

# PHILCO

## Retail Dealer Agreement for 1950

Date January, 19 50

AGREEMENT, between Eshelman Supply Co.

hereinafter called DISTRIBUTOR, whose street address is: 110 N. Water St.

and Heindel & Wagner

hereinafter called DEALER, whose

street address is: \_\_\_\_\_, City of Dallastown

County of York State of Penna.

Distributor is a duly authorized wholesale distributor of certain products produced by Philco Corporation of Philadelphia, Pennsylvania, and it is intended hereby to set forth the relations of Distributor and Dealer in the sale of Philco products as stated herein.

THE PARTIES AGREE AS FOLLOWS IN CONSIDERATION OF THEIR MUTUAL PROMISES HEREIN CONTAINED:

1. **Products** This agreement by itself does not authorize Dealer to sell Philco products. Such authorization shall be given by the signing of supplemental riders to this agreement, each rider authorizing Dealer to sell the Philco product or products mentioned therein. Dealer's authority to act as a Philco Retail Dealer in the sale of Philco products covered by such supplemental riders shall continue during the term hereof and shall be subject to all the terms and conditions herein set forth.

2. **Shipments** Distributor agrees to use his best efforts to make shipment of all Dealer's orders accepted by Distributor, subject however, to strikes, shut down of manufacturing plants, fires, accidents, wars, inability to secure transportation facilities, acts of God, acts or requirements of the Civil or Military authorities, or of the public enemy, or other causes beyond the control of Distributor. Dealer agrees to pay for all products purchased in accordance with the terms of the sale thereof.

3. **Marketing** Dealer will display prominently and devote his best efforts to the sale of Philco products. He will, insofar as possible, group Philco products so that the sell-up advantages will be apparent to his customers. Dealer will sell Philco products only in their original cabinets. Distributor agrees that Dealer's name will be placed upon Philco's Dealer Mailing List so that Dealer may receive Philco Sales Helps and Plans, as may be issued to Philco Dealers from time to time.

4. **Advertising** Appreciating the value of local advertising coordinated with the Philco National Advertising Campaign, Dealer agrees to advertise Philco products locally and to spend liberal amounts on such advertising. The Dealer agrees, however, upon notice from Distributor, to correct, change or discontinue any advertising which in the sole opinion of Distributor may be objectionable in any way.

5. **Repurchase** At any time during the term of this agreement, or after termination thereof, Distributor shall have the absolute right to purchase from Dealer, and Dealer agrees to sell and deliver to Distributor upon demand, any or all Philco products in Dealer's stock at the net price paid by Dealer for same.

6. **Liabilities** Distributor agrees to protect Dealer and hold him harmless from any claim of loss or injury to the person or the property of the purchaser or the purchaser's representatives or employees or any other person, arising out of inherent defects in any Philco product existing at the time such product is sold by Distributor to Dealer, provided that Dealer gives Distributor immediate notice of any such loss or claim and cooperates fully with Distributor in the handling thereof. Dealer agrees to protect Distributor and Philco Corporation and hold them harmless from any other kind of loss or claim arising out of the installation or use of any of the products sold hereunder, including any loss or injury to the property or person of the purchaser thereof or the purchaser's representatives or employees, or any other person.

7. **Purchases** Dealer represents that he intends to purchase \$\_\_\_\_\_ of Philco products from the Distributor during the term of this Agreement. Such representation does not constitute an obligation to purchase that amount but it does constitute Dealer's best estimate of the Dollar amount of Philco products that he will require during the term of this Agreement. Dealer agrees to give Distributor initial purchase orders with shipping instructions for a representative stock of Philco products concurrently with the signing of supplemental riders to this Agreement authorizing Dealer to sell the Philco products specified therein.

8. **Sales Promotion** Dealer hereby orders and agrees to accept billing for the special new Philco Sales Promotion Service with which Distributor agrees to supply Dealer during the term of this Agreement, at the cost thereof. Dealer agrees to participate in and cooperate with Distributor in such promotion plans as are devised to stimulate sales of Philco products and consents to the inclusion in such plans of provisions rewarding Dealer's employees and salesmen for their efforts.

9. **Allotment** Distributor shall have the full right to allot its sales in such manner as it shall deem best. Distributor may make only part shipment or no shipment against any order of Dealer and for any such actions Distributor shall not be to any extent liable or responsible to Dealer.

10. **Purchase Orders** No printed terms or conditions on any order from Dealer, or other terms and conditions inconsistent with this Agreement, shall be binding on Distributor. Distributor's failure to reject such terms and conditions or the shipments of Philco products against such order shall not be an assent to such terms and conditions.

