

## **SUPPLY AGREEMENT**

between

**COMPANY A , S.A.**, incorporated under the laws of Spain and having its legal domicile at C/. C/ Orilla del Río 6, Bilbao (España) (Spain), ("**COMPANY A**"),  
and

**COMPANY B, S.A.**, incorporated under the laws of Spain and having its legal domicile at en Ctra. de Salamanca, Km. 384, Polígono Industrial de Los Camachos, 32.000 Cartagena (España)), ("**Company**"),

A "Party" and collectively the "Parties"

### **BACKGROUND**

(A) COMPANY A has the ownership of the Product.

(B) Company is interested to purchase the Product from COMPANY A for resale it in the Territory under the trademark BEAGRA 50 ("Trademark") property of Company.

(C) COMPANY A is interested to supply Company with the Product.

(D) The Parties agree that the supply of the Product shall be in accordance with the terms and conditions set out in this Agreement.

**NOW, THEREFORE**, the Parties agree as follows:

### **OPERATIONAL PROVISIONS**

#### **1 Definitions**

Affiliate shall mean any business entity which controls, is controlled by or is under common control with either Party; for the purpose of this definition, a business entity shall be deemed to „control“ another business entity if it owns, directly or indirectly, in excess of 50% of the outstanding voting securities or capital stock of such business entity or any other comparable equity or ownership interest with respect to a business entity other than a corporation.

Agreement shall mean this agreement including the Annexes A and B.

Competing Product shall mean all products described in Annex B.

Confidential Information shall have the meaning ascribed to it in Article 10.1

Defect shall mean any non-conformity of the Product.

Delivery shall mean delivery of the Product as set forth in Annex A.

Effective Date shall mean 1st November, 2011.

Force Majeure shall have the meaning ascribed to it in Article 9.1.

Forecast shall have the meaning ascribed to it in Article 2.4.

Losses shall mean, in respect of any matter, event or circumstance, includes all demands, claims, actions, proceedings, damages, payments, losses, reasonable costs, reasonable expenses or other liabilities.

Party shall mean either party to this Agreement.

Product shall mean the product BEAGRA 50 LA (Reg. No. 223344).

Specification shall mean formulated product containing 50% of Beagril, in SC formulation fulfilling the registration of the Product

COMPANY A Group shall mean any entity under the ultimate common control

Company of COMPANY A, VV, Vallee de Joux/Switzerland.

Trademark shall mean BEAGRA a Registered Trademark of Company.

Territory Spain

Visual Inspection shall have the meaning ascribed to it in Article 7.2.

Year shall mean the period from 1st of January through 31st of December.

## **2 Supply, Forecasting and Ordering**

**2.1** COMPANY A shall supply, and Company shall purchase, such quantities of the Product as Company may order and COMPANY A may supply in accordance with the terms and conditions of this Agreement.

**2.2** COMPANY A shall supply the Product on an exclusive basis.

**2.3** Company shall purchase all its requirements of Product exclusively from COMPANY A.

**2.4** By the first (1st) calendar day of each quarter, Company shall submit to COMPANY A a twelve (12) month rolling forecast ("Forecast") of Company's estimated purchases of the Product under this Agreement. Company shall use all reasonable care and diligence in the preparation of Forecasts to be provided to COMPANY A hereunder. The Forecast shall contain details as requested and required by COMPANY A for appropriate planning. COMPANY A shall use its reasonable commercial efforts to supply the Product requirements forecasted by Company. COMPANY A shall inform Company in due time in case the forecasted purchase volumes may not be delivered with regard to volume and/or timing.

**2.5** Company shall place purchase orders for the Product with COMPANY A in writing at least 30 (thirty) days in advance of requested delivery dates. Such order shall be confirmed by COMPANY A in writing (by fax or electronically), indicating available quantity and estimated delivery date, and shall be binding on both Parties.

## **3 Delivery, Prices and Payment**

**3.1** All Deliveries shall be accompanied by all transportation documents required by law and freight handlers (carriers).

