

CLAYTON UTZ

21 December 2000

Fax

Mr Ian Searles
Adjudication Branch
ACCC

(02) 6243 1199

Attn: Mr Peter Strauch

FILE No:
DOC:

Lawyers
 Level 18
 333 Collins Street
 Melbourne VIC 3000
 Australia
 DX 31314 Mid Town
 Tel + 61 3 9286 6000
 Fax + 61 3 9629 8488
 www.claytonutz.com
 Melbourne · Sydney
 Brisbane · Perth
 Canberra · Darwin
 Our reference
 207/912
 Partner
 R M Trindade

No of Pages - 17

Billback Id - 912
File No - 1525867

Handwritten: SUM 2/12 5885

The information contained in this facsimile message may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient, any use, disclosure or copying of this document is unauthorised. If you have received this document in error, please telephone + 61 3 9286 6690.

Notification for exclusive dealing: Callaway Golf

Please see attached.

Yours faithfully
CLAYTON UTZ



Alexandra Merrett
Solicitor
(03) 9286 6912
amerrett@claytonutz.com

CLAYTON UTZ

Lawyers

Level 18
333 Collins Street
Melbourne VIC 3000
Australia

DX 31314 Mid Town

Tel + 61 3 9286 6000
Fax + 61 3 9629 8488
www.claytonutz.com

Melbourne · Sydney
Brisbane · Perth
Canberra · Darwin

Our reference
R M Trindade/A J
Merrett/1525867

Partner
Rachel Trindade

21 December 2000

By hand (and subsequent internal ACCC delivery)

Mr Ian Searles
(Attn: Mr Peter Strauch)
Adjudication Branch
Australian Competition and Consumer
Commission
PO Box 1199
Dickson ACT 2602

Copy

Mr Michael Rider
Vice President, Associate General Counsel
Callaway Golf Company
2285 Rutherford Road
Carlsbad CA 92008-8815
United States of America

Mr Frank McCarthy
Callaway Golf South Pacific Pty Ltd
1/60 Northlink Place
Virginia QLD 4014

Dear Mr Searles

Notification for exclusive dealing: Callaway Golf

We refer to Peter Strauch's conversation with Ms Rhonda Smith of 21 December 2000.

As discussed, please find attached:

- a completed Form G, as executed by Callaway Golf South Pacific Pty Ltd;
- a submission prepared by Clayton Utz in relation to the notification;
- a copy of the Preferred Retailer Program (the PRP), which is the subject of the notification;
and

Mr Ian Searles
Australian Competition and Consumer Commission

CLAYTON UTZ

21 December 2000

- a cheque for \$2,500, being the lodgement fee.

We note that, as discussed, a faxed copy of the notification will be sent to Canberra, although the original documentation is to be filed in Melbourne.

As per the discussion with Ms Smith, we have not provided the attachments to the PRP as they do not contain material which is relevant to this notification (as they simply are setting out the mechanics - eg. extent and subject matter - of the discounts available to participants in the PRP).

If the Commission has any questions relating to the notification, please do not hesitate to call the author or the solicitor contact listed below.

Yours faithfully
CLAYTON UTZ

claytonutz

per Rachel Trindade
Partner
9286 6207
rtrindade@claytonutz.com

Contact Alexandra Merrett
Solicitor
9286 6912
amerrett@claytonutz.com

Enclosures

FORM G

Regulation 9

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 - subsection 93(1)

EXCLUSIVE DEALING: NOTIFICATION

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in subsection 47(2), (3), (4), (5), (6) or (7), or paragraph 47(8)(a), (b) or (c) or 9(a), (b), (c) or (d), of that Act in which the person giving notice engages or proposed to engage.

