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## CONSIGNMENT MANUFACTURING AGREEMENT

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BETWEEN

[full legal name entity 1]

AND

[full legal name entity 2]

DATED

[date, year]

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## Article 1 Definitions

1. For the purpose of this Consignment Manufacturing Agreement, the following terms shall have the meaning assigned to them below unless the context requires otherwise:
  - a) Actual Services Costs means all Variable Labour Costs, Variable Fringe Costs and General Operating Expenses actually incurred by the Manufacturer, as demonstrated to Supplier pursuant to the provisions of Section 5.2 hereof.
  - b) Agreement means this Consignment Manufacturing Agreement, together with all exhibits and appendices hereto, as the same may be amended, modified or supplemented from time to time.
  - c) Confidential Information means any information disclosed by one Party to the other Party pursuant to this Agreement which is written, graphic, machine readable, or in other tangible form and is marked "Confidential," "Company Secret," or disclosed under such circumstances which indicate that information is confidential. Confidential Information may also include secret and confidential oral information disclosed by one Party to the other Party pursuant to this Agreement.
  - d) Effective Date means the date first hereinabove written.
  - e) General Operating Expense means all of Manufacturer's overhead costs allocable to its performance of all Manufacturing Services whether associated with a specific service, or a service facility of Manufacturer's corporate operations, including but not limited to insurance costs, utilities costs, maintenance costs and materials costs.
  - f) Intellectual Property Rights means the Trademarks and other intellectual property rights covering or associated with the Products.
  - g) Manufacturing Services means all services of Manufacturer related to the manufacture of the Products.
  - h) Mark Up Rate has the meaning given to such term in Section 5.1 of this Agreement.
  - i) Product Specifications means and includes any and all designs, drawings, blueprints, formulations, models, specifications, manufacturing data, techniques, processes, procedures, performance data, know-how and other technical information relating to the design, manufacture and/or operation of the Products, which are provided by Supplier for the purpose of manufacturing Products pursuant to this Agreement.
  - j) Products means the products manufactured and delivered by Manufacturer at Supplier's instructions and listed on Appendix A hereto.

not object to any item contained therein, the invoice shall be deemed approved and such amount shall be paid by Supplier within forty (40) days of receipt of Manufacturer's invoice. If Supplier questions particular items included in the invoice, the amounts relating to such disputed items will not be paid until the Parties are in accord over such disputed items. Once an accord is reached, the amounts relating to such items shall be added to the next quarterly payment to Manufacturer without regard to the payment of interest as set forth in Section 6.2 below.

2. Invoices not paid by Supplier within forty (40) days from the date received by Supplier shall accrue interest on all past due amounts at the rate of [insert number]% per annum.
3. All payments by the Supplier to the Manufacturer are considered to be exclusive of VAT. If applicable, VAT shall be charged in addition.
4. All risks with regard to exchange rates will be borne by the Supplier.
5. Except as otherwise agreed by the Parties, payments made by one Party to the other Party under this Agreement will be calculated in [insert currency].

## **Article 7 Raw Materials**

1. Supplier, at its own cost and expense, shall provide Manufacturer with all parts, components and materials necessary to manufacture the Products (collectively, "Raw Materials"). Such Raw Materials shall be transferred to Manufacturer in accordance with the terms of a separate agreement between the Parties.
2. In the event that Manufacturer requires any Raw Materials in addition to the Raw Materials provided by Supplier, Manufacturer shall purchase, at the direction of Supplier, and at Supplier's cost, all such additional Raw Materials as are necessary to manufacture the Products ordered by Supplier hereunder. All such suppliers of Raw Materials shall be approved in advance by Supplier.
3. At all times during this Agreement, Supplier shall hold title to all Raw Materials.

## **Article 8 Orders, Forecast, Production Schedules**

1. Thirty days prior to the first day of each calendar quarter, Supplier shall prepare and submit to Manufacturer a forecast of the Manufacturing Services which Manufacturer reasonably expects will be required during each quarter of the one-year period commencing with such calendar quarter (the "Services Forecast").
2. Based on the information set forth in the Services Forecast, Manufacturer shall prepare and deliver to Supplier a quarterly Projected Cost Forecast specifying the Projected Services Costs for a corresponding one-year period (the "Projected Cost Forecast"). Manufacturer shall furnish its Projected Cost Forecast as soon as possible

to visit Manufacturer's offices during regular business hours to observe and assist in quality control.