**3.2** A delay in Delivery of the Product to Company may not give rise to any liability on the part of COMPANY A, unless it can be proved that such delay arose from COMPANY A's wilful misconduct or gross negligence.

**3.3** Price of the Product, payment terms and Delivery shall be as set forth in Annex A, as amended from time to time by COMPANY A giving notice in writing to Company.

## **4 Trademarks**

**4.1.** Product shall be sold by Company in the Territory solely under the Trademark.

**4.2** Company shall assist COMPANY A in assuring that the packaging and labels of the Product conform to the Product registrations and all applicable laws and regulations in the Territory.

## **5 Registrations**

**5.1** In case the Product registration is cancelled, Company shall waive any and all rights and/or claims and COMPANY A shall be entitled to terminate this Agreement with immediate effect. Company expressly renounces to claim from COMPANY A any kind of amount for damages or losses, or right in case of the mentioned termination.

**5.2** Company will be responsible for the design, the wording and the updating of the Product label according to the current registration. COMPANY A shall have the right to go through such label.

**5.3** Company will comply with COMPANY A's policy on stewardship and safe use of Product. COMPANY A will provide Company with the guidelines on this policy to the extent they are necessary for the resale of the Product.

## **6 Term and Termination**

**6.1** This Agreement shall enter into force on Effective Date and, unless terminated by earlier in accordance with this Agreement, shall expire at the end of 2012.

**6.2** The Parties shall meet six (6) months before the end of this Agreement to discuss their future interests.

**6.3** COMPANY A shall be entitled to immediately terminate this Agreement in case of Company non-compliance with the obligation stated in Articles 2.3 and/or 5.3, upon 30 days written notice. COMPANY A shall be also entitled to immediately terminate this Agreement - by giving written notice of termination to Company - in case of cancellation of the registration of the Product, effective as of the date of receipt of the written notice.

**6.4** Either Party may terminate this Agreement with immediate effect by giving written notice of termination to the other Party upon the occurrence of:

a) any breach of this Agreement by the other Party which remains uncured after 30 days written notice thereof from the non-breaching Party; or

b) the other Party suffering a change in ultimate control or being taken over by or merging with another company or entity, or changing its organization or its legal form, or one of its parents companies being taken over by or merging with another company not belonging to the same group of companies.

**6.5** Upon the expiration of this Agreement, or in case of termination for any reason, Company shall immediately render adequate and final accounts to COMPANY A with respect to any transaction under this Agreement to which it has not yet rendered an accounting to COMPANY A.

**6.6** Upon termination of this Agreement COMPANY A shall have the right, but be under no obligation to take back any stocks and/or inventory of any Products from Company. If such stock and/or inventory is not taken back by COMPANY A, Company shall have the right to sellout and market the remaining stock of the Product within a limited period of time as agreed between the Parties.

## **7 Warranty and Liability**

**7.1** COMPANY A warrants that the Product shall conform to the Specification at Delivery. Apart from this warranty, COMPANY A makes no further warranties or representations of any kind, express or implied, including no warranties and representations as to marketability or fitness of the Product for any other particular purpose.

**7.2** Within seven (7) days of receipt of each Delivery of the Product, Company shall visually inspect the Product and in case any Defects are detected, immediately inform COMPANY A in writing thereof. Such visual inspection shall be executed against the consignment note and shall cover the examination of quantity delivered and the physical appearance of packing and the Product ("Visual Inspection").

**7.3** In the absence of such written claim within the period mentioned above, the Delivery of the Product shall be deemed free of Defects detectable by Visual Inspection.

**7.4** All Defects which Company has not and could not detect upon proper performance of the examination as set forth in Article 7.2 and which Company detects at a later stage, shall be notified to COMPANY A within seven (7) days of the detection of such Defect but in any event not later than six (6) months after the respective delivery date. All Defects which Company failed to either detect or notify in accordance with this Article shall be deemed waived and the respective Delivery of the Product shall be deemed to have been accepted in satisfactory condition and Company shall have no claim against COMPANY A in relation to such Defects.

