

AGREEMENT TO GRANT LICENCE

THIS AGREEMENT made this 22nd day of June 1994

BETWEEN TRANSFLUX HOLDINGS LIMITED, of corner Armagh and Manchester Streets, Christchurch, New Zealand, a company organized and existing under the laws of New Zealand (hereinafter called "the Licensor") of the one part,

AND TRANSFLUX DEVELOPMENTS LIMITED, of corner Armagh and Manchester Streets, Christchurch, New Zealand, a company organized and existing under the laws of New Zealand, (hereinafter called "the Licensee") of the other part.

WHEREAS


I. THE Licensor is the owner of valuable intellectual property rights, technical knowledge and Know-How (as hereinafter defined) relating to an invention which concerns fluid heating apparatus.

II. THE Licensor is the proprietor of patents for the invention (as hereinafter defined) in the following countries:

New Zealand	Patent No. 233841
U.S.A.	Patent No. 5216215
North Korea	Patent No. 28848
Australia	Patent No. 644883

and has filed patent applications for the invention in the following countries:

Brazil	Patent Application No. PI9106482
Bulgaria	Patent Application No. 97004
Canada	Patent Application No. 2083370-0
China	Patent Application No. 91103676.8
Europe	Patent Application No. 91910309.3



Finland	Patent Application No. 925402
Hungary	Patent Application No. P9203658
India	Patent Application No. 403/MAS/91
Japan	Patent Application No. 3-509475
South Korea	Patent Application No. 92-702849
Norway	Patent Application No. 924439
Poland	Patent Application No. P-296934
Romania	Patent Application No. 92-01459

III. THE Licensor has agreed with the Licensee to grant to the Licensee:

- (a) An exclusive Licence under any patents which have or shall be granted for the Invention, and
- (b) The exclusive right and licence to use said intellectual property rights, technical knowledge and Know-How,

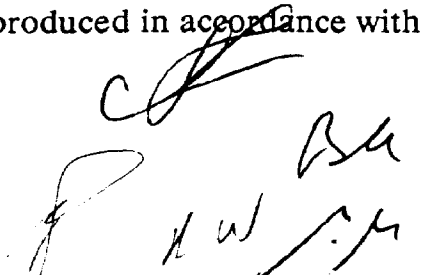
to the extent and subject to the restrictions, covenants and agreements and upon such terms hereinafter expressed and contained.

NOW IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:

DEFINITIONS

1. IN this Agreement the following expressions and terms shall have the meaning set out opposite to them; words importing the singular shall include the plural and vice versa, unless otherwise specified.

- (a) "The Invention" means an invention as described in the complete specification accompanying New Zealand patent number 233841 relating to a fluid heating apparatus.
- (b) "The Inventive Products" means fluid heating apparatus produced in accordance with the Invention.


PATENT
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- (c) "Know-How" means drawings, production methods, techniques, and other information used by the Licensor in the design, production and operation of the Inventive Products, but said Know-How shall be restricted to Know-How which is directly relevant to the commercial production and use of the Inventive Products.
- (d) "Commencement Date" means the date on which this Agreement is signed by the second of the parties to sign the Agreement.
- (e) "The Patent Applications" means the applications listed in paragraph II above.
- (f) "The Patents" means the patents listed in paragraph II above, together with any patents granted in pursuance of the Patent Applications.
- (g) "The Territory" means the countries in which the Patents are in force or Patent Applications pending.
- (h) "The Trade Mark" means the word "Transflux" either alone or as part of a composite trademark.

GRANT OF LICENCE

2.1 THE Licensor HEREBY GRANTS to the Licensee:

- (a) the exclusive rights to produce or have produced and/or sell the Inventive Products in any country worldwide.
- (b) the exclusive rights to use the technical knowledge and Know-How associated with the Invention in any country worldwide.

2.2 THE Licensor agrees to grant to the Licensee an exclusive Licence under each of any Patents already granted to the Licensor at the Commencement Date and also under each of any Patents granted to the Licensor in respect of any of the Patent Applications, as soon as each of the patents is sealed, the said Licences being as set out in the Schedule hereto.

