

State of _____

MANUFACTURING AND SUPPLY AGREEMENT

This Manufacturing and Supply Agreement (this "Agreement") is made as of the _____ day of _____, 20____ (the "Effective Date") by and between:

Supplier: _____ ("Supplier"), located at _____ [Address] and _____

Buyer: _____ ("Buyer"), located at _____ [Address].

Manufacturing under this Agreement will take place at _____ [Address] (the "Manufacturing Plant").

1. Supply of Products. Supplier shall manufacture and supply to Buyer _____ (the "Products")

in accordance with the following specifications (the "SOW"): _____

_____.

Buyer will make all reasonable efforts to provide clear instructions, documentation, and product specifications to Supplier.

Additional Orders (Check one)

- Buyer may submit additional orders under this Agreement. Buyer shall submit orders for the Products by submitting a purchase order to Supplier (the "Purchase Order") detailing the number of units of the Products to be manufactured and supplied.
- Buyer may NOT submit additional orders under this Agreement.

Subcontracting (Check one)

- Supplier may subcontract the manufacture of the Products without the prior written consent of Buyer.
- Supplier will NOT subcontract the manufacture of the Products without the prior written consent of Buyer.

Supplier must manufacture and supply the Products in accordance with this Agreement, in compliance with applicable laws and regulation, and using generally accepted industry practice.



2. **Grant of License.** Buyer represents and warrants to Supplier that all trademarks, trade names, trade labels, trade dress, packaging and other intellectual property (the "Intellectual Property") supplied by Buyer to Supplier for the Products do not infringe upon or otherwise violate the intellectual property rights of any third party. Buyer grants to Supplier a limited, non-transferrable and non-exclusive license to use the Intellectual Property and manufacture the Products during the term of this Agreement. Nothing in this Agreement shall give Supplier any right, title or interest in the Intellectual Property. In addition, Supplier shall not adopt any trademark, trade name, trade dress, labeling or packaging which is deceptively similar to or likely to cause confusion with respect to the Intellectual Property and/or the Products. The license granted by Buyer in this Agreement is non-exclusive, and Buyer will not be limited in any manner to engage in other manufacturing or distribution activities or to appointment of other manufacturers, dealers, distributors, value-added resellers, original equipment manufacturers, licensees or agents.

3. **Ownership of Products.** Buyer owns all rights to the Products produced by Supplier. Supplier's sale, re-sale or distribution to any entity other than Buyer, including without limitation distribution to retailers or other distributors or sub-distributors, will be prohibited unless made pursuant to a specific written agreement between Buyer and Supplier.

4. **Payment.**

(Fill out if Additional Orders are accepted)

Supplier will be paid \$_____ per unit for the number of units specified in each Purchase Order.

Payment shall be made: (Check one)

- After submitting a Purchase Order.** Payments shall be made within _____ days from the date of each Purchase Order.
- After delivery of the Products.** Payments shall be made within _____ days from the date the Products are delivered.
- According to the SOW.** Supplier will be paid accordance to the agreed upon fee schedule included in the SOW.

(Fill out if Additional Orders are NOT accepted)

Supplier will be paid \$_____ under this Agreement. Payment will be made: (Check one)

- After executing the Agreement.** Payment will be made within _____ days from the date of this Agreement.
- After delivery of the Products.** Payment will be made within _____ days from the date the Products are delivered.
- After receiving an invoice.** Payment will be made within _____ days from receiving an invoice from Supplier.
- According to the SOW.** Supplier and Buyer will agree to a fee schedule included in the SOW.



Additional Payment Terms: _____

5. **Late Payments.** Supplier will be entitled to charge interest of _____% on any unpaid balance more than _____ days past due.

6. **Discount.** (Check one)

- If payment is made at least _____ days before the due date, Buyer will be entitled to a discount of _____% off the total amount due.
- Not applicable.

7. **Shipments.** The Products will be delivered by Supplier to Buyer: (Check one)

- On or before _____, 20____ at the following address:

- In accordance with the terms of each Purchase Order
- In accordance with the agreed upon terms and delivery schedule in the SOW

The Products will be suitably packaged in accordance with the SOW. Supplier Buyer will pay for all freight, insurance and other shipping expenses. Supplier will use commercially reasonable efforts to deliver the Products on the agreed-upon delivery dates and notify Buyer of any anticipated delays.

Risk of Loss (Check one)

- Title and risk of loss will pass to Buyer upon delivery of the Products.
- Title and risk of loss will pass to Buyer upon shipment of the Products.

8. **Product Acceptance.** The Products delivered by Supplier will be inspected and tested by Buyer within _____ days of delivery. If the Products delivered do not comply with the specifications in the SOW (and Purchase Order), Buyer has the right to reject the non-conforming Products. Products not rejected within _____ days of delivery will be deemed to be accepted by Buyer. In the event any Products do not comply with the specifications in the SOW and are rejected by Buyer, Buyer may, at its option: (Check all that apply)

- Return for a replacement
- Return for a credit
- Return for a refund
- Other: _____



9. **Warranties.** Supplier warrants that it will perform the SOW in a good, professional and workmanlike manner, and Supplier will promptly notify Buyer of any delay or defect in the manufacture and supply of the Products. Supplier warrants that the Products will be manufacture and supplied in compliance with the specifications in the SOW and in compliance with all governmental and environmental regulations.

Substantive Defects (Check one)

Supplier warrants that the Products will be free from substantive defects in workmanship for a period of _____ (Check one) days months years from the date of shipment. The warranty does not apply to any Products that are damaged due to the misuse, abuse, alteration or negligence of any party other than Supplier. SUPPLIER MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

There is NO warranty for substantive defects. SUPPLIER 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 _____ years. This Agreement will: (Check one)

- Terminate, unless the parties have mutually agreed in writing to renew it for an additional term.
- Renew automatically for a term of _____ year(s), unless either party has given at least _____ days written notice not to renew to the other party.

11. **Termination.** Buyer and Supplier may at any time by mutual consent decide to terminate this Agreement pursuant to written and delivered notice to the other party. Buyer may terminate Supplier's rights to manufacture and supply the Products for any reason on _____ days' written notice of termination. Supplier retains the right at any time to terminate its obligations to manufacture and supply the Products on _____ days' written notice of termination. This Agreement also may be terminated automatically, without notice, (i) upon the institution by or against Buyer or Supplier of any insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of debts, (ii) upon Buyer or Supplier's making an assignment for the benefit of creditors, or (iii) upon Buyer or Supplier'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 _____ 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 Supplier 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 Buyer to Supplier, or refunds due from Supplier, will become immediately due and payable, and legally enforceable, upon termination. Supplier 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 manufacturing and supplying 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"). Supplier will keep confidential all Confidential Information of Buyer, 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 Supplier, nor any agent, representative, affiliate, or subcontractor of Supplier, will have the right to copy, manufacture or distribute the Products without the express prior written approval of Buyer. Anyone who copies, manufactures or distributes the Products without a license and prior written approval of Buyer will be liable for any cost or loss in sales, revenue or profits by Buyer, plus all applicable attorneys' fees and costs incurred in investigating and prosecuting an action against the offending party. Supplier will notify those to whom it entrusts knowledge of, or access to, the Products that Supplier and the offending party will be liable for losses.

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

17. **Insurance.** Buyer and Supplier 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 _____, without regard to its conflicts of laws provisions.

26. **Disputes.** Any dispute arising from this Agreement shall be resolved through: (Check one)

Court litigation. Disputes shall be resolved in the courts of the State of _____.

(Check if applicable)

If either party brings legal action to enforce its rights under this Agreement, the prevailing party will be entitled to recover from the other party its expenses (including reasonable attorneys' fees and costs) incurred in connection with the action and any appeal.

Binding arbitration. Binding arbitration shall be conducted in accordance with the rules of the American Arbitration Association.

Mediation.



Mediation, then binding arbitration. If the dispute cannot be resolved through mediation, then the dispute will be resolved through binding arbitration conducted in accordance with the rules of the American Arbitration Association.

29. **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.

30. **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.

31. **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.

32. **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.

33. **Miscellaneous.** _____

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

Buyer Signature

Buyer Full Name

Supplier Signature

Supplier Full Name