**7.5** In the event of a Defect the Parties agree whether to replace the defective Product by a conforming Product.

**7.6** Liability of COMPANY A under or in connection with this Agreement shall be limited to purchase price paid by Company to COMPANY A for the Delivery of Product

concerned. The limitation of liability under this Article shall not apply to claims based on (i) death or personal injury caused by negligence or (ii) fraud, for which liability is unlimited.

**7.7** Company shall indemnify, defend and hold COMPANY A and/or its Affiliates harmless from and against all Losses arising in relation to or in connection with the Product following its Delivery in accordance with this Agreement, to any property or person, whether arising in whole or in part from any act or omission of Company provided that this indemnity shall not include any Losses to the extent they arise from any breach of this Agreement by COMPANY A including any breach of COMPANY A's warranties in this Article 7.

**7.8** In case Company violates any of its obligations under this Agreement, for example but not limited to any of its confidentiality or exclusive supply obligations, COMPANY A, besides any other right for asking for any damage COMPANY A and/or its Affiliates may suffer, is also expressly entitled to immediate termination of this Agreement. Company shall immediately return all technical information and/or any other Confidential Information to COMPANY A without keeping any copy or any other kind of instrument containing such information.

## **8 Limited Liability**

Neither Party shall be liable to the other for any loss of profits, loss of business, interruption of business, indirect, special, or consequential damages of any kind, suffered by such other Party for breach of hereof, whether based on contract or tort claims or punitive damages or damages in the nature of penalties, otherwise, even if such Party has been advised of the possibility of such loss.

## **9 Force Majeure**

**9.1** In the event that either Party is affected by any circumstances which prevent the performance by such Party of its obligations hereunder in whole or in part, then such Party shall notify the other Party of the nature and extent of such circumstances ("Force Majeure").

**9.2** Neither Party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other Party, by reason of any delay in the performance or non-performance, of any obligations hereunder to the extent that such delay or non-performance is due to any unforeseeable circumstance beyond its control and which a Party cannot avoid in spite of taking all reasonable care in accordance with the particular circumstances and of which the other Party has been notified of in accordance with Article 9.1. Including but not limited to strikes, riots, wars, fire and flood. The time for the performance of such obligation shall be extended accordingly. The Party so affected shall take all reasonable steps to minimise the loss caused to the other Party and the Parties shall as soon as practicable enter into bona fide discussions with a view to alleviating the effects of said circumstances or to agreeing upon such alternative arrangements as may be fair and reasonable. **9.3** Upon cessation of the circumstances causing delay or impossibility to perform, the Party affected by Force Majeure shall continue the performance of its contractual obligation(s), unless such performance has been waived in writing by the Party to whom such performance was due.

**9.4** If COMPANY A claims a case of Force Majeure the Parties will discuss how to proceed. COMPANY A shall have the right in this case to deliver the Product from a third party using reasonable efforts.

## **10 Secrecy**

**10.1** Company shall maintain and preserve during the term of this Agreement the confidentiality of all information, including information relating to the Product, which is disclosed to Company pursuant to or in connection with this Agreement (whether orally, electronically or in writing and whether or not such information is expressly stated to be

confidential or marked as such) (“Confidential Information”). Company shall disclose Confidential Information only to those of its employees who need it for the resale of the Product and who shall be under the same commitment of confidentiality. Company shall be responsible for these employees and for their strict compliance to the above.

**10.2** Confidential information shall not include information which

a) at the time of disclosure is in the public domain;

b) becomes, by publication or otherwise, part of the public domain after disclosure, except by breach of its confidentiality obligations by the Receiving Party;

c) the Receiving Party can prove was in its possession at the time of disclosure by or on behalf of the Disclosing Party and was not acquired, directly or indirectly, from the Disclosing Party;

d) the Receiving Party may receive from a third party, provided, however, that such Confidential Information was not obtained by such third party, directly or indirectly, from the Disclosing Party; or

e) the Receiving Party may be under an obligation to disclose to any competent government, regulatory authority or court. Such disclosure shall not constitute a breach of this Agreement provided that the Party disclosing under this Article 10.2 promptly notifies the other when such obligation arises to enable the other Party to seek an appropriate protective order and to make known to the said government, regulatory authority or court the proprietary nature of the Confidential Information and to make any applicable claim of confidentiality.