PATENTS

3.1 THE Licensor shall use its best endeavours to:

- 1) procure the grant of each of the Patent Applications and
- 2) keep said Patents in force during the life of this Agreement.

3.2 NOTWITHSTANDING the provisions of Clause 3.1, the Licensor may abandon or allow to lapse any of the Patents or Patent Applications, subject to the approval of the Licensee, such approval not to be unreasonably withheld.

3.3 THE Licensor shall bear the costs of prosecuting the Patent Applications and of paying the renewal fees for the Patents.

DISCLOSURE OF KNOW-HOW AND CONFIDENTIALITY

4.1 THE Licensor shall make all of the Know-How available to the Licensee as soon as possible after the Commencement Date.

4.2 THE Know-How imparted to the Licensee by the Licensor and any other information the Licensee acquires where that information is confidential to the Licensor, shall be treated as confidential information by the Licensee provided that it shall not be a breach of this confidence to disclose, in confidence, said Know-How and information to a sub-contractor or sub-licensee where such Know-How and information is necessary for the successful performance of such a contract or Licence.

4.3 THE Licensee undertakes to return to the Licensor all documents in its possession relating to the Invention and forming part of the Know-How or associated therewith at the termination of this Agreement UNLESS the Licensor states in writing that such material may be retained by the Licensee.

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QUALITY

5.1 ALL of the Inventive Products manufactured by or for the Licensee or any sub-licensee shall be manufactured according to a specification agreed between the parties, said specification being in accordance with the ISO9002 standard or with a mutually acceptable equivalent standard.

5.2 THE Licensee shall maintain a strict quality control system to ensure that the requirements of Clause 5.1 are met.

5.3 THE Licensor shall be entitled to inspect the Inventive Products manufactured by the Licensee and may at reasonable intervals call for samples to be forwarded to the Licensor at the Licensor's expense.

5.4 IF the Licensee does not maintain the required quality and fails to rectify any defects within thirty (30) days after receiving notification of the defects from the Licensor, the Licensor shall again notify the Licensee of the defects and if the Licensee fails to rectify said defects within thirty (30) days of receiving the second notification of the defects from the Licensor, the Licensor shall be entitled, upon giving three (3) months' final notice in writing to the Licensee to remedy the defects, to terminate this Agreement.

LIABILITY

6. THE Licensor shall not be under any obligation to purchasers, users or hirers of the Inventive Products from the Licensee or from any sub-licensee and the Licensee hereby agrees to indemnify the Licensor against any and all claims against the Licensor alleging loss, damage, or injury as the result of the manufacture, sale or use of the Inventive Products.

MARKING

7. THE Licensee shall mark all packaging for the Inventive Products and any instructional manuals and promotional material, with a reference to any relevant Patent or Patents in the country or countries in which said products are to be sold and/or used; said reference including the word "Patent", the name of the or each country, and the serial number of the corresponding Patent or Patent Application, together with such additional words or symbols as may be specified by the laws of that country or countries.

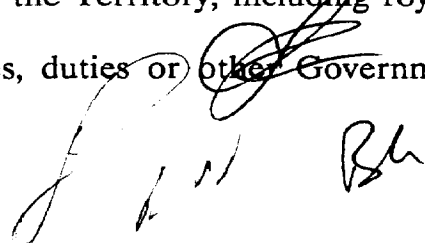
ROYALTIES

8.1 THE Licensee shall pay to the Licensor on each anniversary of the Commencement Date, in the manner hereinafter provided, a royalty equal to the sum of:

(a) An amount equal to the amount spent by the Licensor in maintaining and/or prosecuting the Patents and the Patent Applications for the preceding twelve (12) months, said amount including all maintenance and renewal fees and all costs of prosecuting the Patent Applications to obtain granted patents, including the costs of dealing with any patent opposition proceedings, but excluding the cost of any infringement or invalidity proceedings relating to any granted Patent;

and

(b) An amount being the sum of (i) a percentage (initially set at four per centum (4%)) of the sale price of all Inventive Products manufactured and/or sold by the Licensee in the preceding twelve (12) months in the Territory, the said sale price being the price actually invoiced by or on behalf of the Licensee to the buyer, but not including any freight charges, taxes, duties or other Government charges; and (ii) a proportion (initially set at one third (1/3)) of all revenue to the Licensee in the preceding twelve (12) months from sublicensing of the rights granted to the Licensee by this Agreement in the Territory, including royalty payments and lump sum payments (exclusive of any taxes, duties or other Government

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charges).

