

# AGREEMENT ON COMMERCIAL COOPERATION IN DISTRIBUTION OF PRODUCTS – “GOLD”

concluded in [ ] on [ ]

between:

1. **Glaze Prosthetics spółka z ograniczoną odpowiedzialnością** with its seat in Kraków, ul. Prądnicza 12, 30-002 Kraków, a company registered in the Court Register by the District Court for Kraków-Śródmieście in Kraków, Department No. 10 - Commercial of the National Court Register under No.: 0000680555, tax identification number NIP: 6772421041, company statistical number REGON: 367431566, with a share capital of [ ] PLN,

represented by **Grzegorz Kosch** – President of the Management Board authorized to represent the Company by himself,

further hereinafter the “**Seller**,”

and

2. [ ] with its seat in [ ] ul. [ ], a company registered in the Court Register by the District Court [ ], Department No. [ ] – Commercial, of the National Court Register under No.: [ ], with tax identification number: NIP [ ], REGON: [ ], with a share capital of [ ] PLN // running his/her economic activity under the name of [ ], with the seat in [ ], ul. \_, tax identification number NIP: [ ],

further hereinafter the “**Distributor**,”

both parties further hereinafter jointly referred to as the “**Parties**”;

as follows:

## §1 Subject of the Agreement

1. Taking into account the subject of their business activities and their willingness to broaden their commercial cooperation, the Parties undertake to engage in a cooperation in accordance with the terms and conditions set forth in detail in § 2 below, in particular:
  - a) to promote orthopaedic and medical products offered by the Seller;
  - b) to offer for sale orthopaedic and medical products, being offered for sale by the Seller with the use of a prosthetic socket prepared by the Distributor.
  - c) achieving the monthly sales volume fixed by the Parties herein;
2. For the activities referred to in point 1.b and 1.c above, the Distributor shall receive remuneration paid as provided for in §3 below.
3. The Parties mutually agree that the subject matter of this Agreement shall be effected on the territory of [ ].
4. The Parties agree to effect the subject matter of this Agreement in accordance with its provisions and with due care assessed according to the principles of transacting business professionally and taking into account the increased business standards and good faith.

## §2 Rules of cooperation

1. Under this Agreement, the Distributor undertakes to:
  - a) promote the Seller’s products, including orthopaedic and medical products. The promotional activities referred to in the preceding sentence shall include in particular:
    - placing information in the social media (Facebook, Twitter, Instagram, and other social networks) about the Seller’s business activity and products,
    - giving favourable opinions about the Seller’s products,
    - distributing the Seller’s promotional materials the Distributor receives from the Seller,
    - other promotional activities.
  - b) purchase a starter set (Test Set) of the Seller’s products with the aim to promote the Seller’s products, unless the Distributor acquired it during mutual partnership beforehand.
  - c) offer to its customers the Seller’s products with the use of a prosthetic socket made by the Distributor in accordance with the guidelines provided by the Seller.

- d) a sale of at least [ ] pieces of the Seller's products per month.
2. The Parties mutually represent and acknowledge that all patents, protection rights and other rights in relation to the Seller's products, utility models, industrial design, commercial marks, trademarks and the Seller's logotypes constitute the Seller's property. Under this Agreement, the Distributor shall receive a royalty-free license that shall entitle him to use the Seller's products, commercial marks, trademarks, and logo exclusively in the scope that shall be necessary to perform this Agreement. The licence is regulated in §7 below.
  3. To implement the activities referred to in point 1.a above, the Seller shall provide the Distributor with promotional materials in the following quantity: [ ]. The Seller represents that he holds all copyright and other intellectual property rights to the transferred promotional materials. This Agreement does not constitute a transfer of the author's economic rights to the promotional materials entrusted to the Distributor.
  4. The Seller stipulates that this Agreement does not give the Distributor exclusivity to promote and/or sell the Seller's products on the territory defined in §1.3 above.
  5. The Distributor shall not be entitled to any additional remuneration for the promotional activities set forth in point 1.a above.