-
1. (a) Name of person giving notice:
Callaway Golf South Pacific Pty Ltd ACN 094 768 359
(See Direction 2 on the back of this Form)
 - (b) Short description of business carried on by that person:
Distribution of golf products manufactured by Callaway Golf Company.
 - (c) Address in Australia for service of documents on that person:
215 Adelaide Street, Brisbane QUEENSLAND 4000
 2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:
Golf clubs, putters, golf balls, golf bags and accessories.
 - (b) Description of the conduct or proposed conduct:
The supply of Callaway golf products to retailers on the condition that they comply with the Preferred Retailer Program (PRP) terms, a copy of which is provided with this notice.
(See Direction 4 on the back of this Form)
 3. (a) Class or classes or persons to which the conduct relates:
Retailers of Callaway golf products.
 - (b) Number of those persons:
 - (i) At present time:
approximately 300-400
 - (ii) Estimated within the next year:
approximately 300 - 400

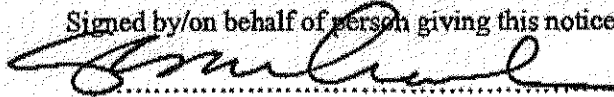
(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:

N/A

4. Name and addresses of person authorized by the person giving this notice to provide additional information in relation to this notice:

Clayton Utz
Level 18
333 Collins Street
MELBOURNE VIC 3000
Attention: Rachel Trindade

Signed by/on behalf of person giving this notice:



(Signature)



Date December 15 2000

Steven Carl McCracken
(Full name)

Director, Callaway Golf South Pacific Pty Ltd
(Description)

DIRECTIONS

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice.
2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), the not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. In item 1(b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in subsection 47(2), (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act* 1974 have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. In item 3(a), describe the nature of the business carried on by the persons referred to in that item.
6. In item 3(b)(ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

NOTICE

If this notification is in respect of conduct of a kind referred to in subsection 47(6) or (7), or paragraph 47(8)(c) or (9)(d), of the *Trade Practices Act* 1974 ("the Act"), it comes into force at the end of the period prescribed for the purposes of subsection 93(7A) of the Act ("the prescribed period") unless the Commission gives a notice under subsection 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under subsection 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A or the Act, decides not to give a notice under subsection 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in subsection 47(2), (3), (4) or (5), or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c), of the Act, it comes into force when it is given.

**CALLAWAY GOLF COMPANY
AUSTRALIAN PREFERRED RETAILER PROGRAM**

**SUBMISSION IN RELATION TO
NOTIFICATION OF EXCLUSIVE DEALING
21 DECEMBER 2000**

Callaway Golf Company

1. Callaway Golf Company is a publicly listed American manufacturer of premium quality golf clubs which are sold worldwide. Until 1 January 2001, Callaway Golf products were imported into Australia by Callaway Golf's exclusive Australian distributor Brosnan Golf Pty Ltd. Effective 1 January 2001, Callaway Golf will be responsible for distribution of its products through its wholly owned subsidiary, Callaway Golf South Pacific Pty Ltd.
2. The Callaway Golf philosophy is to produce products which are "demonstrably superior to and pleasingly different" from those offered by its competitors. In the 1999 year, Callaway Golf's total exports from the USA exceeded US\$300 million. Further background information about Callaway Golf, including recent financial information, can be found at the Callaway Golf website (www.callawaygolf.com).

The Golf Industry

3. The golf industry is highly competitive. Callaway Golf's main international competitors are American manufacturers such as Titleist (a subsidiary of Fortune Brands), Taylor Made (a subsidiary of adidas), Ping and Cleveland as well as Japanese manufacturers such as Bridgestone, Mizuno, Dunlop (sold by Sumitomo Rubber Industries) and S-Yard (a subsidiary of Seiko). Many of these strong international competitors have not yet focussed on building a large presence in Australia, but can easily do so.
4. Barriers to entry are low, as demonstrated by the success of Orlimar. Although Orlimar has been around for almost 40 years, it achieved break-through status in 1998 with the introduction of a single product, the TriMetal Fairway Woods, reportedly achieving almost US\$100 million in worldwide sales in 1998. Similarly, SRI has recently been successful with aggressive marketing of its XXIO model of Dunlop golf clubs at the retail level in Japan.
5. Golf equipment manufacturers typically seek to differentiate themselves in this highly competitive international industry by improving product quality and performance and by manufacturing a wide range of different clubs to enable customers to better find the right club. Finding the right club is important to golfers seeking to gain maximum enjoyment from a very demanding sport in which the quality of equipment can make a significant difference.
6. Callaway Golf customers include both serious golfers who are prepared to invest time and money (golf course membership, lessons and regular practice) in order to achieve a level of performance (handicap), as well as infrequent golfers who need the more forgiving golf club designs popularised by Callaway Golf. Both kinds of golfers typically demand both a high quality product and specialist services such as expert advice.