8.2 NOTWITHSTANDING clause 8.1 above, the parties hereto shall agree upon a minimum royalty to be paid in respect of each country in the Territory, within three (3) years of the date of the sealing of a Patent in that country, and if the annual royalty paid by the Licensee to the Licensor in respect of that country under provisions of Clause 8.1 is less than the said minimum royalty, the Licensor if it so wishes may advise the Licensee that henceforth the licence under that Patent for that Country shall be a non-exclusive licence.

8.3 IF the Inventive Products are manufactured and sold in a country outside the Territory, or in a country inside the Territory but in which the Patent Application has been finally and irrevocably refused or allowed to lapse or in which the Patent has expired or been invalidated or has otherwise terminated, then the royalty payable by the Licensee to the Licensor under the provisions of Clause 8.1 shall be an amount equal to the sum of:

(i) two per centum (2%) of the sale price of all Inventive Products manufactured and sold by the Licensee in said country in the preceding twelve (12) months, the said sale price being the price actually invoiced by or on behalf of the Licensee to the buyer, but not including any freight charges, taxes duties or other Government charges

and

(ii) one-sixth (1/6) of all revenue to the Licensee in the preceding twelve (12) months from sub-licensing of the rights granted to the Licensee by this Agreement in that country, including any royalty payments and lump sum payments (exclusive of any taxes, duties or other Government charges).

8.4 ON the third anniversary of the Commencement Date and every three (3) years thereafter, each of:

- (1) the percentage of the Licensee's sale price payable to the Licensor under the provisions of Clause 8.1 (b);
- (2) the proportion of the revenue from sub-Licensees payable to the Licensor under the provisions of Clause 8.1 (b);
- (3) any minimum royalty which has been set under the provisions of Clause 8.2; and
- (4) any royalty payable to the Licensor under the provisions of Clause 8.3;

shall be reviewed by the Licensor and the Licensee jointly on a country-by-country basis, with the object of agreeing upon a mutually acceptable royalty under the provisions of Clause 8.1(b), a minimum royalty under the provisions of Clause 8.2, and/or (if applicable) any royalty payable under the provisions of Clause 8.3; and said mutually acceptable royalty, minimum royalty, and royalty under the provisions of Clause 8.3, shall be deemed to be respectively the amount payable under the provisions of Clause 8.1(b), the minimum royalty due under the provisions of Clause 8.2, and the royalty payable under the provisions of Clause 8.3 for that country for the three-year period starting at said review date.

8.5 THE Licensee shall within sixty (60) days of the end of each anniversary of the Commencement Date during the currency of this Agreement deliver to the Licensor a statement setting out the quantity of Inventive Products sold by or on behalf of the Licensee, or otherwise disposed of or retained for the Licensee's own use during the preceding twelve months with respect to each of the countries in which the said goods were manufactured and/or sold or otherwise disposed of, and shall also deliver to the Licensor the royalty due under Clauses 8.1 - 8.4 inclusive for the preceding twelve months.

8.6 IF any sum due under Clauses 8.1 - 8.5 inclusive is not paid within the prescribed period interest will accrue on such overdue payments at the current Bank overdraft rate, calculated on a monthly basis or part thereof and if said payment is not made within three

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months of the due date the Licensor may on sixty (60) days notice to the Licensee terminate the Licence. Such termination will not affect the Licensor's right to sue for and recover money owing and outstanding including the accrued interest as specified herein.