11. **Use of Name** Dealer shall not use the name "Philco" as part of its firm, corporate, or business name and shall not use the name "Philco" in any way except to designate the Philco products purchased from Distributor in accordance with this agreement.

12. **Service** Dealer will give expert service on Philco products by organizing and maintaining a Service Department, or by contractual arrangement with a reliable service organization which will render such service for him, and in doing this, Dealer agrees to follow all reasonable recommendations as may be made from time to time by Distributor or its representatives with respect to the adequacy of Dealer's service organization.

13. **Warranty Policy** In connection with the printed warranty issued by Philco Corporation to the original purchaser of any Philco product, Distributor shall replace without charge any part or parts thereof which Distributor finds defective within the warranty period and Dealer at his own expense shall furnish any necessary labor in connection with such replacement of defective parts. If Dealer at any time has Philco products in stock which, in Distributor's sole judgment, are obsolete because they have not been sold to the original purchaser within a reasonable time after their purchase by Dealer, then Distributor's obligation to replace defective parts shall cease and if said obsolete products are subsequently sold by Dealer, the obligations of the printed warranty shall be assumed by Dealer.

14. **Termination** The term of this agreement shall extend from the date hereof to December 31, 1950, but either party may sooner terminate it by giving written notice to the other. If any other agreement existing between Dealer and Distributor shall, during the term hereof, be terminated other than by expiration of its stated term, this Agreement shall also terminate forthwith. This Agreement is non-assignable and non-transferable by Dealer. Notice to the parties under this Agreement shall be sufficiently served if mailed to the addresses hereinabove set forth. Such notices shall take effect as of the date of mailing. The Parties hereto declare it is their intention to be legally bound hereby.

15. **Cancellation of Orders** The termination of this Agreement shall operate as a cancellation, as of the date of such termination, of all orders which shall not have been shipped by Distributor; and neither party shall thereafter be under any obligation to the other with respect to orders so cancelled. This Agreement contains the full agreement between the parties, and Distributor and Dealer agree and declare that there are no other terms or conditions, representations or understandings, except those set forth herein. The parties further agree that no other agreement or understanding hereafter in any way modifying or supplementing this agreement, nor any promises made by representatives of Distributor, shall be binding on Distributor unless formally confirmed by writing duly signed by Distributor.

16. **No Further Use of Trade-Mark After Termination** Upon the termination of this Agreement, Dealer agrees to remove and not thereafter use all signs containing the word "Philco", and immediately to destroy all stationery, advertising matter and other printed matter in his possession or under his control containing the word "Philco". Dealer further covenants and agrees that he shall and will not, at any time after such termination, use or permit the use of the word "Philco", in any manner in connection with any business by him conducted or in which he may be interested, or otherwise whatsoever as descriptive of or referring to anything other than "Philco" merchandise or products. Dealer further agrees that upon termination of this agreement irrespective of the cause, he will immediately take all appropriate steps to remove and cancel any of his listings in telephone books, in other directories, in public records, or elsewhere, which contain the word "Philco". If Dealer shall fail to obtain such removals or cancellations promptly, as above provided, Distributor or Philco Corporation may make applications for such removals or cancellations on behalf of Dealer and in his name, and in such event, Dealer shall render every assistance to obtain such removals or cancellations promptly.

17. **Construction** The paragraph headings in this agreement do not form a part of it but are for convenience only, and shall not limit or affect in any way the meanings of the paragraphs. The failure of either party to enforce at any time or for any period of time the provisions hereof, shall not be construed to be a waiver of such provisions or of the right of such party thereafter to enforce each such provision. The terms of this agreement shall also cover all sales by Distributor to Dealer of any Philco products other than the specific products authorized by the supplemental riders provided for hereinabove. The parties hereto declare it is their intention to be legally bound hereby.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

DISTRIBUTOR Eshelman Supply Co. DEALER: Heindel & Wagner

By R. H. Baldwin By John O. Heindel

NOTE - BEFORE EXECUTING THIS AGREEMENT, THE BLANK IN PARAGRAPH 7 MUST BE FILLED IN AND THE DATE, FULL NAME AND ADDRESSES MUST BE SHOWN. IF EITHER PARTY IS A CORPORATION, TWO AUTHORIZED OFFICERS SHOULD SIGN FOR IT, AND THE SEAL SHOULD BE ATTACHED. FOUR COPIES SHOULD BE SIGNED IN ALL. DEALER RETAINS YELLOW COPY, DISTRIBUTOR KEEPS BLUE AND FORWARDS WHITE AND PINK TO PHILCO CORPORATION, TIoga AND C STREETS, PHILADELPHIA 34, PENNSYLVANIA.