### **§3 Exclusivity**

1. Based on the rules set forth in this § 3, the Seller grants the Distributor and the Distributor accepts an exclusive right to sell the Seller's products on the territory indicated in § 1.3 above for the duration of this Agreement.
2. Under the granted exclusivity the Distributor exclusively shall be authorized to offer the Seller's products to the Seller's retailers (clients) in any form permitted by applicable provisions of law on the territory indicated in § 1.3 above, in particular at the Distributor's own points of sale or through the entities the Seller acquired for trade cooperation.
3. The Distributor shall not be authorized to conclude sales agreements with clients outside the territory indicated in § 1.3 above.
4. The exclusivity granted under § 3 shall not exclude the Seller's right to conclude cooperation agreements on the territory indicated in § 1.3 above with third parties that run activities that are competitive to the Distributor's business provided that in such a case these entities shall be treated as ones that were acquired for trade cooperation by the Distributor. The rules referred to in the preceding sentence shall also apply to all entities which have taken on trade cooperation with the Seller prior to the conclusion of this Agreement with the Distributor and which have not received the exclusivity right for selling the Seller's products.

### **§4 Sale Agreement of the Test Set**

1. In accordance with the obligation set forth in § 2.1.b above, under this Agreement the Seller undertakes to transfer upon the Distributor the ownership of the Test Set encompassing [ ] and to transfer on to the Distributor ownership of the Test Set and to hand over the Test Set to him in return for payment of the price set forth in point 2 below.
2. The net sale price shall be [ ]. The price shall be increased by VAT at the rate being in force at the time of the conclusion of this Agreement.
3. The Distributor shall be obligated to pay the price within [ ] days from the day the Seller delivered him a VAT invoice. The Seller shall issue a VAT invoice immediately after the conclusion of this Agreement.
4. The sale price shall be paid on to the Seller's bank account indicated on the VAT invoice.
5. The day of payment shall be the day on which the transferred amount is credited to the Seller's bank account.
6. The Parties agree that the Test Set shall be handed over to the Distributor within [ ] days from the day the payment was credited on the Seller's bank account.

### **§5 Production guidelines for prosthesis socket**

1. Together with the Test Set referred to in point 1.b above, the Seller shall provide the Distributor with detailed guidelines concerning the process of assembling a prosthetic socket for the Seller's products.
2. Based on the guidelines provided, the Distributor undertakes to prepare a sample socket and send photographs of such made product to the Seller for the Seller's verification within [ ] days from the receipt of the guidelines from the Seller.
3. Positive verification of the product referred to in point 2 above, shall be confirmed by granting the Distributor a certificate of compliance confirming the correctness of assembly of the socket by the Distributor.
4. Negative verification of the product referred to in point 2 above shall constitute grounds for terminating this Agreement by the Seller without prior notice.

5. The Distributor is obliged during the terms of this Agreement to follow the guidelines provided by the Seller. Infringement in terms of quality or technical parameters of prosthesis socket shall constitute grounds for terminating this Agreement by the Seller indicated below in §10.4.c.
6. Parties state, that throughout the terms of this Agreement, the Distributor undertakes to use only prosthesis sockets manufactured by the Distributor in compliance with the Sellers guidelines.

### **§6 Remuneration to the Distributor**

1. For the sale of the Seller's products, the Distributor shall receive sales commission of 20% on the value of each product sold to a client that is serviced by the Distributor and who is listed in the Seller's database as a client. In the case of a sale of the Seller's product to a client that was acquired by the Distributor himself, the Seller shall pay the Distributor additional commission in the amount laid down in Attachment No. 1 – Commission rates – "Clients acquired by the Distributor."
2. The commission referred to in point 1 above shall be paid only when a customer uses the prosthetic socket prepared by the Distributor in compliance with the Seller's guidelines.
3. Furthermore, the Distributor shall be also entitled to additional remuneration / commission in the case where the Seller has achieved sales revenue from the trade cooperation with third entities in the scope indicated in § 3.4 above in the amount of \_% of the sales volume the Seller achieved on the territory indicated in § 1.3 above.
4. The commission referred to in point 1 and 3 above shall be paid monthly on the basis of a VAT invoice issued by the Distributor within [ ] days from the delivery of the VAT invoice to the Seller.
5. The Distributor shall issue a VAT invoice within 7 days after the end of a calendar month for which the Distributor is entitled to a commission.
6. The commission shall be paid onto the Distributor's bank account indicated on the VAT invoice.
7. The Distributor shall add VAT tax to the commission referred to in point 1 above at the rate being in force on the day of issuance of the VAT invoice.
8. The day of payment shall be the day the transfer amount is charged to the Seller's bank account.
9. All payments between the Parties shall be made in [ ].

