**APPOINTMENT OF SOLE DISTRIBUTOR FOR SUPPLY OF BULK ITEMS BY THE MANUFACTURER WITH A RIGHT TO PACK THE SAME INTO SMALL PACKINGS**

THIS AGREEMENT made at……………..this……………..day of……………..20………….. between Apple Photo Film Ltd., a company duly incorporated and existing under the laws of USA, having its principal office at ................. (hereinafter referred to as "Apple") and M/s. Gupta Photo Films, a partnership firm registered under the Indian laws and having its principal office at……………..(hereinafter referred to as "Gupta").

 **WITNESSETH**

 Chapter I

 **General Provisions**

**Article 1: Definitions**

1.01 The term "Bulk Rolls" shall mean colour negative in the form of Jumbo Rolls which are emulsion coated, dried and rolled by Apple but which are yet to be converted into finished products to be sold under "Apple Trademarks".

1.02 The term "Products" shall mean packing of colour negative film for 24 and 36 photos converted by Gupta from "Bulk Rolls" and ready for ordinary marketing with "Apple Trademarks" affixed.

1.03 The term "Territory" as used herein shall mean India only.

Chapter II

**Purchase of bulk rolls by distributor**

**Article 2: Purchase contracts**

2.01 Apple shall sell the Bulk Rolls to Gupta and Gupta shall purchase the same from Apple under such terms and conditions set forth in this Chapter 11, and except as otherwise agreed upon between the parties hereto, such terms and conditions shall also apply to all individual purchase contracts for the purchase of the Bulk Rolls hereunder. Each individual contract shall become effective and binding only when Gupta's order for the Bulk Rolls is accepted by Apple in writing.

2.02 The parties hereto shall, prior to the first day of each accounting period (April 1st to 30th September and 1st October to 31st March) during the term of this Agreement, fix the tentative quantity (on a monthly basis) of Bulk Rolls to be purchased by Gupta during such accounting period; provided, however, that any tentative quantity so fixed shall not become final and binding upon the parties hereto.

**Article 3: Purchase prices**

3.01 The purchase price of the Bulk Rolls shall be listed on the then effective Price List established and furnished by Apple. Unless otherwise agreed upon the parties hereto, Apple shall quote in the Price List the prices of Bulk Rolls on the basis of CIF Bombay by vessel.

**Article 4: Payment**

4.01 Except as otherwise agreed upon by and between the parties hereto, all payments for the Bulk Rolls supplied to Gupta hereunder shall be made on the basis of draft at sight under irrevocable UC in U.S. Dollar to be confirmed by a prime bank in USA.

4.02 Notwithstanding the provisions of Article 4.01, Apple shall agree that the UC opened by Indian governmental bank is not required to be confirmed by a prime bank in USA.

**Article 5: Shipment, transportation and storage**

5.01 Apple shall make all arrangements for shipment of the Bulk Rolls purchased by Gupta. Apple may tranship any shipment of the Bulk Rolls at any port or ports other than its destination or ship the Bulk Rolls covered by any single order in two or more partial shipments, whenever Apple finds it necessary to do so for the sake of convenience in shipping arrangement. It is expressly agreed that no estimate of delivery time made by Apple will constitute a guarantee of delivery or deliveries by such date, that all shipping and delivery dates will be approximate, and that Apple will not be liable for any damages, consequential or otherwise, for delays in delivery.

5.02 Concerning the methods and/or manners of the transportation and storage of Bulk Rolls in India, Gupta shall comply with instructions given by Apple from time to time.

**Article 6: Insurance**

Marine insurance obtained by Apple, if any, for the Bulk Rolls in transit shall cover the full invoice value of the Bulk Rolls plus ten per cent (10%) thereof for All Risks on the "Warehouse to Warehouse" basis as provided in the "Institute Cargo Clauses". Apple shall, if so requested by Gupta or if Apple finds it necessary to do so, obtain, at the expenses of Gupta, a War and S.R.C.C. Risks Insurance for the Bulk Rolls in transit at the rate then prevailing at the time of shipment thereof. Apple shall in no way be held liable for any portion of Gupta's claim for damages for non‑arrival or loss or any damage or other accident occurred to the Bulk Rolls in transit exceeding the amount actually redeemed by such insurance.