Golf Clubs

7. The vast majority of golfers playing a typical 18 hole course would use a combination of 3 basic types of club:
 - (a) woods (typically a driver and one or more fairway woods);
 - (b) irons (ranging from long distance irons to short pitching irons); and

(c) a putter.

(Historically, woods were made using a wooden golf club head but modern woods are generally made with metal heads and are therefore commonly known as metal woods.)

8. The design of modern golf clubs is very sophisticated. Clubs have varying characteristics in regard to the materials from which they are made, their weight, loft, shaft and flex. These characteristics have an effect on (among other things) the angle and speed with which the club hits the ball. This is an important consideration in determining the club most suitable to a golfer's particular physical characteristics and level of skill.
9. Callaway Golf invests significant resources in research and development and quality of materials to produce golf clubs which are considered technologically advanced and have superior performance characteristics. Callaway Golf also invests considerably in advertising and promotion, including advertising and promoting the high level of quality and customer service associated with its brand. In the 1999 year, Callaway Golf spent over US\$27 million on research and development and US\$55 million on advertising and promotion worldwide.

Specialist Retailer Services

10. It is not enough that the manufacturer invests in producing and promoting a technically superior product. Retailers must also support the product with a high level of specialist retailer services to enable each golfer to find the right club and thereby maximise customer satisfaction. This in turn increases demand for the product and justifies the investment in producing a premium quality product. These specialist retailer services include:
 - (a) trained staff who possess a high level of knowledge as to the characteristics of different clubs and the different needs of golfers associated with physical differences and levels of skill;
 - (b) stocking a full range of clubs so as to cater to all potential customers;
 - (c) demonstration areas in which customers can test and compare different clubs;
 - (d) sufficient trained staff available to spend time on the floor with customers; and
 - (e) support for manufacturer warranty programs.
11. Callaway Golf recognises the need to assist retailers in providing specialist retailer services and makes a considerable investment in training and equipping its retailers to provide those services. For example, product training is typically provided to all new retailer staff within 4 weeks of their commencement. Callaway Golf often pays to bring foreign retailers to its headquarters in California for additional training.

Free Riding Concerns

12. Premium quality products (such as Callaway Golf's products) are expensive to produce and stock. On the other hand, it is possible to manufacture a low quality product very cheaply. By way of illustration, the difference in wholesale price can range from \$20 for a low quality golf club up to \$1000 for a premium quality golf club. Specialist retailer services are expensive and cannot be charged for separately - they must be recouped in the product price. These factors create a real risk of "free riding" by retailers who may seek to use the quality associated with premium quality brands in order to drive traffic in a manner similar to "bait and switch" tactics.
13. In particular, some retailers will deliberately discount premium quality brands to generate increased overall sales, but not necessarily increased sales of the premium quality brand being discounted. This is because, even after severely discounting the retail price of the premium quality product, that product is still more expensive than a slightly discounted low quality

product which will provide the retailer with a bigger margin per product sold. Retailers who engage in this form of free riding do not invest in specialist retailer services and they do not seek to assist customers in finding the right club merely the cheapest club - they retail the products they carry like a commodity product.

14. Although the manufacturer can encourage and assist retailers by bearing the cost of training so that retailers have the expertise to provide specialist retailer services, manufacturers cannot ensure that this expertise is actually used.

