DISTRIBUTION AGREEMENT
DATED
15 July 2013
BETWEEN
Transit Holdings Pty Ltd
AS MANUFACTURER
AND
Distribution Services Pty Ltd
AS DISTRIBUTOR
This Agreement (the “Agreement”) is entered into between:

1 Transit Holdings Pty Ltd (ABN 45 230 982 345) of 45 Telegraph Street, Sydney, New South Wales, 2000, Australia (the “Manufacturer”); and

2 Distribution Services Pty Ltd (ABN 45 392 456 123) of 56 Collins Street, Melbourne, Victoria, 3000, Australia (the “Distributor”).

The Manufacturer manufactures certain goods.

The Distributor wishes to sell and distribute those goods as agent of the Manufacturer on the terms and conditions set out in this Agreement.

1 Definitions and Interpretation

1.1 Definitions

In this Agreement:

“Business Day” means a day which is not a Saturday, Sunday or bank or public holiday in New South Wales.

“Confidential Information” means any information or document about or in any way relating to the Manufacturer in any media or form that is acquired by or made available to the Distributor in the course of the relationship between the Parties, including but not limited to any information or documents about the Goods, the Manufacturer’s business, organisational structure, activities, operating procedures, products and services, trade secrets and know how, finances, plans, transactions and policies.

“Distribution Area” means Victoria.

“Event of Default” means:
(a) the Distributor does not pay any money due for payment by it in accordance with this Agreement;
(b) a representation, warranty or statement made or deemed to be made by a Party in this Agreement is untrue or misleading;
(c) an event or series of events, including any material adverse change in the property or financial condition of a Party, occurs which has or is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
(d) an investigation is instituted under the Corporations Act 2001 or other legislation into or an inspector is appointed to investigate a Party’s affairs;
(e) a Party is or states that it is unable to pay all its debts as and when they become due and payable;
(f) a corporate Party is taken or must be presumed to be insolvent or unable to pay its debts under any applicable legislation;
(g) an application or order is made for the winding up or dissolution of a corporate Party or a resolution is passed or any steps are taken to pass a resolution for its winding up or dissolution;
(h) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of a corporate Party or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within 5 Business Days;

(i) a controller is appointed in respect of any property of a corporate Party;

(j) a corporate Party is deregistered under the Corporations Act 2001 or notice of its proposed deregistration is given to the corporation;

(k) a distress, attachment or execution is levied or becomes enforceable against any property of a corporate Party;

(l) a corporate Party enters into or takes action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them;

(m) a receiver or receiver and manager is appointed in respect of any individual Party;

(n) a petition for the making of a sequestration order against the estate of a Party is presented and the petition is not stayed, withdrawn or dismissed within 5 Business Days or a Party presents a petition against itself;

(o) a Party presents a declaration of intention under section 54A of the Bankruptcy Act 1966;

(p) an individual Party dies; or

(q) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of a Transaction Party.

“Goods” means green and gold handled pencils, which are manufactured and sold by the Manufacturer.

“Parties” means the parties entering into this Agreement.

“Term” means the period commencing on the date of this Agreement and ending on 23 July 2013, unless this Agreement is terminated earlier in which case this Agreement ends on the date that notice of termination of this Agreement is effective pursuant to clause 3.

1.2 Interpretation

In this Agreement, unless expressed to the contrary:

(a) words in the singular include the plural and vice versa;

(b) headings are for convenience and do not affect the interpretation of this Agreement;

(c) any gender includes the other gender;

(d) a reference to a clause, paragraph, schedule or annexure is a reference to a clause, paragraph, schedule or annexure, as the case may be, of this Agreement;

(e) if any act which must be done under this Agreement is to be done on a day that is not a Business Day then the act must be done on or by the next Business Day;

(f) a reference to any legislation includes subordinate legislation and all amendments, consolidations or replacements from time to time;

(g) if a word or phrase is defined in this Agreement then any other grammatical form of the word or phrase shall have a corresponding meaning;

(h) a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity;
(i) “includes” and similar words mean includes without limitation;
(j) no clause of this Agreement shall be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;
(k) a reference to a Party includes the Party’s legal personal representatives, successors, assigns and persons substituted by novation;
(l) a reference to this or any other agreement includes the agreement, all schedules and annexures as novated, amended or replaced and despite any change in the identity of the parties;
(m) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;
(n) a reference to time is to local time in New South Wales; and
(o) a reference to “$” or “dollars” refers to the currency of Australia from time to time.