**Article 7: Defective Bulk Rolls**

7.01 All Bulk Rolls must be examined by Gupta immediately after receipt of them. Any defects thus found out shall promptly be reported by Gupta without fail to Apple otherwise the Bulk Rolls shall be deemed as accepted.

7.02 Complaints relating to defects in Bulk Rolls shall be submitted in writing by Gupta to Apple within a period of fifteen days of receipt of Bulk Rolls by Gupta together with particulars of the emulsion batch number and sample of the Bulk Rolls forming the subject of the complaints.

In the event of a justified complaint, Apple shall provide compensation only in the form of Bulk Rolls of an equal kind and quantity as the Bulk Rolls forming the subject of the complaint. No replacement can be made for Bulk Rolls of which the guarantee period on the log sheet has already expired at the time of sending the sample pertaining to the complaint.

7.03 Apple shall not make any warranty with respect to the quality of the products converted by Gupta hereunder except that Bulk Rolls shall conform to Apple's quality standard applicable at the date of shipment.

7.04 If Apple is compelled to supply Bulk Rolls which are partially defective, Apple shall notify details of the defects to Gupta by means of the log sheets pertaining to such Bulk Rolls. The price of the partially defective Bulk Rolls shall be determined taking into consideration the effective square meters of said Bulk Rolls reasonably excluding the defective parts.

Chapter III

**Converting of Bulk Rolls**

**Article 8: Converting of Bulk Rolls**

Gupta shall convert all Bulk Rolls supplied to it hereunder into the packing of colour negative films for 24 and 36 photos, in accordance with the instructions issued by Apple. Apple will train Gupta's engineers and technicians for converting the Bulk Rolls into products and Gupta will construct and maintain necessary workshop for converting the Bulk Rolls into products at its own cost. Gupta shall manufacture packing material of small films and sample of each batch of packing material will be sent to Apple for inspection and if Apple finds any batch of packing material defective or not upto the mark, Gupta shall destroy the entire remaining packing material of that batch.

 Chapter IV

 **Distribution of products**

**Article 9: Distributorship**

Apple hereby grants to Gupta the non‑exclusive right to sell, market or otherwise distribute the products in the territory, subject to the terms and conditions hereinafter set forth.

**Article 10: Sales**

10.01 Gupta shall sell the products at its own risk and for its own account under such terms and conditions as it may think fit. Gupta shall in no way be considered as representative or agent for Apple and it shall have no power or authority to set or incur any liability on behalf of Apple.

10.02 Except as otherwise agreed upon by and between the parties hereto, Gupta shall not, either directly or indirectly, sell, transfer or otherwise make available the products outside the territory, nor shall it sell the products to any party in the territory who Gupta knows or has reasons to believe intends to resell or re‑export the products outside the territory.

Chapter V

**Inventory and sales promotion**

**Article 11: Inventory**

Gupta shall always maintain inventory of the products sufficient to meet in a timely manner all reasonably expected demands for the products in the territory. Apple may from time to time give Gupta advices on the size of inventory to be maintained by Gupta. Gupta shall properly store or cause to be properly stored all products kept in its inventory under such appropriate storage condition or conditions as the nature of the products will require.

**Article 12: Marketing and sale promotion**

12.01 Gupta undertakes that it shall conduct sales and marketing of the products in the territory at its own risk and expense and that it shall exert its best efforts to maximise the sale of the products in the territory.

12.02 For the purpose of implementing its undertakings set forth in Article 12.01, Gupta shall establish and maintain and/or cause to be established and maintained adequate sales organisations and operate the same efficiently, taking Apple's advices. The term "sales organisations" as used herein shall mean and include sales organisations, channels and outlets for the products, their storage and after sales service facilities.

12.03 Apple shall, from time to time when it finds it necessary to do so, furnish Gupta without cost to Gupta with advertisement materials prepared or designed for the sales promotion of the products, such as pamphlets, leaflets, catalogues and posters.

Chapter VI

**Prohibition of marketing**

**Article 13: Products unsuitable for marketing**

13.01 For the purpose of examining the marketability of the products kept in Gupta's inventory, Apple shall be entitled to inspect Gupta's inventory of the products at any time and from time to time during the term of this Agreement, and Gupta shall, from time to time upon Apple's request, promptly furnish Apple with a list of inventory of the products in Gupta's hand and/or a list of their batch number.