Golf Retailers

15. At the retail level, golf clubs are sold by on-course professional golf shops or off - course retailers. Off-course retailers include:

- off-course specialist golf shops;
- retail department stores with specialty sports departments; and
- general sports retailers.

16. Approximately 20% of all golf club sales in Australia are made by on-course professional golf shops. For premium quality products, 30% of all sales are made by on-course professional golf shops. For Callaway Golf products, 40% of all sales are made by on-course professional golf shops and 60% by specialist golf shops. Less than 1% of Callaway Golf products are sold by other types of off-course retailers. Specialist golf retailers (on-course professional golf shops and off-course specialist golf shops) are the fundamental retail channels for premium quality products in Australia as they are the retailers who offer the highest level of specialist retailer services.

17. It is imperative that the investment made in producing a high quality product and providing a high level of specialist retailer services is not eroded by retailers seeking to free ride off this investment by others. Given that specialist retailing of golf equipment requires a "bricks and mortar" retail outlet, Callaway Golf is mindful of the risks posed by e-tailers in this regard. Specialist golf retailing necessarily involves face to face contact and time on the floor with the customer matching the qualities of the product and the needs of the customer. Having used these services to find the right club at a "bricks and mortar" outlet, customers can then seek to purchase that club over the internet.

18. It would be highly damaging to the competitiveness of the industry if specialist golf retailers were dissuaded from providing a high level of specialist retailer services.

The Preferred Retailer Program

19. Callaway Golf wishes to ensure customer satisfaction by supplying its product to retailers who are committed to providing the specialist retailer services which are critical to customer satisfaction and goodwill. For this reason, it has embarked on a worldwide preferred retailer program (PRP) which it now wishes to introduce into Australia from 1 January 2001.

20. The PRP does not seek to introduce any form of resale price maintenance, nor is it motivated by the type of concerns which typically motivate resale price maintenance. For example, resale price maintenance often seeks to preserve an image of prestige in order to justify to consumers a retail price which is higher than otherwise justified by the quality or characteristics of the product. By contrast, the concern in this instance is to ensure customer satisfaction which will then encourage, reward and protect investment in producing a technically superior product and in providing a specialist retailer services. For this reason the PRP is pro-competitive.

21. The PRP sets out objective standards which retailers of Callaway Golf products must satisfy. It will be a condition of Callaway Golf's supply of products to retailers that they satisfy objective standards (preferred retailers). Callaway Golf understands from its discussions with retailers that there is broad support for the concept of a PRP and is hopeful that, of the 300-400 Australian retailers previously supplied by its distributor Brosnan Golf, all of these retailers will choose to meet the objective standards and qualify as preferred retailers.

Key Terms of the PRP

22. To preserve the integrity of the PRP, preferred retailers are restricted from purchasing new Callaway Golf products from sources other than Callaway Golf or other preferred retailers (clause 2.5) and from selling Callaway Golf products other than to consumers or other preferred retailers (clause 2.6). Preferred retailers are also subject to certain restrictions as to the approved retail outlets from which they may sell Callaway Golf products (clause 2.7) and the sale of Callaway Golf products other than from "bricks and mortar" retail shops (clause 2.8). These restrictions address the free riding concerns indicated above.
23. The PRP does not impose a restriction on preferred retailers stocking other brands. In fact, Callaway Golf prefers retailers who stock a full range of premium quality brands to allow its product to be measured against and compared with other premium quality golf clubs. The only limitation imposed by the PRP in this regard is to restrict preferred retailers from stocking products which infringe and unlawfully trade upon the intellectual property rights of Callaway Golf (clause 2.12).
24. The PRP does not seek to restrict or affect price competition in any way.
25. Preferred retailers are required to conduct brand advertising for Callaway Golf products and are limited to price advertising for Callaway Golf products at point of sale only (clause 2.9). There is no restriction on general advertising. The rationale for the restrictions with respect to advertising of Callaway Golf products is to address the "bait and switch" practice, described above, of deliberately discounting premium brand products to generate increased overall sales for the retailer. This practice is to be distinguished from genuine price competition between retailers which is encouraged.
26. The PRP requires preferred retailers to provide a consistent standard of promotion and advertising. To this end retailers are provided with merchandising displays and materials (clause 1.10), which they must use only for Callaway Golf products (clause 3.2) in an area set aside for that purpose (clause 2.2).