The foregoing exceptions shall not apply to any combination of features or combination of items constituting Confidential Information merely because one or more of the individual features or individual items (but not the combination itself) fall within any one or more of such exceptions.

**10.3** Upon termination of this Agreement (by whomsoever and for whatsoever reason) the Receiving Party at the discretion of the Disclosing Party shall

a) cause all disclosed information in whatever medium the same is recorded or held to be returned or destroyed according to the direction of the Disclosing Party, and;

b) not disclose or make or allow any further use of any disclosed information either directly or indirectly until the expiry of 10 years from the termination of this Agreement. It is understood that this Article 10 shall survive the termination of this Agreement.

## **11 Competing Product**

During the effective term of this Agreement, Company shall not sell any Competing Product as described in Annex B in the Territory without prior written permission of COMPANY A.

## **12 Miscellaneous**

**12.1** Assignment: Any assignment of this Agreement, in whole or in part, by Company shall require the written prior consent of COMPANY A.

**12.2** Entire Agreement: This Agreement shall supersede all prior oral and written agreements and understandings between the Parties and shall constitute the entire Agreement between the Parties, each in respect of the subject matter hereof.

**12.3** Variation: No variation to this Agreement shall be effective unless it is in writing and signed on behalf of both Parties by their duly authorized representatives.

**12.4** Severability: In the event any provision of this Agreement is deemed to be void or unenforceable under any applicable law, the remaining provisions shall not be affected

and the void provision shall be deemed to have been replaced by such valid and enforceable provision which most closely reflects the original intention of the Parties.

**12.5 No Distribution:** Nothing contained in this Agreement shall be construed as a distribution agreement, nor as an authorization to Company to represent itself as a distributor of COMPANY A.

**12.6 Notices:** All notices provided under this Agreement shall be in the English language and in writing and shall be given by registered letter or facsimile to the addresses set forth below, or such other address as either Party may communicate to the other Party in accordance with this Article. A notice shall be deemed to be received upon actual receipt of a registered letter (as evidenced by the respective receipt) or on the first business day at place of receipt following the date of transmission if sent by facsimile (as evidenced by the respective transmission protocol of sender).

If to Company:  
COMPANY B, S.A.

Contact Names:

If to COMPANY A:  
COMPANY A, S.A.

Contact Names:

**12.7 Governing Law:** This Agreement shall be governed and construed by the Laws of Spain.

**12.8 Jurisdiction:** Any disputes or controversies between the Parties that may arise or derive from this Agreement, including any question with respect to the existence of such Agreement, its validity, termination or nullification, shall be submitted to the Courts of Madrid, which shall have exclusive jurisdiction on these matters.

Date: [-----] Date: [-----]

## **COMPANY A, S.A. COMPANY B, S.A. ANNEX A**

### **Supply Terms and Conditions**

#### Prices

Beagril 50% SL (200 litres) = 5,75 EUR /litre

Price schedule can be amended at any time throughout the year by COMPANY A according to Art. 3.3 of this supply Agreement. New prices will be properly communicated to Company.

#### Payment Terms

90 days from date of invoice through confirming

Company shall pay invoices within 90 days of the date of invoice. After 90 days of the date of invoice, delayed payments shall bear default interest on the outstanding amounts at the legal default interest plus seven (7) percentage points. Default interest shall fall due without further notice. In the event of Company's payment default, COMPANY A shall be entitled to cancel, or until receipt of full payment, suspend pending orders.

#### Delivery Terms

Incoterms 2000: DDP to the destination in Spain designated by Company.

#### Delivery Address

To be defined by Company

#### Minimum Order Quantity

4.800 LITRES

#### **Competing Product**

Product containing one of the following active ingredients - alone or in mixture or in combination with others – that can be used for the same or similar purpose/segment and/or has the same or similar effect as the product

Beagril