ACCOUNTS

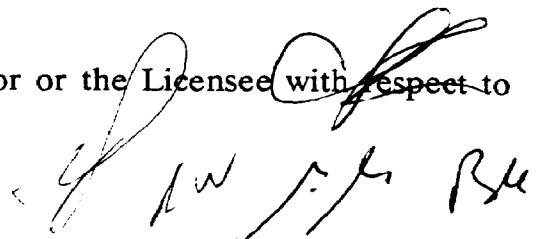
9.1 THE Licensee shall at all times keep accurate and proper records containing all particulars which may be material for the purpose of showing the amounts payable by way of royalties as aforesaid and the said accounts and all other documents in the possession of the Licensee which may be material for the said purposes shall be kept at the registered office of the Licensee and shall at any time during normal business hours (but not more often than four (4) times in any twelve (12) month period) be produced for the inspection of the Licensor or any person acting for or on behalf of the Licensor who shall be at liberty to make copies of or extracts from any of the records or matters contained therein, but shall keep confidential any information thus obtained.

9.2 ONCE every twelve months during the continuance of this Agreement the Licensor may request and the Licensee shall cause to be prepared at the Licensee's expense a statement by an independent auditor approved by the Licensor, verifying the statements required pursuant to Clause 9.1 above.

TERM AND TERMINATION

10.1 THIS Agreement shall commence on the Commencement Date and shall remain in force until the last of the Patents to lapse or expire has lapsed or expired.

10.2 IN the event of any default by either the Licensor or the Licensee with respect to

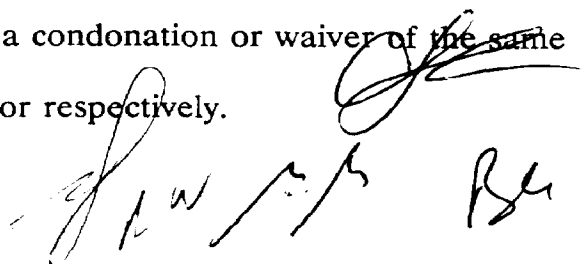
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performance of the terms of this Agreement the party not in default may give notice in writing to the party in default specifying the thing or matter in default and in the event that the party in default fails to remedy the default within thirty (30) days of receiving said notice, the party not in default shall again write to the party in default specifying the thing or matter in default; and if the party in default fails to remedy the default within thirty (30) days of receiving said second notice, the party not in default shall be entitled, upon giving three (3) months final notice in writing to the party in default, to terminate this Agreement. Such right of termination shall be in addition to and not in substitution for any other right power or remedy which may be available to the party giving such notice.

10.3 WITHOUT limiting the generality of the foregoing provisions the Licensor may by written notice to the Licensee forthwith terminate this Agreement but without prejudice to the right to sue for any antecedent breach of this Agreement upon either of the following events:-

- (a) If any sum due and payable hereunder remains unpaid six months after the due date.
- (b) If any order is made or resolution passed for the winding up of the Licensee (except as part of a scheme for reconstruction or amalgamation), or is placed under the direction or control of any Federal or State body, Statutory power, Court officer, receiver, or equivalent, for any reason whatsoever.

10.4 THE termination or expiration of this Agreement shall not relieve the Licensee or Licensor of any obligations which are expressed herein to arise or continue after termination, and failure by the Licensee or Licensor in any one or more instances to terminate this Agreement or require remedy of a breach of any covenant herein by the Licensor or Licensee respectively shall not be taken to constitute a condonation or waiver of the same or of any default or breach by the Licensee or Licensor respectively.



IMPROVEMENTS

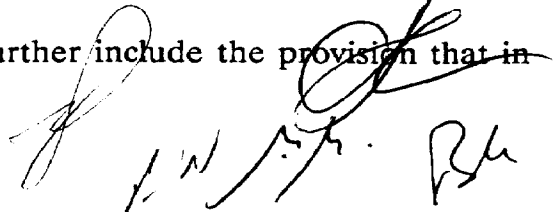
11.1 SUBJECT to the provisions of Clauses 11.2 and 11.3, the Licensee and the Licensor shall inform each other of commercially relevant new developments relative to the Invention, including any improvements, alterations, and modifications. Such information shall be communicated to the other party as soon as practical after the communicating party has knowledge thereof, and shall be kept in confidence by the party receiving the information, until notified otherwise in writing by the communicating party.