Public Benefit

27. Callaway Golf does not believe the PRP would have the effect of substantially lessening competition between retailers. It is pro-competitive. The PRP is designed solely with the purpose of ensuring customer satisfaction which is associated with the Callaway Golf brand, to encourage and protect the investment in producing a high quality product and providing a high level of specialist retailer services. The retailing of golf clubs is highly competitive. This to some extent naturally fosters competition at the level of general service. However, without selective distribution programs such as the PRP, retailers will be discouraged from investing in specialist retailer services and competition (which is highly dependent upon these services being provided by retailers) would suffer.
28. For effective inter-brand competition, it is necessary that retailers invest in offering a full range of specialist retailer services to allow meaningful comparison between brands and product differentiation. These specialist retailer services cannot be charged for separately by retailers. Manufacturers can provide training but cannot ensure retailers use that training to provide specialist services. By encouraging retailers to invest in a full range of specialist retailer services, the PRP encourages inter-brand competition. By seeking to limit free riding by retailers who are not prepared to invest in specialist retailer services, the PRP encourages

strong intra-brand competition between retailers of Callaway Golf products. By doing so in a manner which does not restrict retail price competition, the PRP allows customers to derive maximum benefit from this enhanced competitive environment.

Clayton Utz

21 December 2000

ATTACHMENT

The following retail data for Australia is based upon historical sales figures available to Callaway Golf's current Australian distributor, Brosnan Golf, and management estimates. Precise sales data is not available.

- A. Callaway Golf clubs represent the following shares of retail sales (based on \$ value) within Australia:

Callaway Golf	Retail Sales
Total Golf Club Sales	<25%
Metal Woods	25%
Irons	15%

- B. Total golf club sales percentages (based on \$ value) for other premium quality brands are as follows:

Brand	Total Golf Club Sales
Titleist	6%
Taylor Made	4%
Ping	2%
Mizuno	2%
Cleveland	0.5%

- C. Indicative retail prices for premium quality metal woods (per club) are as follows:

Brand	Indicative retail price (metal wood)
Mizuno	\$800
Callaway Golf	\$700
Titleist	\$600
Taylor Made	\$600
Ping	\$500
Cleveland	\$350

Callaway Golf Preferred Retailer Program (PRP)

Effective 1 January 2001

Callaway Golf Company's philosophy is to create, produce and merchandise golf clubs and related products that are demonstrably superior to, and pleasingly different from those offered by its competition. This philosophy requires a substantial investment of money and effort to research and development of new products, to advertising those products, and to training and supporting an excellent retail distribution network around the world.

Callaway Golf Company is dedicated to maximising the value of the investment by Callaway Golf Company and its retail accounts, and to protecting its products from unfair treatment in the market place. In furtherance of this philosophy Callaway Golf Company has introduced selective distribution systems worldwide so as to work exclusively with Preferred Retailers.

In Australia, Callaway Golf (via its wholly owned subsidiary Callaway Golf South Pacific Pty Ltd) plans to introduce the Preferred Retailer Program from 1 January 2001.

Preferred Retailers fully promote, service, and stock the Callaway Golf and Odyssey brands. In return they qualify for certain monetary benefits depending on timing and volume of purchases, as well as form of payment. Preferred Retailers also qualify for savings on demonstration and personal use golf clubs.

The Preferred Retailer Program will be open to quality accounts that agree to the commitments detailed on the following pages. Preferred Retailers will be reviewed periodically to determine if they are meeting the requirements for continued inclusion in the Program. Retailers who do not meet or maintain Preferred Retailer Program requirements and standards will be subject to termination.

1. Callaway Golf's General Obligations

- 1.1 Callaway Golf will continue to invest significant resources in Research and Development in order to supply its Preferred Retailers with the most distinctive and technologically advanced products in the market place.**
- 1.2 Callaway Golf will supply its Preferred Retailers with products meeting both Callaway Golf's standards and the demands of the market place, subject to availability of stock.**
- 1.3 Callaway Golf will promote, advertise and market its brands and products to maintain the prestige and image of the Callaway Golf and Odyssey brands.**
- 1.4 Due to the special technology of its products, Callaway Golf will provide local product training sessions and seminars for the benefit of its Preferred Retailers.**
- 1.5 Callaway Golf is dedicated to launching all new products within two weeks world wide subject to product availability and market conditions.**
- 1.6 Callaway Golf is striving to provide its Preferred Retailers with fair and consistent wholesale pricing, subject to exchange rate and US wholesale pricing variations.**
- 1.7 Callaway Golf will provide its Preferred Retailers with a Performance Bonus Program based on purchases and certain other criteria.**
- 1.8 Callaway Golf will offer its Preferred Retailers demonstration golf clubs at a discounted price, depending on volume of full price purchases as well as the Preferred Retailer's performance and history.**

1.9 **Callaway Golf will offer its Preferred Retailers golf clubs and other equipment and accessories at a discount for personal use under the personal use discount program (PUD Program). The PUD Program is available to owners, managers and key employees consistent with the account's performance and history.**

1.10 **Callaway Golf will provide its Preferred Retailers with merchandising displays and other merchandising materials in reasonable quantities.**

2. The Preferred Retailer Agrees:

2.1 **To pay bills on time. Participation in the Direct Debit Program is encouraged.**

2.2 **To maintain the high level of customer service associated with the Callaway Golf and Odyssey brand images. This is to be accomplished by having an appropriate premium position set aside for display of Callaway Golf and Odyssey products, giving those products a positioning equal to or better than any other brand, ensuring that customers have an opportunity to test demonstration clubs and receive appropriate advice as to the clubs most suitable for them and making sure that current point of sale materials are easily available to all customers.**

2.3 **To stock a comprehensive, mutually determined, core selection of the Callaway Golf and Odyssey product lines consisting of:**

- **Callaway Golf Clubs and Putters**
- **Callaway Bags and Accessories**
- **Callaway Golf Balls**
- **Odyssey Putters**

consistent with market conditions, the account's prior history of purchases, and seasonality.

2.4 **To set, in consultation with their Callaway Golf representative, an annual purchase target of Callaway Golf and Odyssey products.**

2.5 **To promote the intellectual property rights of Callaway Golf and Odyssey, and therefore not to purchase Callaway Golf and Odyssey products (other than second hand products) from sources other than Callaway Golf, or Preferred Retailers.**

2.6 **To function as retailers, not wholesalers, of Callaway Golf and Odyssey products. Preferred Retailers are permitted to sell Callaway Golf and Odyssey products only to consumers and other Preferred Retailers in Australia.**

2.7 **To operate only from approved retail outlets, being such outlets as evaluated and approved by Callaway Golf. In determining whether an outlet should be approved, Callaway Golf shall consider the ability of the Preferred Retailer to meet the high standards of Callaway Golf and, in particular, to comply with the terms of the Preferred Retailer Program from such an outlet. If the Preferred Retailer operates from more than one retail outlet, then the Preferred Retailer understands and agrees that Callaway Golf shall retain the unilateral right to determine, on a case by case basis, whether any particular retail outlet shall qualify as an approved retail outlet eligible to participate in the Preferred Retailer Program. The Preferred Retailer's decision to open new retail outlets shall not obligate Callaway Golf to supply Callaway Golf or Odyssey Golf products to those particular retail outlets. The Preferred Retailer further agrees that it shall not sell Callaway Golf and Odyssey Golf products from other than approved retail outlets without Callaway Golf's prior written consent.**

