

MANUFACTURING AGREEMENT

THIS AGREEMENT dated the ____ day of _____, _____.

BETWEEN:

[SELLER]
(the "Seller")

- and -

[MANUFACTURER]
(the "Manufacturer")

WHEREAS:

- A. The Seller is engaged in the business of manufacturing, packaging and selling, to customers in _____, various Products, including Products developed by the Seller for use in its field, and has developed or acquired in the course of its business valuable "Know-how" and other technical information relating to the Products and their applications;
- B. The Seller is the sole owner of certain inventions, improvements, trade marks and "Know-how";
- C. The Manufacturer is presently engaged in the manufacture and packaging of other products in _____ and desires to obtain from the Seller, on the terms and conditions set forth, the right to manufacture the Products developed by the Seller and to use the Seller's "Know-how" in the manufacture of the Products;
- D. The Seller is willing to grant such rights on the following terms and conditions.

NOW THEREFORE the parties hereto agree as follows:

1. Definitions

For the purposes of this agreement:

- (a) "Affiliate", whether of the Manufacturer or the Seller, shall mean any corporation, firm, association or other business owned or controlled beneficially or directly or indirectly by the Manufacturer or the Seller respectively, its principal officers, directors, supervisory employees or members of their families. Ownership of 50% or more of such business by any one of such persons shall constitute beneficial ownership or control;
- (b) "Know-how" shall mean secret processes, formulae, trade secrets, engineering, design, process and operating information, inventions, developments, patents, patent applications, technical data and other scientific and technical information relating to any process or method now owned or controlled by the Seller or its Affiliate relating in any way to any of the Products;
- (c) "Products" shall mean _____.

2. Disclosure of Know-how

- (a) Commencing ____ (___) days after the execution of this agreement, the Seller will make full disclosure of its Know-how to such of the Manufacturer's technical personnel as the Manufacturer may designate. The Seller shall promptly inform the Manufacturer of any Know-how thereafter acquired by the Seller and shall fully disclose the same to the Manufacturer's technical personnel. The Manufacturer's personnel shall be entitled to make and retain such notes and memoranda and such copies of papers relating to the Seller's Know-how as may be appropriate to enable the Manufacturer to utilize such Know-how.

- (b) The Seller also agrees, when requested by the Manufacturer, to instruct the Manufacturer's personnel in the technique of the Seller's processes or methods of application of the manufacture of the Products.
- (c) All disclosure and instruction shall be made or given by the Seller without cost to the Manufacturer.
- (d) All disclosures of the Seller's Know-how shall be deemed to have been made in confidence and shall be held confidential by the Manufacturer and shall not be disclosed to others. This obligation of non-disclosure shall not apply to information which at the time of the Seller's disclosure is already known to the Manufacturer, or is rightfully obtained from a third party without obligation of confidence, or which is freely available to the public by publication or otherwise, and shall remain in force and effect for the term of this agreement and for a period of _____ years thereafter.

3. Grant of Rights

- (a) The Seller hereby grants to the Manufacturer the right to manufacture and package the Seller's Products, to use the Seller's Know-how in the manufacture of the Products and to grant to its Affiliates the right to manufacture and package the Products and to utilize the Know-how, subject to the terms of this Agreement.
- (b) The Manufacturer hereby grants to the Seller the exclusive right to use any improvements or technical developments of the Products which are discovered or developed by the Manufacturer after the Seller has made the disclosure required by this agreement. Such right shall be royalty-free provided, however, that if the Seller does not elect to exercise such right in writing within ____ days after the Manufacturer makes written disclosure to the Seller, the Manufacturer will be free to deal with others with respect to such right.
- (c) The Manufacturer grants to the Seller the right to purchase any new inventions or related products which the Manufacturer may develop, invent, design, obtain or acquire in any manner as a result of disclosure of Know-how made by the Seller. If a bona fide purchaser wishes to buy from the Manufacturer any of these inventions or related products, the Manufacturer shall immediately inform the Seller, by notice in writing by registered mail, of such offer and its terms and conditions. The Seller shall then have a period of ____ days within which to elect, by notice in writing by registered mail, to purchase such inventions, or related products on the same terms and conditions. The mailing of such notice by the Seller shall constitute a written contract of purchase and sale incorporating the terms of the offer.

4. Further Agreements Between Seller and Manufacturer

- (a) The Manufacturer agrees to use its best efforts and all due diligence to manufacture the Products.
- (b) The Manufacturer agrees that, from the date of execution of this Agreement until its termination, the Manufacturer will not, without the written consent of the Seller, sell or distribute the Products.
- (c) The Manufacturer further agrees that the trade name "[trade name]" shall appear in some way on the enclosure or cover of any Product which the Manufacturer manufactures, together with the Seller's registered trade mark or trade name.

5. Payment by Seller

- (a) The Seller agrees to pay to the Manufacturer for the manufacturing services performed pursuant to the terms of this Agreement the sum of the net cost of manufacturing the Products plus _____% plus applicable taxes on all Products manufactured by the Manufacturer or its Affiliates.
- (b) The Manufacturer shall, within ____ days after the end of each calendar month, render to the Seller, in writing, a report setting forth the Products manufactured during that month and the net

cost of the Products manufactured. In such report, the net cost of manufacturing the Products shall be allocated to each Product manufactured during the preceding month. Payment of the amounts due shall be made at the Manufacturer's place of business within thirty (30) days after delivery of the report or upon such other terms as the Seller and the Manufacturer from time to time agree in writing.