2 Appointment of Distributor

2.1 The Manufacturer appoints the Distributor as its agent for the Term to sell and distribute the Goods in the Distribution Area on the following conditions:

(a) the Distributor's appointment is limited to the Distribution Area, unless otherwise agreed by the Parties.
(b) the Distributor may sell other goods of a similar type to the Goods.

3 Term and Termination

3.1 This Agreement will commence on the date of this Agreement and shall be valid for the Term.

3.2 At any time during the Term either Party may terminate this Agreement:

(a) by giving at least three (3) months’ notice in writing to the other Party; or
(b) immediately, by giving notice in writing to the other Party where there is an Event of Default.

3.3 This Agreement will be immediately terminated in the event that the Goods are withdrawn from sale by the Manufacturer for any reason, including but not limited to safety reasons.

4 Supply of, and payment for, the Goods

4.1 The Manufacturer agrees to sell the Goods to the Distributor at a price of $500 per box of 100 units, which price may be reviewed by the Manufacturer in its absolute discretion from time to time.

4.2 The Distributor must place orders for the Goods with the Manufacturer in accordance with the Manufacturer’s processes and procedures as notified by the Manufacturer to the Distributor from time to time.

4.3 The Manufacturer will invoice the Distributor in respect of any Goods ordered by the Distributor within five (5) Business Days of receipt of an order from the Distributor in accordance with clause 4.1.
4.4 The Distributor will pay any invoice issued by the Manufacturer within ten (10) Business Days of the date of the invoice.

4.5 Where the Manufacturer receives an order from the Distributor, the Manufacturer:

(a) has no obligation to deliver the Goods to the Distributor until payment is received for the Goods, unless otherwise agreed by the Parties;

(b) will use its best endeavours to supply the Goods in a timely manner;

(c) will use its best endeavours to supply the Goods in accordance with the Distributor’s order;

(d) will supply the Goods in such a way, including as to labelling of any packaging of the Goods, so as to comply with any applicable legislation or standards;

(e) will ensure that the Goods supplied are of a merchantable quality for distribution by the Distributor.

4.6 Unless otherwise agreed by the Parties, the Distributor must, at its own expense, arrange delivery of the Goods to the Distributor’s nominated delivery address.

4.7 Upon collection of the Goods by the Distributor or its representative, risk and legal title in the Goods will pass from the Manufacturer to the Distributor.

4.8 The Distributor indemnifies the Manufacturer from and against, any loss of and/or damage caused to the Goods after the Goods are collected by the Distributor or its representative.

5 Reporting

5.1 Within five (5) Business Days of the end of each calendar month during the Term the Distributor must provide to the Manufacturer a report setting out the volume of the Goods sold during the preceding month.

6 Acknowledgements, warranties and representations

6.1 The Distributor acknowledges and agrees that:

(a) it has legal capacity, power and authority to enter into this Agreement;

(b) it will sell the Goods in the same condition, without alteration or modification in any way, as they were received from the Manufacturer;

(c) in selling the Goods it will acknowledge the Manufacturer as the manufacturer of the Goods;

(d) the Manufacturer owns all intellectual property rights in the Goods;

(e) it will not represent itself as the manufacturer or owner of any intellectual property rights in the Goods;

(f) it will seek approval in advance from the Manufacturer in relation to all advertising and promotion of the Goods.

6.2 The Manufacturer warrants and represents to the Distributor:

(a) it has legal capacity, power and authority to enter into this Agreement;
it has all rights in relation to the Goods and to perform its obligations as set out in this Agreement;

(c) that the Goods will be packed by the Manufacturer so that they are safe solely for their intended use.

