

MANUFACTURING CONTRACT

I. THE PARTIES. This Manufacturing Contract ("Contract") is made between:

Customer: _____ with a mailing address of _____ ("Customer") and

Manufacturer: _____ with a mailing address of _____ ("Manufacturer").

Customer and Manufacturer may herein be referred to individually as a "Party" and collectively as the "Parties". This Contract may be referred to herein as the "Agreement".

WHEREAS Customer and Manufacturer intend to enter into an agreement for contract manufacturing services effective _____;

NOW THEREFORE, Customer and Manufacturer for good and valuable consideration do agree to be legally bound by this Contract as follows:

II. ORDERING. Customer shall initiate all orders by submitting a purchase order to Manufacturer for Products that are covered by this Agreement. Manufacturer will make every reasonable effort to acknowledge receipt of purchase orders no later than _____ business days after the purchase order has been received. If the purchase order is not acknowledged within this timeframe, the purchase order shall be deemed as not having been received by Manufacturer and Customer shall resubmit.

III. FORECASTS. Customer and Manufacturer acknowledge that forecasts are for the benefit of Manufacturer's planning and they do not constitute an order or a commitment to place an order. Under this Agreement, (check one):

- Customer is not required to provide Manufacturer with forecasts.
- Customer shall provide Manufacturer with forecasts as follows:

IV. DOWN PAYMENT AND PAYMENT. Prior to Manufacturer beginning production of any order, Customer shall remit a payment to Manufacturer that is equivalent to _____% of the price of that order. Manufacturer shall have the right to delay production on any order until payment has been received. The remaining balance of an order, if any, shall be due:

- Prior to shipment
- Other: _____



Manufacturer shall have the right to suspend the shipment of any order that has not been paid for by Customer hereunder.

V. DELIVERY AND ACCEPTANCE. Time is of the essence, therefore, products shall be shipped from Manufacturer's facility at _____ by or before the agreed-upon shipping date, and will be packed, packaged, crated, stored, and marked so as to ensure safe delivery in compliance with all regulations of the carrier(s) and any governing authorities.

Customer has _____ days after the date of delivery to inspect and accept or reject the shipment in whole or in part ("Inspection Period"). If a shipment is not accepted or rejected within this Inspection Period, then the shipment is considered to have been accepted by Customer.

Customer shall notify Manufacturer within the Inspection Period if any Product(s) are rejected for damage or for failing to conform to the specifications set forth herein. Manufacturer shall have the right to repair or replace any Product it deems Customer has reasonably rejected for damage or for failing to conform to specifications.

VI. LATE DELIVERY. Time being of the essence, if Manufacturer fails to deliver the Products in accordance with Paragraph V, and fails to cure such delay for 5 business days after the issue of written notice by Customer, Customer may elect to do any of the following:

- approve a revised delivery date or time;
- require expedited or premium shipment of the late delivery at Manufacturer's expense;
- cancel the applicable order and obtain similar goods and products from other sources until such time that Manufacturer is able to fulfill the subsequent order at the agreed-upon date and time.

In addition, Manufacturer shall be liable to Customer for all damages incurred by Customer as a result of the late delivery, including without limitation any increased costs of obtaining substitute products, any costs for expedited shipping, and any lost profits resulting from the delay. The Parties agree that these damages are a reasonable estimate of the harm that would be suffered by Customer as a result of the late delivery, and that they do not constitute a penalty. Manufacturer shall use its best efforts to avoid any delay in the delivery of the Products, and shall promptly notify Customer in writing of any circumstances that may cause a delay.

VII. INSURANCE. Shipments from Manufacturer to Customer (select one):

- are not required to be insured. Customer assumes all liability for any and all losses.
- shall be insured by the Customer.
- shall be insured by the Manufacturer.

VIII. WARRANTY. Manufacturer warrants to Customer that upon the date of delivery, and for a period of _____ (select one): days weeks months thereafter, Products will remain free from defects and will conform to the tolerances and specifications set forth herein. In addition, Manufacturer will pass to Customer all Supplier's warranties to the extent that they are transferable.

Exclusions: This warranty is the sole warranty given by Manufacturer and supersedes any other warranties either express or implied. Manufacture makes no warranty as to the merchantability, noninfringement, or fitness of Products for any particular purpose. This warranty does not apply to Products that have defects resulting from a) design flaws, functionality failures, or failures resulting from the use of Products in any specific environment; b) accident, disaster, neglect, abuse, misuse, improper handling, storage, testing, or installation, or c) alterations, modifications, or repairs without Manufacturer's prior written approval.

Remedy: The sole remedy under this agreement shall be, at Manufacturer's discretion, the repair or replacement of, or reimbursement for Product covered by this warranty.

IX. CHANGES. Neither Party may make changes to a Product's specifications except as set forth in this Provision. Upon sufficient notice, Customer may make changes from time to time, within reason, and within the general scope of this Agreement that may include but shall not be limited to changes in design, specification, procedure, tolerances, drawings, packaging, Bill of Materials, and Products. Changes shall be accomplished by submission of a written order ("Change Order") by one party to the other that clearly identifies the changes to be made and clearly identifies any obsolete or superseding information. If such changes cause an increase or decrease in Manufacturer's cost or time required to perform under this Agreement, Manufacturer may adjust pricing in a manner that adequately compensates Parties for such changes.

X. REPRESENTATIONS. Customer warrants that the manufacture of Products pursuant to this Agreement does not, or will not, to the best of Customer's knowledge, constitute any infringement whatsoever upon the intellectual property rights of any third party.

XI. SCOPE. