

# Distributor Agreement

This Distributorship Agreement ("Agreement") is made and effective this \_\_\_\_\_, by and between ("Distributor") \_\_\_\_\_ and Clamca Toolbox Distributors.com Incorporated o/a: Swivel Storage Solutions, 1100 Burloak Drive Suite 300, Burlington, ON L7L 6B2 Manufacturer desires to appoint Distributor, and Distributor desires to accept appointment, as an exclusive distributor of Manufacturer's products within a defined area and sales channel as set forth herein.

Therefore, in consideration of the mutual agreements and promises to set forth herein, it is agreed:

## 1. **Rights Granted.**

Manufacturer hereby grants to Distributor the right, on the terms and conditions set forth herein, to purchase, inventory, promote and resell "Manufacturer's Products" (as defined below) within the following area and channel (the "Territory/Channel"): While every effort will be made by Manufacturer to support the distributor network, nothing herein shall prevent or prohibit Manufacturer from selling any of Manufacturer's Products to National distributors or directly to inside or outside the Territory/Channel.

## 2. **Products.**

The term "Manufacturer's Products," in this Agreement, shall mean the products, related service parts and accessories manufactured and/or sold by Manufacturer as follows:

- Swivel Model max60, Pro20, Pro30, Pro50 and Pro60 and related Swivel Pro Series accessories
- Pivot Series
- Truck boxes
- PRO80 Series

## 3. **Territory/Channel.**

Distributor is assigned normal online sales channels.

Distributor's assigned distribution channel shall consist of the following:

- Normal sales channel consistent with your current marking program.

#### **4. Pricing.**

**A.** The Distributor agrees to not sell at a price lower than the Minimum Acceptable Market Price. Selling below the Minimum Acceptable Market Price without written consent from the Manufacturer our current MAP pricing is 20% of MSRP as per attached price sheet.

**B.** Pricing may be adjusted by Manufacturer upon 30-day notice. Manufacturer will make every effort to limit price adjustments to reasonable annual adjustments however during periods of higher than normal inflation or other rising costs, such as steel, the manufacturer may need to pass along increases in cost by adjusting the price.

#### **5. Terms of Sale.**

All sales of Manufacturer's Products to Distributor shall be made pursuant to this Agreement at such prices listed in price list. All prices are FOB Manufacturer's plant or warehouse location. From time to time the Manufacturer may offer a reduction in freight cost or share in the cost of freight in consideration of large orders or due to special promotions. Risk of loss due to damage or destruction of Manufacturer's Products shall be the responsibility of the Distributor after delivery to the carrier for shipment. Manufacturer will select the shipper unless Distributor requests a reasonable alternative. All orders are subject to acceptance by Manufacturer. Except as otherwise expressly agreed by Manufacturer in advance, this Agreement shall control all aspects of the dealings between the parties with respect to the Manufacturer's Products and any additional or different terms in any Distributor order are hereby rejected unless the parties specifically agree to them in advance of shipment and mutually sign another agreement to that effect.

#### **6. Payment.**

Distributor shall pre-pay all charges due via credit card or interact money transfer

#### **7. Marketing Policies.**

**A.** Distributor will attempt maintain floor model units of Manufacturer's Products and will promote actively and effectively the sale of Manufacturer's Products through all appropriate means of distribution prevailing in the Territory/Channel.

**B.** The risk of collection from customers is entirely the risk undertaken by the Distributor. The Distributor may not, under any circumstances, chargeback Manufacturer for unpaid invoices by a customer.

**C.** The Manufacturer will promptly refer to Distributor all leads, prospects and related information which are directed to it or which it receives regarding purchasers of any Product with the Territory/Channel. It is expected that Distributor will always actively follow up and pursue all leads, prospects and related information supplied by the Manufacturer.

**D.** In the event Manufacturer discontinues the manufacture of any Products, Manufacturer will continue, for a reasonable time after such discontinuance, to make available to Distributor replacements parts for such discontinued Products, to the extent necessary to service such discontinued Products previously sold to Distributor.

**E.** Distributor agrees to refrain from selling, leasing, renting or shipping any Products to any business or person outside the Territory/Channel.

## **8. Distributor's General Duties.**

**A.** Distributor shall maintain a place of business in the Territory, including suitable showroom facilities to display Manufacturer's Products. Distributor shall provide maintenance/warranty service on Manufacturer's Products sold in the Territory, using qualified personnel and subject to service policies satisfactory to Manufacturer.