6.3 The Manufacturer acknowledges and agrees that:

(a) it will accept full responsibility for addressing, investigating and responding to consumer complaints in relation to the Goods;

(b) the Distributor may, by giving reasonable notice to the Manufacturer, visit any business premises of the Manufacturer for the purpose of inspecting the Manufacturer’s production or storage of, or materials used in producing, the Goods.

7 Liability

7.1 Other than as provided or warranted in this Agreement:

(a) the Distributor will not be liable in any way to any person; and

(b) the Manufacturer indemnifies and agrees to indemnify, hold harmless, release and discharge the Distributor from and against,

all claims, liabilities, costs, damages and expenses arising out of or in any way connected with the Goods, the distribution of the Goods by the Distributor or the manufacture of the Goods by the Manufacturer.

8 Confidentiality

8.1 Subject to clause 8.2, the Distributor agrees:

(a) not to disclose the Confidential Information to any third party at any time;

(b) to use its best endeavours to protect the Confidential Information from any unauthorised disclosure;

(c) only to use the Confidential Information for the purpose for which it was disclosed by the Manufacturer and not for any other purpose; and

(d) to be responsible for and assume liability in relation to all of its employees, agents, consultants and contractors to whom Confidential Information is disclosed and ensure that they maintain the confidentiality of the Confidential Information and otherwise comply with the obligations set out in this Agreement.

8.2 The Distributor’s obligations set out in sub-clause 1 do not apply to Confidential Information:

(a) that is already in the public domain, except as a result of the actions of the Distributor in breach of this Agreement; and/or

(b) received from a third party, except where there has been a breach of confidence; and/or

(c) that must be disclosed by law, provided that the Distributor reveals only so much of the Confidential Information as the Distributor is required by law to disclose and gives sufficient notice to the Manufacturer in order to allow the Manufacturer to object to, or otherwise prevent, the Confidential Information being disclosed.
9 Costs and Expenses

9.1 Each Party must pay its own costs and expenses (including legal costs and expenses) in relation to the negotiation, preparation and execution of this Agreement and any variation or replacement of this Agreement.

9.2 The Parties will share equally any duty, taxes, registration and other fees (including fines and penalties relating to the duty, taxes and fees) which are payable in relation to this Agreement and any transaction contemplated by it.

10 GST

10.1 Taxable supply

(a) If GST is payable by the Manufacturer on any supply made under this Agreement the Distributor must pay to the Manufacturer an amount equal to the GST payable on the supply.

(b) That amount must be paid at the same time that the consideration for the supply is to be provided under this Agreement and must be paid in addition to the consideration expressed elsewhere in this Agreement.

(c) On receiving that amount from the Distributor, the Manufacturer must provide the Distributor with a tax invoice for the supply.

10.2 Adjustment events

If an adjustment event arises in respect of any supply made by the Manufacturer under this Agreement, a corresponding adjustment must be made between the Manufacturer and the Distributor in respect of any amount paid to the Manufacturer by the Distributor under this Agreement and any payments to give effect to the adjustment must be made.

10.3 Payments

If the Distributor is required under this Agreement to pay for or reimburse an expense or outgoing of the Manufacturer or is required to make a payment under an indemnity in respect of an expense or outgoing of the Manufacturer, the amount to be paid by the Distributor is the sum of:

(a) the amount of the expense or outgoing less any input tax credit in respect of that expense or outgoing that the Manufacturer is entitled to; and

(b) if the Manufacturer’s recovery from the Manufacturer is in respect of a taxable supply, an amount equal to the GST payable by the Manufacturer in respect of that recovery.

10.4 GST terminology

The terms “adjustment event”, “consideration”, “GST”, “input tax credit”, “supply”, “taxable supply” and “tax invoice” each has the meaning which it is given in the A New Tax System (Goods and Services Tax) Act 1999.

11 Amendment

11.1 This Agreement may only be amended by written agreement executed by all the Parties.
12 Notices

(a) Form of notice

A notice or other communication must be in writing in English and may be:

(i) delivered personally;
(ii) given by an agent of the sender;
(iii) left at a Party’s current delivery address for notices as set out in this Agreement;
(iv) sent by prepaid mail to a Party’s current postal address for notices as set out in this Agreement; and/or
(v) sent by fax to a Party’s current fax number for notices as set out in this Agreement.