11.2 (a) The Licensee and the Licensor shall take all steps necessary to ensure that any commercially relevant improvements to the Invention effected by or on behalf of either party shall be made available in confidence to the other party as quickly as reasonably practicable.

(b) If the party by or for whom the said improvement was effected wishes to obtain patent protection for the improvement, that party may do so in its own name and at its own expense, but shall immediately after filing a Patent Application offer to the other party first refusal of an exclusive licence to make use and sell the said improvement, at a royalty not greater than the royalty at which a licence is subsequently offered to any other party, for the term of this Agreement, and under the terms and conditions, mutatis mutandis, of this Agreement.

(c) If the party effecting the said improvement does not wish, or fails, to obtain patent protection, then the other party and any sub-licensee appointed under Clause 18 may make use of the said improvement as it wishes, without payment of any additional fee or royalty, for the term of this Agreement.

11.3 ANY sub-licence granted under the provisions of Clause 18 shall contain the same provision, mutatis mutandis, as Clause 11.2, and shall further include the provision that in

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the case of an improvement effected by or on behalf of said sub-licensee, the term "other party" in Clause 11.2 shall include the Licensee, and the Licensor.

ASSIGNMENT

12. THE Licensee shall not assign mortgage or charge any licence granted by this Agreement without the written consent of the Licensor, such consent not to be unreasonably withheld.

GOVERNING LAW

13. THIS Agreement and any licence granted under the provisions of this Agreement shall be subject to and construed in accordance with the laws of New Zealand.

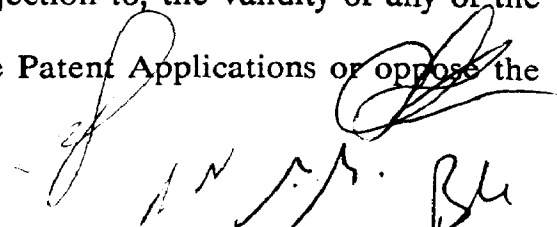
COSTS

14. THE costs of and incidental to the preparation of this Agreement and the costs of stamping of this Agreement shall be borne by the Licensee, and the Licensor will at the request and expense of the Licensee take all steps that may be required to enable the Licensee to be recorded as its Licensee against the Patents.

VALIDITY OF PATENTS

15.1 THE Licensor does not warrant that any Letters Patents which may be granted in respect of the Invention are or will be valid or that the Invention will not be an infringement of any rights of third parties.

15.2 THE Licensee shall not before termination or expiration of this Agreement raise or cause to be raised any question concerning, or any objection to, the validity of any of the Patents, or oppose the grant of a patent on any of the Patent Applications or oppose the

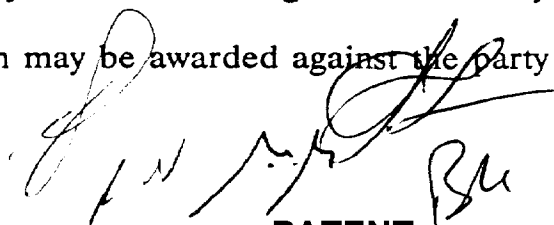


grant of extension of any Patent or directly or indirectly assist another so to do.

INFRINGEMENT OF PATENTS AND CHALLENGE TO PATENTS

16.1 IF either party shall at any time learn of any infringement or possible infringement of any of the Patents, that party shall give notice in writing of such infringement or possible infringement to the other party and within fourteen days from service of such notice either party shall be at liberty to decline by notice in writing served on the other party to institute or join in instituting any proceedings in respect of such infringement. If either party so declines and the other party wishes to take legal proceedings in respect of such infringement, the former party shall on receiving a full indemnity as to all costs and expenses (including an indemnity as to all costs which may be awarded against the party taking the legal proceedings in any such proceedings), give to the party taking legal proceedings all assistance in its power in relation to such proceedings including becoming a party thereto if so requested and in that event any damages profits or other compensation shall belong exclusively to the party initiating the legal proceedings; and if neither party so declines within the period provided for above then the parties shall, if either party so requires, forthwith join in instituting and diligently prosecuting such proceedings as may be necessary to enforce the Patent being infringed and all costs and expenses thereby incurred and costs and damages thereby recovered shall be shared equally by the parties hereto.

16.2 IF at any time the validity of any of the Patents shall be attacked, the Licensor shall give notice in writing of such attack to the Licensee, and within fourteen days from service of such notice either party shall be at liberty to decline by notice in writing served on the other party to defend, or join in defending, the Patent. If either party so declines and the other party wishes to defend the Patent, the former party shall on receiving a full indemnity as to all costs and expenses, (including any costs which may be awarded against the party

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defending the Patent in such proceedings) give to the party defending the Patent all assistance in its power including becoming a party thereto if so requested and in that event any compensation shall belong exclusively to the party initiating the said defense; and if neither party so declines within the period provided for above then the parties shall, if either party so requires, forthwith join in diligently prosecuting such proceedings as may be necessary to defend the Patent and all costs and expenses thereby incurred and any costs and compensation thereby recovered shall be shared equally by the parties hereto.

BEST ENDEAVOURS

17. THE Licensee shall at all times during the currency of this Agreement use its best endeavours to produce and sell the Inventive Products thereby to supply upon reasonable terms any demand for the Inventive Products in any country in which a Patent has been granted or a Patent Application has been filed, and shall not under or by virtue of the rights hereby granted impose conditions unfairly prejudicial to any person.

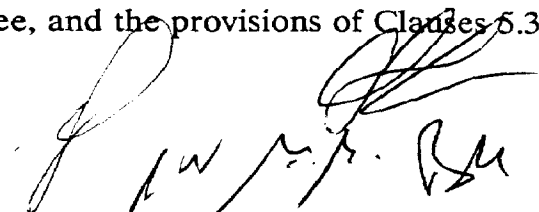
SUB-LICENSING

18.1 THE Licensee is hereby granted the right to grant sub-licences providing that before any sub-licence agreement is signed by the parties thereto, the Licensor must approve said agreement, such approval not to be unreasonably withheld.

18.2 ANY sub-licence granted hereunder shall be in the same terms, mutatis mutandis, as the terms of this Agreement, so far as they are applicable, but excluding the right to sub-licence, unless agreed otherwise by the Licensor.

18.3 THE Licensee shall be responsible to the Licensor for royalties or other payments due in respect of sales by sub-licensees as though they were sales by the Licensee.

18.4 THE Licensee shall be a guarantor for any sub- licensee, and any default by a sub- licensee shall be deemed to be a default of the Licensee, and the provisions of Clauses 5.3,

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5.4, 6,8, and 10 shall apply.

18.5 ANY sub-licence granted shall be co-terminous with this Agreement, whether this Agreement expires or is previously terminated under the provisions of Clauses 8.6, or 10.

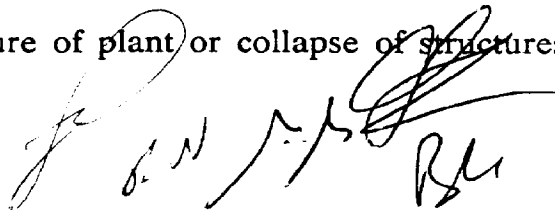
18.6 THE Licensee shall be responsible to the Licensor for the enforcement of the terms of any sub-licence, and for inspecting the accounts and records kept by the sub-licensee. At least once every twelve months during the term of any sub-licence the Licensee at its own expense shall arrange for a qualified person approved by the Licensor to inspect the records and accounts of any sub-licensee and to issue a report thereon to both the Licensee and the Licensor.