**B.** Distributor shall hire sales personnel or appoint representatives to introduce, promote, market and sell Manufacturer's Products in the Territory/Channel. Distributor shall adequately train such personnel and/or representatives. Distributor shall employ sufficient numbers of sales personnel and/or representatives to market Manufacturer's Products in the Territory.

**C.** Distributor agrees not to engage in the distribution promotion, marketing or sale of any goods or products that compete or conflict with Manufacturer's Products.

**D.** Distributor will use its best efforts to enact and carry out a merchandising policy designed to preserve the goodwill that is associated with the name and reputation of the Manufacturer and the Products.

**G.** Distributor agrees to conduct any and all sales activities in connection with the Products in a lawful manner, consistent with the highest standards of fair trade, fair competition and business ethics.

## **9. Sales Policies.**

**A.** Manufacturer will establish sales quotas, giving reasonable regard to past performance and market potential of the Manufacturer's Products. Distributor agrees to employ sales personnel of demonstrated capacity to attain such quotas and consents to rewards directly to such personnel by Manufacturer in recognition of superior performance.

**B.** Manufacturer will provide Distributor with merchandising assistance in the form of providing reasonable quantities of brochures and promotional material and from time to time, product and sales training. Additionally, a link will be placed in the dealer section of Manufacturer's website, [www.Swivel.pro](http://www.Swivel.pro).

C. Distributor agrees to use such assistance in carrying out Manufacturer's merchandising and sales promotion policies.

## **10. Advertising Policies.**

Manufacturer will from time to time provide advertising and promotion of Manufacturer's Products throughout the Territory/Channel along with continuous efforts to drive traffic to the Manufacturer's website, www.Swivel.pro. Nothing herein shall prevent Distributor from separately advertising and marketing the Manufacturer's Products within the Territory/Channel, provided the form and content of the advertising or marketing materials are approved by Manufacturer in advance.

## **11. Warranty Policies.**

If any of Manufacturer's Products are proven to Manufacturer's satisfaction to have been defective at time of sale to Distributor, Manufacturer will provide the appropriate part for repair or make an appropriate adjustment in the original sales price of such product or, at Manufacturer's election, replace the defective product. Manufacturer shall provide to Distributor information with respect to Manufacturer's limited warranty extended to the original consumer of Manufacturer's Products.

## **12. Indemnification.**

A. Manufacturer agrees to protect Distributor and hold Distributor harmless from any loss or claim arising out of inherent defects in any of Manufacturer's Products existing at the time such product is sold by Manufacturer to Distributor, provided that Distributor gives Manufacturer immediate notice of any such loss or claim and cooperates fully with Manufacturer in the handling thereof.

B. Distributor agrees to protect Manufacturer and hold Manufacturer harmless from any loss or claim arising out of the negligence of Distributor, Distributor's agents, employees or representatives in the installation, use, sale or servicing of Manufacturer's Products or arising out of any representation or warranty made by Distributor, its agents, employees or representations with respect to Manufacturer's Products that exceeds Manufacturer's specifications or limited warranty.

## **13. Order Processing and Returns.**

A. Manufacturer will employ its best efforts to fill Distributor's orders promptly on acceptance but reserves the right to allot available inventories among distributors and end user customers at its discretion.

B. Except for Manufacturer's products that are defective at the time of sale to Distributor, Manufacturer shall not be obligated to accept any of Manufacturer's Products that are returned. In the event such returns are accepted, Manufacturer may impose a reasonable restocking charge.

**14. Use of Manufacturer's Name.**

Distributor will not use, authorize or permit the use of, the name or any other trademark or trade name owned by Manufacturer as part of its firm, corporate or business name in any way. Distributor shall not contest the right of Manufacturer to exclusive use of any trademark or trade name used or claimed by Manufacturer. Distributor may utilize Manufacturer's name, trademarks and logos in advertising, on stationery and business cards, or on its website.

**15. Relationship of the Parties.**

The relationship between Manufacturer and Distributor is that of vendor and vendee. Distributor, its agents and employees shall, under no circumstances, be deemed employees, agents or representatives of Manufacturer. Distributor will not modify any of Manufacturer's Products without written permission from Manufacturer. Neither Distributor nor Manufacturer shall have any right to enter into any contract or commitment in the name of, or on behalf of the other, or to bind the other in any respect whatsoever.