(b) Receipt of notice

A notice or communication is taken as having been given:

(i) when left at a Party’s current delivery address for notices; or
(ii) if mailed within Australia to an Australian address, on the third Business Day after posting; or
(iii) if mailed outside of Australia to an Australian postal address or within Australia to an address outside of Australia, on the tenth Business Day after posting; or
(iv) if sent by fax, when the sender receives a fax report from the recipient’s fax machine acknowledging receipt of the notice, unless the fax is received after 5pm in the place of receipt, in which case it is taken as having been given at 9am on the next day that is not a Saturday, Sunday or bank or public holiday in the place of receipt.

(c) Address for service

Transit Holdings Pty Ltd
Delivery address: 45 Telegraph Street, Sydney, New South Wales, 2000, Australia
Postal address: Same as Delivery Address
Fax: none
Attention: the Director

Distribution Services Pty Ltd
Delivery address: 56 Collins Street, Melbourne, Victoria, 3000, Australia
Postal address: Same as Delivery Address
Fax: None
Attention: the Director

A Party may change its address for service of notices by written notice to the other Party.
13 Relationship of parties

13.1 Neither Party is authorised to bind the other Party in any way without prior written consent of the other Party.

13.2 The Parties acknowledge and agree that they will not seek to bind the other Party other than with the prior written consent of the other Party.

14 Assignment

14.1 This Agreement is personal to the Parties. A Party must not assign or deal with the whole or any part of its rights and/or obligations under this Agreement without the prior written consent of the other Parties (such consent not to be unreasonably withheld).

14.2 Any purported dealing in breach of this clause is of no effect.

15 Waiver or variation of rights

15.1 Any failure or delay by a Party in exercising a power or right (either wholly or partially) in relation to this Agreement does not operate as a waiver or prevent that Party from exercising that power or right or any other power or right.

15.2 A Party is not liable to any other Party for any loss, cost or expense that may have been caused or contributed to by the failure, delay, waiver or exercise of a power or right.

16 Powers, rights and remedies

16.1 Except as expressly stated to the contrary in this Agreement, the powers, rights and/or remedies of a Party under this Agreement are cumulative and are in addition to any other powers, rights and remedies of that Party. Nothing in this Agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects any power, right, or remedy that a Party may have at any time against the other Party to this Agreement or any other person.

17 Consents and approvals

17.1 Where this Agreement provides that a Party may conditionally or unconditionally give or withhold any consent or approval in relation to any matter in this Agreement, that Party may in its absolute discretion, and without being obliged to give reasons for doing so, withhold any consent or approval or give consent or approval conditionally or unconditionally.

18 Further assurance

18.1 Each Party must from time to time and in a timely manner do all things reasonably required of it by another Party to give effect to this Agreement.

19 Counterparts

19.1 This Agreement may be executed in any number of counterparts and, if so, the counterparts taken together will constitute one and the same Agreement.
19.2 The date of this Agreement will be the date that it is executed by the last Party.

20 **Entire agreement and understanding**

20.1 In respect of the subject matter of this Agreement:

(a) this Agreement contains the entire understanding between the Parties;

(b) all previous oral and written communications, representations, warranties or commitments are superseded by this Agreement and do not affect the interpretation or meaning of this Agreement;

(c) each of the Parties has relied entirely on its own enquiries before entering into this Agreement.

21 **Governing law and jurisdiction**

21.1 This Agreement is governed by the laws of New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.
**SIGNING PAGE**

**Executed as a Deed.**

**Executed** for and on behalf of
**Transit Holdings Pty Ltd (ABN 45 230 982 345)** in accordance with
section 127(1) of the **Corporations Act 2001 (Cth):**

.......................................................
Signature of Sole Director/Secretary

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Name of Sole Director/Secretary

**Executed** for and on behalf of
**Distribution Services Pty Ltd (ABN 45 392 456 123)** in accordance with section 127(1) of the **Corporations Act 2001 (Cth):**

.......................................................
Signature of Sole Director/Secretary

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Name of Sole Director/Secretary