- 2.8 Not to sell any **Callaway Golf or Odyssey** products by mail order, telephone, radio, television, email, Internet or any other electronic media without prior written approval by **Callaway Golf and Odyssey Golf**.
- 2.9 Not to advertise the price at which the Preferred Retailer sells **Callaway Golf or Odyssey** products, other than price advertising at point of sale at an approved retail outlet.
- 2.10 To undertake brand advertising of the kind approved from time to time by **Callaway Golf**.
- 2.11 Not to disparage **Callaway Golf and Odyssey** products, or use them as the target of bait and switch or loss leader selling practices. It is acknowledged that the price at which each Preferred Retailer sells **Callaway Golf or Odyssey** products is entirely at the discretion of the Preferred Retailer.
- 2.12 Not to stock or promote the sale of unlawful copies, counterfeit or knock-off golf clubs which infringe or unlawfully trade upon the intellectual property rights of **Callaway Golf and Odyssey** or which in **Callaway Golf's** reasonable opinion unfairly trade upon the name, image or design of **Callaway Golf or Odyssey** products.
- 2.13 To support **Callaway Golf and Odyssey** world-wide warranty program and to use their best efforts to ensure that regardless of point of purchase the **Callaway Golf** consumer is not disadvantaged in respect of a warranty claim or repair request. If a warranty card program is implemented, Preferred Retailers will complete and send in warranty cards to **Callaway Golf**.
- 2.14 To abide by all of **Callaway Golf** Terms and Conditions as published and periodically revised.
- 2.15 To return all advertising, promotional, point of sale, display or other **Callaway Golf and Odyssey Golf** material upon termination of the Preferred Retailer Agreement.

3. The Preferred Retailer Further Agrees:

- 3.1 To require that sales staff participate in **Callaway Golf and Odyssey** product and sales training sessions if and when offered locally by **Callaway Golf** so that they will be able to fully explain and promote the benefits of **Callaway Golf and Odyssey** products.
- 3.2 To use **Callaway Golf and Odyssey** specific display stands, when supplied by **Callaway Golf and Odyssey**, for display of **Callaway Golf and Odyssey** products only.
- 3.3 To participate in and actively promote Demonstration Days as provided by **Callaway Golf and Odyssey** locally.
- 3.4 To retain demonstration clubs in the store and use for demonstration purposes only throughout the season. Demonstration clubs cannot be sold during the season. Preferred Retailers will keep accurate records of demonstration club usage on forms provided by **Callaway Golf**.
- 3.5 To actively promote **Callaway Golf and Odyssey** products. If the Preferred Retailer advertises **Callaway Golf and Odyssey** products, the Retailer will submit copies of advertising materials to the outside sales representative after publication.
- 3.6 To allow **Callaway Golf and Odyssey** representatives to inspect inventory levels of **Callaway Golf and Odyssey** products upon request.

4. Term and Termination

- 4.1 The term of the Preferred Retailer Agreement is from the date of signature by both parties until Dec. 31, 2001. The Preferred Retailer Agreement will automatically be extended for an additional twelve (12) months if not terminated by either party, as set forth in paragraphs 4.2

and 4.3 below, thirty (30) days prior to the end of the calendar year.

- 4.2 **Callaway Golf** reserves the right to modify or terminate the Preferred Retailer Program or the Preferred Retailer Agreement by providing thirty (30) days written notice to the Retailer.
- 4.3 The Preferred Retailer may terminate the Preferred Retailer Agreement by providing thirty (30) days written notice to **Callaway Golf**.
- 4.4 **Callaway Golf** reserves the right to immediately terminate the Preferred Retailer Agreement without penalty if:
- the Preferred Retailer materially breaches the Preferred Retailer Agreement or the Terms and Conditions;
 - there is a change in the legal structure, ownership, management or trading name of the Preferred Retailer; or
 - the Preferred Retailer is insolvent (within the meaning of the Corporations Law), or in the case of an individual who declares bankruptcy, or the Preferred Retailer becomes an externally administered body corporate (within the meaning of the Corporations Law) or a controller (within the meaning of the Corporations Law) enters into possession or assumes control of any part of the assets or undertaking of the Preferred Retailer.