### **§7 License and industrial property rights**

1. In his economic activity, the Distributor shall not be authorized to use for purposes contrary to or exceeding the rules set forth herein any of the protection rights, industrial property rights or copyrights or related rights concerning the Seller's products, including in particular in his own production process, except for his compliance with the guidelines referred to in §5.1 above and subject to this §5.
2. For the purpose of this Agreement, the Seller hereby grants the Distributor a royalty-free nonexclusive licence on the territory indicated in §1.3 above for the duration of this Agreement (regardless of the manner of its expiry) within the limits of the Distributor's use of the intellectual property rights, copyrights and related rights constituting the Seller's property, commercial marks, logotypes, trademarks to perform this Agreement, including in particular the implementation of marketing, advertising, promotional, and sales aims.
3. The specification of the Seller's commercial marks, trademarks, and logotypes forms Attachment No. 2 hereto.
4. Within the licence referred to in point 2 above, the Distributor shall be entitled to use the rights covered by the licence on all known (from the point of view of the state of the art) fields of exploitation on the day of conclusions of this Agreement, including in particular on the following fields of exploitation:
  - a) saving in computer memory, server;
  - b) recording by any technique;
  - c) multiplying permanently or temporarily by any technique;
  - d) disseminating by public performance, reproduction, display, projection, exhibition;
  - e) giving visibility in the Internet;
  - f) disseminating to the public also via the Internet as well as to make an offer in this scope;
  - g) using for advertising and other forms of presentation;
  - h) making a digital recording;
  - i) broadcasting by vision or sound via the terrestrial means or by satellite by wire or wirelessly;
  - j) translation.
5. In connection with the licence granted, the Distributor shall be authorized to put together his own logotypes, trademarks and commercial marks with the Seller's trademarks, commercial marks and logotypes for which he was granted a licence under this Agreement.
6. The Parties agree that the Distributor shall not be authorized to grant further licences.
7. In the case of the termination or expiry of this Agreement, regardless of the reason for the expiry or termination, the licence referred to in point 4 above shall expire. In the event of expiry of the licence, the Distributor shall be obligated to cease using the rights arising out of this Agreement for which he was granted the licence to use.

Furthermore, the Distributor shall also have the duty to return to the Seller all materials bearing the Seller's commercial marks, trademarks, logotypes, and other marks of the Seller, and to remove them from all data carriers in the Distributor's possession.

### **§8 Warranty. Service procedures.**

1. The Seller hereby issues a [ ]-months warranty for the products he offers for the Distributor's customers.
2. The liability of the Seller relating to the warranty shall include only the defects arising from the reasons inherent in the products delivered by the Seller.
3. The warranty shall not include:
  - a) mechanical damages caused by the Distributor's customers,
  - b) damages and defects which occurred due to the use and storage of the products offered by the Seller not in accordance with the instructions for use;
  - c) repairs made by the Distributor or his customers.
4. The Seller makes available the detailed terms and conditions of the warranty and the rules of sending the products for warranty service on the following Internet site: [ ].

### **§9 Possibility to extend cooperation**

1. In the case where the Distributor should acquire a customer or where a customer should be referred to the Distributor through the Distributor's efforts, the Parties undertake to conclude an Agreement on Cooperation – "Gold" under which the Parties' cooperation shall be extended by the sale of the Seller's products with exclusivity on the territory defined in the agreement.
2. A draft agreement referred to in point 1 above forms Attachment No. 2 hereto.