ARBITRATION

19. ANY dispute or difference between the parties arising out of or touching upon this Agreement may be referred to one or more Arbitrators to be agreed upon between the parties, to be arbitrated upon in accordance with provisions of the Arbitration Act 1908 or any modification or re-enactment thereof for the time being in force, and the decision of the Arbitrators shall be binding upon the parties.

FORCE MAJEURE

20. IN the event of any delay in performance by either party due to any cause arising from or attributable to Force Majeure in the form of acts, events, non-happenings, accidents or Acts of God beyond the reasonable control of the party liable to perform (unless conclusive evidence to the contrary is provided), (including but not limited to strikes, lock-outs, shortage of labour; civil commotion, riots, war, threat of or preparation for war, breaking off of diplomatic relations; fire, explosion, sabotage, storm, flood, earthquake, fog, subsidence, pestilence or epidemics; machinery breakdown, failure of plant or collapse of structures;



mandatory compliance with any direction, request or order of any person having authority, whether for defence or other Governmental or national purpose, or any requisition for materials or services stated to be for purposes of defence; inability to obtain suitable raw material, equipment, fuel, power, components or transportation), the party so delayed or prevented shall be under no liability for loss or injury suffered by the other party thereby and the Agreement shall be suspended during such delay and upon cessation of the cause of the delay, the Agreement shall again become fully operative; provided that if such delay shall exceed twelve (12) months, either party may give written notice of termination of this Agreement and the Agreement shall terminate thirty (30) days after the date of said notice.

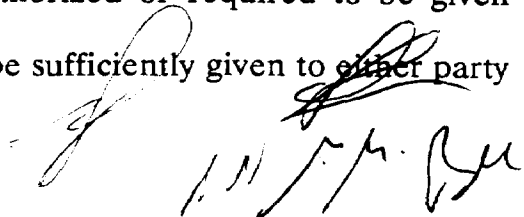
TRADEMARKS

21.1 THE Licensee shall use the Trademark on or in relation to the Inventive Products sold or leased for use in New Zealand and the Licensor at the request and at the expense of the Licensee shall take all necessary steps to register the Trademark in New Zealand and to appoint the Licensee as Registered User of the Trademark.

21.2 THE trademark(s) (if any) to be used on or in relation to the Inventive Products in countries other than New Zealand shall be agreed between the parties on a country-by-country basis at a date not later than six months after the first commercial sale of the Inventive Products in that country, and the Licensor at the request and at the expense of the Licensee shall take all necessary steps to register the or each trademark in the corresponding country, and to appoint the Licensee as Registered User of said trademark(s).

ADDRESS FOR SERVICE

22. ANY notice consent or other communication authorized or required to be given hereunder or for the purpose hereof shall be deemed to be sufficiently given to either party



if left or forwarded by registered post addressed to such party at the address as set out below or to such other address as either party may have notified in writing to the other and every notice consent or other communication shall be deemed to have been received and given at the time when in the ordinary course of transmission it would have been delivered at the address to which it was addressed.

IN THE CASE OF THE LICENSOR

IN THE CASE OF THE LICENSEE

c/- Southpower,
Private Bag 4999,
Christchurch,
NEW ZEALAND.

c/- Southpower,
Private Bag 4999,
Christchurch,
NEW ZEALAND.

Street address:
cnr Armagh/Manchester Streets,
Christchurch,
NEW ZEALAND.

Street address:
cnr Armagh/Manchester Streets,
Christchurch,
NEW ZEALAND.

THE SCHEDULE ABOVE REFERRED TO

DEED OF LICENCE

THIS DEED made the day of 19

BETWEEN TRANSFLUX HOLDINGS LIMITED, a company organized and existing under the laws of New Zealand of corner Armagh and Manchester Streets, Christchurch, New Zealand, (hereinafter called "the Licensor") of the one part

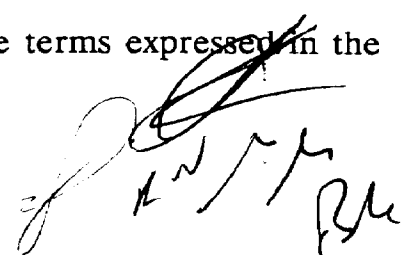
AND TRANSFLUX DEVELOPMENTS LIMITED, a company organized and existing under the laws of the New Zealand of corner Armagh and Manchester Streets, Christchurch, New Zealand, (hereinafter called "the Licensee") of the other part.

