall be entitled to commence or maintain any action in a court of law on any matter in dispute until this matter has been submitted and determined as

provided previously in this clause 15 and then only for the enforcement of the arbitration.

- 15.6 Pending the submission to arbitration and until the board of arbitration publishes its award, the parties shall continue to perform all their respective obligations under the agreement without prejudice to a final adjustment in accordance with the award.

## 16. NOTICES

- 16.1 Any notice, by way of demand or otherwise, may be delivered or sent by first class recorded delivery post or fax addressed as follows:-

Vesuvius: Lot PT.11693, Jalan Pelabuhan Utara, Kawasan Industri Bandar Sultan Suleiman, 42000 Pelabuhan Klang, Selangor D.E., Malaysia

Attention: Vesuvius Malaysia Sdn Bhd  
Fax No.: +603-3176 0508

Distributor: Grand Slipi Tower 6<sup>th</sup> Floor, Jl. Letjen S. Parman Kav.22-24, Jakarta-11480, Indonesia .

Attention: PT Haltraco Sarana Mulia  
Telp No.: +62-21-29021901,29021902, Fax No: 29021903

- 16.2 Notice sent by fax shall be deemed received on the first working day following the date of dispatch, and if sent by first class recorded delivery shall be deemed received on the fifth (5th) day following the date of dispatch, and if sent by couriered letter or by delivery in person then receipt shall be deemed the date of delivery.

## 17. EXCHANGE CONTROLS

- 17.1 If due to foreign exchange restrictions in the Territory it becomes illegal for the Distributor to pay to Vesuvius any price or amount (referred to in the agreement or arising from the sale of the Products by Vesuvius to the Distributor) in the currency quoted for the Products then the Distributor shall pay the price or amount in any foreign currency which is still permitted for these purposes. Vesuvius at its absolute discretion, may stipulate payment in any of the permitted currencies. The amount of payment in these circumstances shall be an amount which is sufficient, when lawfully converted in any foreign currency marketed in England, or any other place in the world chosen by Vesuvius at its absolute discretion, to purchase the amount of the relevant currency to be paid, free and clear of all costs, expenses and commissions.
- 17.2 If it becomes illegal for the Distributor to make any payments (referred to in the agreement or arising from the sale of the Products by Vesuvius to the Distributor) abroad, and if Vesuvius gives its prior consent in writing, the Distributor shall make these payments by depositing the amount due in any bank or other account in the Territory as Vesuvius may specify, and the making of this deposit shall be deemed to be in lieu of the obligation to make the payment abroad. Subsequently, the Distributor shall exercise all reasonable efforts to obtain approval for remittance of this deposit to Vesuvius wherever it may direct in such currency as Vesuvius may designate.



## **18. GENERAL PROVISIONS**

- 18.1 If one or more of the provisions of the agreement are declared by any court of competent jurisdiction invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions contained in the Agreement shall not be affected or impaired in any way. The parties shall in good faith negotiate in order to give legal effect to any provision of the Agreement which is so determined to be invalid, illegal or unenforceable.
- 18.2 Neither party shall be liable for any delay or failure in the performance of any obligations under the agreement to the extent that the delay or failure is caused by Force Majeure provided that all efforts are used to minimise the effects of such force majeure and notice of occurrence of an event shall be given to the other party within fifteen (15) days of such occurrence setting out in full details of the occurrence with documentary evidence as available. "Force Majeure" for the purposes of the agreement shall mean any event or circumstances beyond the reasonable control of the party whose obligations it effects that renders due performance of an obligation under the Agreement illegal or impracticable, including [but not limited] to a decree or ruling or restraint of any government or any governmental subdivision or agency (including refusal by the authorities to either the Agreement where necessary or to recognise the relationship between the parties established by the Agreement), Acts of God, war, riot, civil commotion, fire, explosion, sabotage, perils of the sea, or embargo.
- 18.3 Failure by either party to exercise any or all of its rights under the agreement, or any partial exercise of them, shall not operate as a waiver of these rights generally under the Agreement or by general law nor oblige either party to await the occurrence or reoccurrence of a similar or other event giving rise to these rights.
- 18.4 Vesuvius may assign or transfer the rights and obligations contained in the agreement in whole or part to an Affiliate by giving written notice to the Distributor. The Distributor may only subcontract or assign its rights and obligations herein with the written consent of Vesuvius.
- 18.5 The agreement shall not be amended, altered or modified except in writing subscribed to by the authorised signatories of both parties.
- 18.6 The agreement contains the entire agreement between the parties relating to the subject and supersedes all oral statements and prior writings with respect to it.
- 18.7 No employer/employee nor principal/agent relationship shall be deemed to exist between Vesuvius and the Distributor who shall operate as a wholly independent company.

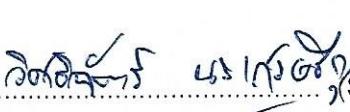
## **19. GOVERNING LAW AND LANGUAGE**

The agreement shall be governed by, construed, and interpreted in accordance with the laws of England and Wales. The Agreement is executed in the English language which shall be controlling in the event of its translation into any other language.

THIS AGREEMENT has been executed by duly authorised officers for an on behalf of the parties.

VESUVIUS MALAYSIA SDN BND

PT HALTRACO SARANA MULIA

By :  (Signature)

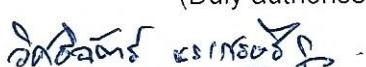


WITTHICHA N. .... (Name)

IBEN RIFA ..... (Name)

Area Director SEA (Title)  
(Duly authorised)

DIRECTOR ..... (Title)  
(Duly authorised)

6 oct 2014 (Date) 

..... (Date)