## **Article 11 Insurance**

1. Supplier shall obtain and maintain during the term of this Agreement, product liability insurance with respect to all liabilities, including but not limited to bodily harm and death, caused by any defective Products. Supplier shall obtain and maintain insurance covering any claims, demands, suits, losses, damages and liabilities including, without limitation, interest and reasonable attorney's fees arising out of, relating to, or resulting from the Manufacturing Services pursuant to this Agreement. Such insurance shall be adequate in scope and coverage considering the potential exposure, and shall include Manufacturer as an additional insured.
2. Manufacturer will obtain and maintain during the term of this Agreement, in addition to insurance in such amounts as is customary for companies in the same or similar business located in the same or similar area, a policy of general liability insurance for companies in an amount of at least [insert currency, amount]. Manufacturer shall use its best efforts to procure a waiver of subrogation in each policy of insurance obtained by Manufacturer in favour of Supplier, its affiliates, joint participants, and their respective officers and directors, and shall provide Supplier with thirty (30) days' prior written notice of material changes, cancellations or renewals. Subject to the other provisions of this Agreement, Manufacturer covenants that during the term of this Agreement, it will at all times be properly insured in accordance with [country] law.
3. Each Party shall obtain and maintain any other types of insurance commonly obtained and maintained by a company in the same or similar business located in the same or similar area.
4. Any reasonable costs of insurance coverage that Manufacturer is required to obtain hereunder for the provision of Manufacturing Services to Supplier which are paid by Manufacturer shall be reimbursed by Supplier.

## **Article 12 Records and Reporting Requirements**

1. Manufacturer shall maintain such records and accounts as are requested by Supplier relating to the performance of Manufacturer's obligations under this Agreement. Supplier shall have access to Manufacturer's premises for inspection during normal business hours. Manufacturer shall also comply with all other reasonable reporting requirements imposed by Supplier under this Agreement.
2. Manufacturer agrees to permit an auditor appointed by Supplier to inspect Manufacturer's records upon reasonable notice during normal and business hours.

4. Subject to the foregoing, however, neither Party shall be liable to the other Party, by reason of the termination of this Agreement, for consequential damages, including but not limited to, compensation of damages resulting from the loss of present or prospective profits on sales, or expenditures, investments or commitments made in connection herewith.

## **Article 19 Confidential Information**

1. Each Party agrees to maintain secret and confidential all Confidential Information that it may acquire from the other Party in the course of this Agreement.
2. The Parties may disclose such Confidential Information only to those of their employees, agents and service providers who need to know such information in order to enable the respective Parties to perform their obligations under this Agreement.
3. The obligations of Section 19.1 above shall not apply to information which:
  - a. is already known to one Party, other than under obligation of confidentiality, at the time of disclosure by the other;
  - b. is subsequently disclosed to the recipient Party without any obligations of confidence by a third party who has not obtained it directly or indirectly from the other Party;
  - c. is or becomes generally available to the public or otherwise is or becomes part of the public domain after its disclosure other than through any act or omission of either Party or its agents or employees in breach of this Agreement;
  - d. is independently developed by employees of either Party without prior knowledge of the secret and confidential information.
4. Each Party shall procure that all its employees, agents and service providers who have access to any information of the other Party to which the obligations of this Section 19 apply shall be made aware of and be subject to similar obligations and shall further procure that, in so far as is reasonably practicable, all of such employees, agents and service providers shall enter into written undertakings in favour of the other Party to this end.
5. The provisions of this Section 19 shall survive five years after the termination of this Agreement.

## **Article 20 General Compliance**

Each Party shall at all times:

cannot be amicably settled, then the dispute, controversy or claim shall be brought exclusively before the courts in [country].

## **Article 24 Miscellaneous**

1. Nothing contained in this Agreement shall be construed to:
  - a. give either Party the power to direct and control the day-to-day activities of the other Party;
  - b. constitute the Parties as partners, joint venture partners, co-owners or otherwise as participants in a joint or common undertaking;
  - c. constitute Manufacturer to be a commercial agent within the meaning of the [country] Civil Code or the equivalent mandatory provisions of public order with respect to commercial agents in the laws of the various countries within which Manufacturer provides the Manufacturing Services;
  - d. allow Manufacturer to create or assume obligations on behalf of Supplier except as provided herein.
2. In entering into this Agreement, the Parties recognize that it is practically impossible to make provisions for every contingency which may arise during the validity of this Agreement. Accordingly, the Parties hereby state and acknowledge their mutual intent that this Agreement shall be enforced and implemented between them with fairness and without detriment to either Party's interest, and that if, in the course of performing the obligations and duties as set forth in this Agreement, substantial hardship or unfairness is anticipated by or has occurred to either Party, the Parties shall use their best commercial endeavors to agree upon such action as may be necessary to rectify or remove the causes thereof, and, if deemed necessary, compensate for disadvantages suffered.
3. The failure of either Party to enforce at any time any Section or part thereof of this Agreement, or the failure to require timely performance by the other Party of any Section or portion thereof, shall in no way constitute present or future waiver of such Section or portion thereof, nor in any way affect the validity of either Party to enforce each and every Section of this Agreement.
4. Manufacturer may not assign or delegate this Agreement or any of its rights or duties under this Agreement without the prior written consent of Supplier, which consent will not be unreasonably withheld.
5. This Agreement shall contain the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof.
6. In the event that this Agreement is executed in more than one language, the English language version shall prevail in the case of any discrepancy.

## APPENDIX A - List of Products

### Products manufactured by Manufacturer

- [Product 1]
- [Product 2]
- [Product 3]
- [etcetera]

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