**16. Confidentiality**

Distributor agrees to keep confidential all Manufacturer trade secrets, proprietary information and any pricing or cost information excluding any pricing that is higher than the Minimum Acceptable Market Price. All patents, trademarks, registered names or products and copyrights are the property of the Manufacturer and any information pertaining to any and all of these is to remain confidential. Distributor will make every effort to store all correspondence in a safe and confidential manner and will be either returned to Manufacturer or shredded when no longer needed or disposed of.

**17. Term and Termination.**

Unless earlier terminated as provided below, the term of this Agreement shall commence on

This date and shall continue until terminated by either party on at least 30 Days prior notice.

**A.** Manufacturer may terminate at any time by written notice given to Distributor not less than ninety (90) days prior to the effective date of such notice in the event Manufacturer decides to terminate all outstanding distributor agreements for Manufacturer's Products and to offer a new or amended form of distributor agreement.

**B.** Manufacturer may terminate this Agreement upon notice to Distributor on any of the following events: (1) failure of Distributor to fulfill or perform any one of the duties, obligations or responsibilities of Distributor in this Agreement, which failure not cured within 30 Days notice from Manufacturer; (2) any assignment by Distributor of any interest in this agreement or delegation of Distributor's obligations without Manufacturer's written consent; (3) any sale, transfer or relinquishment, voluntary or involuntary, by operation of law or otherwise, of a material interest in

the direct or indirect ownership or any change in the managers of Distributor; (4) failure of Distributor for any reason to function in the ordinary course of business; (5) conviction in a court of competent jurisdiction of Distributor, or of a significant partner, principal officer or major stockholder of Distributor for any violation of law that, in Manufacturer's opinion, to affect adversely the operation or business of Distributor or the good name, goodwill, or reputation of Manufacturer, products of Manufacturer, or Distributor; or (6) submission by Distributor to Manufacturer of fraudulent reports or statements, including, without limitation, claims for any refund, credit, rebate, incentive, allowance, discount, reimbursement or other payment by Manufacturer.

#### **18. Obligations on Termination.**

On termination of this Agreement, Distributor shall cease to be an authorized distributor. All amounts owing by Distributor to Manufacturer shall, notwithstanding prior terms of sale, become immediately due and payable.

**A.** All unshipped orders shall be cancelled without liability of either party to the other;

**B.** Distributor will resell and deliver to Manufacturer on demand, free and clear of liens and encumbrances, such of Manufacturer's Products and materials bearing Manufacturer's name as Manufacturer shall elect to repurchase, at a mutually agree price, but not in excess of Manufacturer's current price to distributors for such products and materials, provided that Manufacturer shall not be obligated to pay Distributor for any item originally provided free of charge;

**C.** Neither party shall be liable to the other because of such termination for compensation, reimbursement or damages on account of the loss of prospective profits or anticipated sales, or on account of expenditures, investments, lease or commitments in connection with the business or goodwill of Manufacturer or Distributor or for any other reason whatsoever growing out of such termination;

**D.** In sum, both parties acknowledge that termination of this Agreement should be treated in the ordinary course of business with both parties exerting their best efforts to end the relationship amicably.

#### **19. Notices.**

Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or recognized overnight services such as Federal Express to the addresses listed in this agreement.

#### **21. No Waiver.**

The waiver or failure of either party to exercise in any respect any right provided in this agreement shall not be deemed a waiver of any other right or remedy to which the party may be entitled.

**22. Entirety of Agreement.**

The terms and conditions set forth herein constitute the entire agreement between the parties and supersede any communications or previous agreements with respect to the subject matter of this Agreement. There are no written or oral understandings directly or indirectly related to this Agreement that are not set forth herein. No change can be made to this Agreement other than in writing and signed by both parties.

**23. Governing Law.**

This Agreement shall be construed and enforced according to the laws of the State of Arizona and any dispute under this Agreement must be brought in this venue and no other.

**24. Headings in this Agreement.**

The headings in this Agreement are for convenience only, confirm no rights or obligations in either party, or do not alter any terms of this Agreement.

**25. Severability.**

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

Manufacturer  
Clamca Toolbox Distributors  
1100 Burloak Dr Suit 300,  
Burlington ON

Name: Joseph Kharshoum  
Title Director of Business Development

Signature

Distributor

\_\_\_\_\_

Name: \_\_\_\_\_

Signature \_\_\_\_\_