13.02 Except as otherwise agreed between the parties hereto, Gupta shall not market or cause to be marketed the products whose date of expiry has gone out or the products which Apple shall have previously informed Gupta to be no longer suitable for marketing due to the reason of quality.

13.03 In the event that Apple gives any instructions to Gupta with respect to the disposition of such unsuitable products, Gupta shall promptly dispose of such products in accordance with such instructions.

Chapter VII

**Reporting requirement**

**Article 14: Reporting requirements**

14.01 During the term of this Agreement, Gupta shall, as soon as practicable after the end of each of its semi‑annual fiscal periods, furnish Apple with a report in writing setting forth the conditions of the market in the territory during the previous six‑months period, including, but not limited to, its achievements in the sale of products and information about their competitive product.

14.02 In addition to regular reports to be furnished under Article 14.01, Gupta shall, from time to time upon Apple's request and when finds it appropriate to do so, furnish Apple with the following information in such manner or manners as Apple may from time to time request or Gupta may from time to time consider fit:

(i) information about the terms and conditions under which Gupta shall sell the products, including, but not limited to, their sales prices;

(ii) information about any new legislations or any amendments or abolitions of any existing laws or regulations which shall in any way affect or which are likely to affect in any way the marketing of the products in the territory; and

(iii) such other information as Apple may require for its marketing operations.

 Chapter VIII

 **Trademarks**

**Article 15: Trademarks**

15.01 Apple hereby authorises and permits Gupta to use during the term of this Agreement any and all trademarks with and to the extent reasonably necessary for the marketing and publicity of the products in the territory.

15.02 When Gupta uses any of the trademarks in accordance with Article 15.01, it shall fully comply with such instructions as Apple may from time to time give to Gupta with respect to the manners and styles of type in which to use such trademarks. When using any trademarks, Gupta shall not add any letters, words, designs or marks to such trademarks or otherwise alter such trademarks nor shall it use such trademarks in combination with any other trademark, without Apple's prior written consent.

15.03 Gupta may authorse and permit its sub‑distributors, wholesalers, dealers in the territory to use all or any of the trademarks which Gupta is authorised and permitted to use under Article 15.01, in connection with and to the extent reasonably necessary for the marketing and publicity of the products in the territory; provided, however, that such sub‑distributors, wholesalers, dealers shall be subject to the same obligations as those which Gupta has under Article 15.02.

15.04 Gupta shall not transfer or otherwise dispose of the right to use the trademarks granted to it under Article 15.01 to any third party except as permitted under Article 15.03.

15.05 Without Apple's prior written consent, Gupta shall not use any of the Trademarks or Apple's corporate name or trade name as a part of its corporate name or trade name, nor shall it make any representations or use any names which may or are likely to cause the public to mistake or confuse Gupta for or with Apple.

15.06 In the event that Gupta obtains knowledge of any actual or threatened suit with respect to the trademarks against Gupta in the territory for an alleged infringement of the right of any third party by reason of use of trademarks or of any actual infringement by any third party or any of Apple's rights, it shall promptly notify Apple thereof and take appropriate measures at Apple's cost in accordance with such instructions as Apple may give to Gupta from time to time.

**Article 16: Secrecy**

Gupta shall keep strictly confidential any and all technical and business information including, but not limited to Apple's know‑how marketing programmes and sales volumes, which may be disclosed or confided to it by Apple or which it may obtain from Apple during the course of performance of this agreement, and shall not disclose the same to any third party provided, however, Gupta shall disclose any of such information upon Apple's prior written consent to Indian Government authorities, if the authorities require the same. Gupta shall be responsible for seeing to it that its officers, employees and agents shall also keep such know‑how and information strictly confidential and shall not disclose the same to any third party.

Chapter X

**Term and termination**

**Article 17: Term**

The term of this Agreement shall be from the date first above written until ...........

**Article 18: Termination**

18.01 In the event that either party breaches any of the provisions of this Agreement or any individual purchase contract for the purchase of the Bulk Rolls hereunder the other party may terminate this Agreement at any time by giving the defaulting party a three‑months prior written notice of termination.

18.02 Apple may immediately terminate this Agreement by written notice to Gupta in the event of Gupta's bankruptcy or insolvency, in the event that Gupta shall make an assignment for the benefit of its creditors, in the event that a petition shall be filed against Gupta under a bankruptcy law, a corporate reorganization law or any other law for relief of debtors (or similar law analogous in purpose or effect), or in the event that Gupta shall enter composition proceedings.