WHEREAS by an Agreement made between the parties and dated the day of

19 it was agreed that a Licence should be granted under each of the Patents set out in the Agreement (hereinafter called "the Patents") in the form contained in that Agreement.

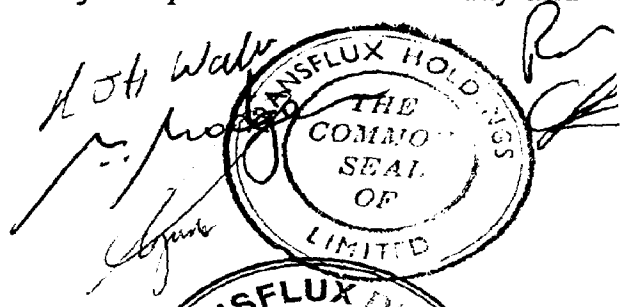
NOW THIS DEED WITNESSES:

1. IN pursuance of the recited Agreement and in consideration of the royalties thereby made payable and the covenants and agreements therein contained the Licensor HEREBY GRANTS to the Licensee an exclusive Licence to make, use, exercise and vend the Invention the subject of the Patents as from the date of each patent respectively or as from the Commencement Date of the Agreement (whichever date shall be the later), to the extent and subject to the restrictions covenants and agreements and upon the terms expressed in the Agreement.

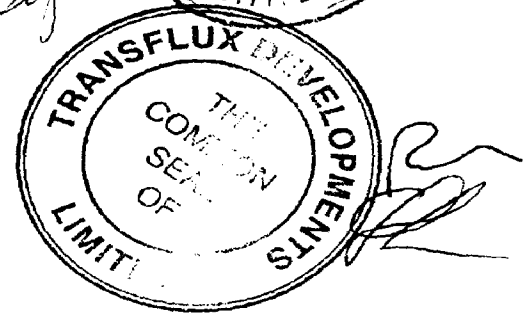


IN WITNESS WHEREOF this Deed has been executed by the parties hereto the day and year first before written.

THE COMMON SEAL of)
TRANSFLUX HOLDINGS LIMITED)
was hereunto affixed in the)
presence of:-)

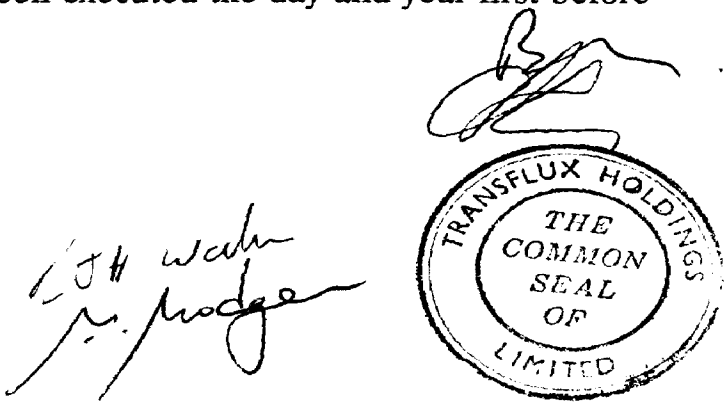


THE COMMON SEAL of)
TRANSFLUX DEVELOPMENTS LIMITED)
was hereunto affixed in)
the presence of:-)



IN WITNESS WHEREOF these presents have been executed the day and year first before written

THE COMMON SEAL of)
TRANSFLUX HOLDINGS LIMITED)
was hereunto affixed in the)
presence of:-)



THE COMMON SEAL of)
TRANSFLUX DEVELOPMENTS LIMITED)
was hereunto affixed in)
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