### **§10 Confidentiality**

1. The Distributor obtained or can obtain access to technical, technological organizational, commercial, business, know-how information that was undisclosed to the public as well as to the data building the Seller's market advantage and to all other confidential information that forms business secrets of the Seller and of the entities cooperating or affiliated with him by way of capital or personal links.
2. The Distributor undertakes and acknowledges that all information that the Seller has communicated to him shall be kept in full secret and confidentiality; that they shall be used and utilized exclusively for the purposes connected with the performance of this Agreement; and that such information shall not be communicated or disclosed to any third person unless the Seller should give his expressed written consent.
3. The duty of confidentiality applies in particular to the rules of cooperation between the Parties and to the rules of settling the accounts between the Parties as adopted herein.
4. The Distributor shall be strictly obligated not to use in any form or manner any of the information, data, realizations, projects, creations, inventions, industrial design, utility models, know-how ideas, where no copyrights, industrial property rights, have been transferred upon him and where no relevant licenses or entitlements for use have been granted.
5. The duty of confidentiality shall not apply to the information that is generally known or the duty to disclose it arises out of the provisions of law or a ruling of an administrative authority or a court.
6. The duty of confidentiality arising from this Agreement shall be observed during the term thereof and within 3 (three) years from the date of its termination or expiry unless the Parties agree otherwise.
7. A violation of the duty of confidentiality shall be each disclosure, communication of the information or making the information available to third persons contrary to the rules defined above.
8. In the event of a breach of the rules governing confidentiality laid down in § 9 herein by the Distributor, the Seller shall be entitled to charge the Distributor a contractual penalty of \_ PLN (\_ Polish zloty) for each case of breach payable within 7 days from the Seller's written call for payment.
9. In the case where such a penalty should not fully cover the damages incurred by the Seller, the Seller shall be entitled to pursue damages in full amount in accordance with the provisions of the Polish civil code being in force.

### **§11 Duration of the Agreement**

1. This Agreement is concluded for an undetermined term / for a period of [ ] years/months.
2. The Parties can terminate this Agreement by mutual consent.
3. Each of the Parties can terminate this Agreement upon one-month notice.
4. The Seller shall be entitled to terminate this Agreement without notice effective immediately in the case where:
  - a) the Distributor should fail to perform his promotional duties arising out of this Agreement or should he disseminate negative information about the Seller;
  - b) the assembly of the test socket has not been carried out in accordance with the Seller's guidelines;
  - c) the quality and the technical parameters of the prosthetic sockets assembled by the Distributor should stand in contradiction to the Seller's guidelines;

- d) the Distributor should fail to achieve the sale limits indicated in § 2.1.d above for at least two settlement periods.
- e) the Distributor has breached the provisions of this Agreement concerning the licence;
- f) the Distributor violated other provisions of this Agreement.

### **§12 Communication between the Parties**

1. The parties agree that all notifications, calls or requests relating to the performance of this Agreement shall be made to the Parties, with the effect of having been delivered in writing unless provisions of law should require a statement to be made in a specific form, in the following manner:
  - a) to the Seller by registered letter, courier service, or electronic mail to the address: [ ] ,
  - b) to the Distributor by registered letter, courier service, or electronic mail to the address: [ ] .
2. Each Party may change their data indicated in point 1 above by written notification sent to the other Party to the address indicated in point 1; such a change shall not constitute an amendment to this Agreement.
3. Each Party represents that notifications sent in the above manner to the address provided until its possible change shall be deemed as valid and effectively served. In the case where a Party should fail to notify the other Party about the change of addresses in accordance with the preceding sentence, if a letter shall be returned with an annotation of a competent post office or courier service provider: “Not collected on time,” “Addressee does not exist,” “Addressee moved out,” or some other similar annotation then it shall be deemed effectively served.

### **§13 Final provisions**

1. All attachments to this Agreement constitute its integral part.
2. The Agreement shall be governed by Polish law and all of its provisions shall be interpreted in accordance therewith. The provisions of the Polish law shall apply to the matters which are not regulated by this Agreement, including in particular the provisions of the civil code.
3. The Parties undertake to resolve all disputes amicably. Where amicable resolution of a dispute is not possible, the dispute shall be resolved by a court of law with jurisdiction over the city of Kraków.
4. All amendments, additions or any other changes to the terms or provisions of this Agreement must be made in writing, otherwise they shall be null and void.
5. In the case where any of the provisions of the Agreement should prove to be or become invalid or unenforceable, the Parties shall be obligated to immediately amend or supplement the Agreement in a way that will as faithfully as possible correspond to the intention of the Parties in such a provision.
6. This Agreement was concluded in two counterparts, one for each of the Parties.

For the Seller:

For the Distributor: