

TOLL MANUFACTURING AGREEMENT

This Toll Manufacturing Agreement (this "Agreement") is made as of the 05 day of January, 2018 (the "Effective Date") by and between Alex Pally ("Company"), an individual located at 2901 Kerry Lane, San Francisco, CA 69028 and Ivan Martinez ("Manufacturer"), an individual located at 2810 Derrick Terrance, San Francisco, CA 69817.

The parties agree as follows:

1. **Toll Manufacturing.** Company shall retain Manufacturer for the production of T-shirts (the "Products") in accordance with the specifications contained in the statement of work attached hereto as Exhibit A (the "SOW"). Company will make all reasonable efforts to provide clear instructions, documentation, and product specifications to Manufacturer. Manufacturer must manufacture the Products in accordance with this Agreement, in compliance with applicable laws and regulation, and using generally accepted industry practice.

2. **Supply of Materials.** Except as otherwise agreed upon herein, Company shall supply, or arrange to supply, to Manufacturer all raw materials need for the production of the Products.

3. **Purchase Orders.** Company shall submit orders for the Products by submitting a purchase order to Manufacturer (the "Purchase Order") detailing the number of units of the Products to be produced and the date of delivery. Supplier will be entitled to produce no more than the number of units of the Products shown on the Purchase Order. Manufacturer must acknowledge receipt of any Purchase Orders.

4. **Grant of License.** Company grants to Manufacturer a limited, non-transferrable and non-exclusive license to use the any intellectual property necessary to produce the Products during the term of this Agreement. Nothing in this Agreement shall give Manufacturer any right, title or interest in such intellectual property.

5. **Ownership of Products.** Company owns all rights to the Products produced by Manufacturer.

6. **Payment.** Manufacturer will be paid \$20.00 per unit of Product produced under this Agreement. Payment will be made within seven (7) days from the date the Products are delivered.

7. **Shipments.** The Products will be delivered by Manufacturer to Company at the following address: 2901 Kerry Lane, San Francisco, CA 69028 or in accordance with the agreed upon terms and delivery schedule in the Purchase Order. The Products will be suitably packaged in accordance with the SOW. Buyer will pay for all freight, insurance and other shipping expenses. Title and risk of loss will pass to Company upon delivery of the Products. Manufacturer will use commercially reasonable efforts to deliver the Products on the agreed-upon delivery dates and notify Company of any anticipated delays.

8. **Product Acceptance.** The Products delivered by Manufacturer will be inspected and tested by Company within thirty (30) days of delivery. If the Products delivered do not comply with the specifications

in the SOW and/or Purchase Order, Company has the right to reject the non-conforming Products. Products not rejected within thirty (30) days of delivery will be deemed to be accepted by Company. In the event any Products do not comply with the specifications in the SOW and are rejected by Company, Company may, at its option:

- Return for a replacement
- Return for a refund

9. **Warranties.** Manufacturer warrants that it will perform the SOW in a good, professional and workmanlike manner, and Manufacturer will promptly notify Company of any delay or defect in the production of the Products. Manufacturer warrants that the Products will be produced in compliance with the specifications and quality control standards, if any, in the SOW and any Purchase Order, and in compliance with all governmental and environmental regulations. MANUFACTURER MAKES NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

10. **Term.** This Agreement commences on the Effective Date and will remain in effect for five (5) years. This Agreement will automatically terminate, unless the parties have mutually agreed in writing to renew it for an additional term.

11. **Termination.** Company and Manufacturer may at any time by mutual consent decide to terminate this Agreement pursuant to written and delivered notice to the other party. Company may terminate Manufacturer's rights to produce the Products for any reason on ninety (90) days' written notice of termination. Manufacturer retains the right at any time to terminate its obligations to produce the Products on one hundred twenty (120) days' written notice of termination. This Agreement also may be terminated automatically, without notice, (i) upon the institution by or against Company and Manufacturer of any insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of debts, (ii) upon Company's or Manufacturer's making an assignment for the benefit of creditors, or (iii) upon Company's or Manufacturer's dissolution.

12. **Default.** If either party should fail to perform its respective obligations under the terms of this Agreement, the other party will notify of the party that it is presumed to be in default and give reasonable recourse to cure the stated issue. The defaulting party will have the opportunity to cure the default within thirty (30) days of notice by the other party. In the event of a failure to cure a breach or default within the stipulated time, the other parties will have the right to terminate this Agreement immediately.

13. **Effect of Termination.** Upon the termination of this Agreement, the rights and licenses granted to Manufacturer pursuant to this Agreement, including without limitation the right to use the intellectual property and manufacture the Products, will automatically terminate. All payments owing from Company to Manufacturer, or refunds due from Manufacturer, will become immediately due and payable, and legally enforceable, upon termination. Manufacturer will not make or retain any copies or samples of any confidential items or information which may have been entrusted to it.

14. **Confidentiality.** In the course of producing the Products, each party may be exposed to confidential and proprietary information of the other party, including designs, drawings, materials, manufacturing specifications, trade secrets, business and financial information and other confidential information (the "Confidential Information"). Manufacturer will keep confidential all Confidential Information of Company, including details of the manufacturing the Products, and will manufacture the Products in accordance with strict security procedures. During the term of this Agreement, each party will refrain from disclosing any

Confidential Information of the other party, except for the strict purposes or activities specifically authorized in this Agreement or if required by law. Each party will use all reasonable efforts to maintain the privacy of the Confidential Information in its possession or control.

15. **Prohibited Acts.** Neither Manufacturer, nor any agent, representative, affiliate, or subcontractor of Manufacturer, will have the right to copy, manufacture or distribute the Products without the express prior written approval of Company. Anyone who copies, manufactures or distributes the Products without a license and prior written approval of Company will be liable for any cost or loss in sales, revenue or profits by Company, plus all applicable attorneys' fees and costs incurred in investigating and prosecuting an action against the offending party. Company will notify those to whom it entrusts knowledge of, or access to, the Products that Company and the offending party will be liable for losses.

16. **Inspection of Books.** Company will have the right, upon reasonable request, to audit and review the books and records of Manufacturer sufficient to verify the number and quality of the Products being manufactured. Any such audit will be conducted at Company's expense and at such times and in such a manner as to not unreasonably interfere with Manufacturer's normal operations. Manufacturer shall maintain all such books and records for a period of five (5) years after shipment of the Products.

17. **Insurance.** Company and Manufacturer agree to maintain appropriate insurance to adequately cover their respective risks under this Agreement, with coverage amounts commensurate with levels in their respective markets.

18. **Limitation of Liability.** In no event will either party be liable for costs, expenses, or damages in connection with this Agreement in excess of actual costs, expenses, damages, or provable and actual lost revenue.

19. **Force Majeure.** Neither party will be liable for the costs or expenses arising from any failure or delay in the performance of this Agreement that is due and attributable to causes beyond the control of either party, including but not limited to acts of God, weather, war, civil unrest, strikes, lockouts, destruction of production facilities, riots, insurrection, terrorist attacks, government regulatory actions, acts or decrees of governmental or military bodies, fire, casualty, flood, earthquake, or any other force majeure event, provided that the party has used commercially reasonable efforts to mitigate the effects of the cause. Supplier will not be liable for any delays in the normal production or interruption in the workflow process caused by changes to the specifications by.

20. **Amendments.** This Agreement may not be modified or amended except by a written agreement signed by all of the parties.

21. **Notices.** Any notice or communication under this Agreement must be in writing and sent via personal delivery, overnight courier service, or certified or registered mail, postage prepaid, return receipt requested and addressed to the to the address stated above or to another address as that party may subsequently designate by notice and shall be deemed given on the date of delivery.

22. **No Waiver.** No party shall be deemed to have waived any provision of this Agreement or the exercise of any rights held under this Agreement unless such waiver is made expressly and in writing. Waiver by any party of a breach or violation of any provision of this Agreement shall not constitute a waiver of any other subsequent breach or violation.

23. **Assignment.** The parties agree that their rights and obligations under this Agreement may not be transferred or assigned without the prior written consent of Buyer. Buyer may assign its rights and obligations under this Agreement without Supplier's consent.

24. **Successors and Assigns.** This Agreement shall be binding and inure to the benefit of the parties and their respective legal representatives, heirs, administrators, executors, successors and permitted assigns.

25. **Governing Law.** This Agreement and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflicts of laws provisions.

26. **Disputes.** Any dispute arising from this Agreement shall be resolved through mediation.

27. **Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected and shall continue to be valid, legal and enforceable as though the invalid, illegal or unenforceable part had not been included in this Agreement.

28. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together, shall constitute one and the same document.

29. **Headings.** The section headings herein are for reference purposes only and shall not otherwise affect the meaning, construction or interpretation of any provision of this Agreement.

30. **Entire Agreement.** This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, understandings and agreements.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Company Signature

Alex Pally

Company Full Name

Manufacturer Signature

Ivan Martinez

Manufacturer Full Name

Exhibit A

STATEMENT OF WORK

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GENERAL INSTRUCTIONS

What is a Toll Manufacturing Agreement?

A Toll Manufacturing Agreement is an agreement between a company with a product design, or product idea, and a manufacturing company who will manufacture the product or parts of it. In addition to the design or idea, the company also provides the raw materials, or the component parts required to create the finished product. The manufacturer provides the skills, the labor, and the equipment necessary to make or complete the product.

A toll manufacturing agreement protects the company with the product design from theft of trade secrets or intellectual property. It also prohibits the manufacturer from using the product design to compete against them. Finally, this agreement places restrictions on the manufacturer's employees and contractors in order to protect the trade secrets or intellectual property.

Toll manufacturing agreements benefit companies, as they do not have to create a factory or invest in the equipment necessary to bring the idea or product to life. By using an external manufacturer, the company has the freedom to customize the product as they deem appropriate. The company pays the manufacturer a "toll" for the privilege of using the manufacturer's employees, equipment, and facilities.

An effective toll manufacturing agreement should contain detailed specifics, so there is no confusion about the expectations of the company seeking manufactured items and the obligations of the manufacturers. The agreement should at least include the following:

- Trade secrets
- Manufacturer obligations
- Expected information security procedures
- Conditions when employees are terminated
- Materials supplied
- Product specifications and requirements
- Trademark preservation
- Costs paid

When Do I Need One?

Any time you are trusting another person to make, design, manufacture, or compile a product that involves trade secrets or intellectual property. A toll manufacturing agreement conveys the value you place on the information, your expectations about how others protect the information, and provides you a remedy if the person or company you rely upon tries to capitalize on your information. The agreement also details the materials the company will supply, and the employee skills, equipment, or factory supplied by the manufacturer.

This agreements protect business owners from losing their competitive advantage due to the secret nature of their idea or product. Once a secret is made public, it can never be returned to its prior status. Toll manufacturing agreements also protect companies and manufacturers, allowing them to engage in mutually beneficial agreements to create products.

The Consequences of Not Using One

Without a tolling manufacturing agreement, you are at the manufacturer's mercy. You have no assurances the manufacturer will protect your intellectual property or trade secrets. Even if you trust your manufacturer, without an agreement, a rogue employee may sell the information or use it for their own purposes.

Alternatively, your design may be improved upon. Without an agreement preserving your right to the intellectual property as improved, the manufacturer or an employee could take the improved design, and make a better widget. Ultimately, this could result in the complete loss of your business. Without an agreement, there may be confusion about product specifications or product requirements. When creating a product with various components, the difference of a single millimeter can be the difference between a product constructed properly and a product that can't be constructed at all. Without a detailed list of shipment requirements, the manufacturer may send components using a method which results in missed deadlines.

Obviously, product specifications and product requirements are critical to a product's success. Without a written document detailing the agreement between the company and the manufacturer, the company opens themselves up to unnecessary risk.