- (c) All calculations of the net cost of manufacturing the Products and the payments from the Seller to the Manufacturer shall be in _____ dollars.
- (d) The Manufacturer and its Affiliates shall maintain adequate books of account and other records prepared in accordance with generally accepted accounting principles of all Products manufactured, which shall be subject to inspection by the Seller at all reasonable times upon ____ days' written notice for a period of ____ years from the date each Product is manufactured. Such records shall include payroll records, job cards, attendance cards and job summaries. Such inspection shall, if desired by the Seller, be made by a firm of reputable chartered accountants retained by the Seller in order to verify the amount of payments due hereunder.
- (e) If the Manufacturer's costs or prices of raw materials used in the manufacture of the Products increase, the price per Product shall be increased proportionately, provided, however, that before such increase takes effect, the Manufacturer shall notify the Seller of the increase in costs and all Products shipped by the Manufacturer after the expiration of ____ days from such notice shall be paid for by the Seller in accordance with the terms hereinbefore set forth at that increased price. Orders during such ____-day period shall be limited to normal orders.

6. Scope of Work

- (a) When authorized by the Seller, the Manufacturer shall, as an independent contractor, perform the work described in the statement of work provided by the Seller and within the requirements as detailed in the statement of work and in accordance with the terms and conditions of this Agreement. The Seller will authorize the Manufacturer to perform the work by issuing a purchase order(s). Execution of this Agreement is not a guarantee that any work will be ordered by the Seller.
- (b) The Manufacturer has the right to enter into other agreements in connection with the performance of the work subject always to the terms of this Agreement.
- (c) All agreements in connection with the work entered into by the Manufacturer with subcontractors shall include the terms and conditions of this Agreement which govern the Manufacturer. No provision of such agreement shall be construed as an agreement between the Seller and the subcontractors. The Manufacturer shall be responsible for the acts or neglect of any of its subcontractors.

7. Supply of Material and Equipment

- (a) The Manufacturer shall supply all materials and equipment required to manufacture the Products, in compliance with the guidelines established by the Seller. Prior to manufacturing any Products, the Seller shall give all necessary notices, obtain all necessary permits and licences and pay all the fees related to the performance of the work. Furthermore, the Manufacturer shall provide to the Seller upon the Seller's request, copies of all certificates necessary as evidence that the work conforms to the laws and regulations of all authorities having jurisdiction.
- (b) All patents, design rights, copyrights and other intellectual property rights relating to special tooling and which are not proprietary to the Seller's manufacturing process shall be the property of the Manufacturer. The Seller agrees that any modifications to the design of the special tooling and any drawings based thereon or incorporating any designs or information provided by the Manufacturer shall be the property of and vest in the Manufacturer.

8. Quality

- (a) The Manufacturer shall provide the Seller with a quality assurance plan that is subject to review and comment by the Seller. The Manufacturer will adhere to the quality assurance plan as accepted and agreed to by both parties.
- (b) It is agreed that at all times and in all respects the Manufacturer will manufacture and package the Products in and to conditions which meet the specifications supplied by the Seller.
- (c) It is an express condition of this Agreement that at all times during the period of this Agreement the Manufacturer shall ensure that the Products shall satisfactorily meet the requirements for good manufacturing practice.
- (d) In the event that the Seller and Manufacturer do not agree on whether the Products meet the specifications established by the Seller, the matter shall be submitted for review to an independent testing laboratory mutually acceptable to the Manufacturer and Seller. The determination of such independent test laboratory shall be binding on both parties. The cost of the independent testing laboratory shall be borne by the party whose testing results were in error.
- (e) The Manufacturer warrants to the Seller that all Products delivered hereunder shall comply with the specifications agreed to between the parties from time to time. If any of the Products is found not to comply with the specifications, the Seller shall have the right to demand replacement thereof by the Manufacturer of the quality specified and to return the defective quantity to the Manufacturer at the Manufacturer's expense provided that notice of the Seller's intention to return such quantity is given by the Seller to the Manufacturer within ____ days of receipt of such quantity and that such quantity is actually returned with ____ days of the giving of such notice.
- (f) The Manufacturer shall permit the Seller's representatives to observe the Manufacturer's quality control procedures upon reasonable notice and reserves the right to inspect finished goods prior to shipment in order to verify that such Products when shipped conform with the Product specifications, as established by the Seller. In addition, the Manufacturer shall provide on request written descriptions of acceptance, test procedures, methods of calibration together with any standards employed and any relevant test results. Should experience in the field after delivery and/or auditing of the Seller's and/or the Manufacturer's inventory demonstrate an unsatisfactory level of Product quality, reliability or performance or if the Product or parts are found not to comply with safety, environmental or other governmental requirements, the Seller shall have the right to withhold acceptance and/or stop shipment of such Products until appropriate corrective action is taken by the Manufacturer and demonstrated to the reasonable satisfaction of the Seller.
- (g) If a retrofit of existing units of the Product (for which customers do not pay) is reasonably necessary or appropriate to remedy significant performance or reliability deficiencies, such parts and related documents shall be provided, free of charge, to the Seller or the Seller's customers.

9. Inspection of Goods

The Seller may inspect the Products within a reasonable time after delivery. The Manufacturer shall be responsible for all charges paid by the Manufacturer for the delivery to the Seller of the Products found by the Seller to be non-conforming. The Seller may return such non-conforming Products to the Manufacturer at the Manufacturer's risk and expense. Payment shall not constitute an acceptance of the Products nor impair the Seller's right to inspect or any of its other remedies.

THIS IS A 14-PAGE CONTRACT.