18.03 In the event that there arises any substantial change in the management or ownership of Gupta, it shall promptly notify Apple thereof. In such case, if Apple finds such change to be disadvantageous or inconvenient to it, it may, at its sole discretion, immediately terminate this agreement by giving a written notice to Gupta within three months from the date on which Apple became aware of such change.

**Article 19: Surviving provisions**

The provisions of Articles 13, 16, 20, 24, 25 and 26 shall survive any termination or expiration of this Agreement.

**Article 20: Rights and obligations upon termination**

20.01 Notwithstanding any termination or expiration of this agreement, any and all rights and obligations of the parties hereto which shall have accrued before the effective date of such termination or expiration under this agreement or any individual purchase contract and which then remain outstanding shall still be governed by this agreement.

20.02 Upon termination or expiration of this agreement, Gupta shall immediately discontinue and cause its sub‑distributors, if any, to discontinue all marketing and publicity relating to the products or all uses of the trademarks.

20.03 Apple shall have the right subject to Indian Government regulations/approval, if necessary but not obligation, to purchase and/or have its assignee purchase at landed cost all or any part of the products, the Bulk Rolls and packaging materials supplied by Apple which remain in the hand of Gupta upon termination or expiration of this Agreement and which are in a good and marketable condition by giving written notice to Gupta. Any and all other materials including advertisement and publicity materials supplied by Apple and remaining in the hand of Gupta upon termination or expiration of this Agreement shall be disposed off in India by Gupta in accordance with Apple's instructions.

20.04 Notwithstanding the provision of Article 20.02, in the event that Apple does not or fails to give Gupta a notice of its intention to exercise its right to purchase or have its assignee purchase Gupta's inventory of the products as provided in Article 20.03, Gupta may continue to sell the products in its inventory for a period of six months following termination or expiration of this agreement.

20.05 After the said six‑months period following termination or expiration of this agreement or after its receipt from Apple of a notice referred to in Article 20.04, whichever is earlier, Gupta shall not sell any products nor shall it use any trademarks.

Chapter XI

**Miscellaneous**

**Article 21: Non‑assignability**

Gupta shall not transfer or assign any of its right and obligations hereunder to any third party without Apple's prior written consent.

**Article 22: Force majeure**

Neither party shall be held liable for any failure or delay in the performance of any of the obligations on its part to be performed hereunder, if and to the extent such failure or delay is caused by any cause or causes beyond reasonable control of such party including but not limited to fire, storm, flood, earthquake, explosion, accident, military operation, war, rebellion, riot, wreck, epidemic, quarantine regulations, labour dispute, shortage of manpower, embargo, failure or delay in transportation, inability to obtain required raw materials or machines and any laws, regulations or other governmental action.

**Article 23: Amendments**

This agreement may be amended only by a writing signed by the duly authorised representatives of both parties and specifically referring to itself as amendment to this agreement.

**Article 24: Arbitration**

Any and all disputes, controversies and differences arising between the parties hereto out of or in relation to this Agreement or any breach thereof shall be finally settled by arbitration to be conducted in New York, USA in accordance with the Rules of the International Chamber of Commerce, to which the parties hereto shall be bound.

**Article 25: Governing law**

This agreement shall be governed by and construed in accordance with the laws of USA.

**Article 26: Government approval**

Before signing and delivery of this agreement and in the course of execution of this agreement, each party hereto, at its own expense, shall seek necessary approval by any government authorities. However, each party hereto understands that no approval of this agreement by any government authorities on each side is required in order for it to become effective or for its lawful performance.

**Article 27**

Every notice required or contemplated by this agreement by any party shall be delivered by postage prepaid, registered airmail, addressed to the other party at its address specified below or at such other address as the intended recipient previously shall have designated by a written notice and such notice shall become effective ten days after the date of despatch of such notice.

IN WITNESS WHEREOF the parties aforementioned have executed this agreement on the date and year first hereinabove written.

WITNESSES Signed and delivered by Apple Photo Film Co. Ltd., by

1. the hands of Shri……………..Marketing Director,
2. Signed and delivered by Gupta Photo Films by its partner

Its duly authorised official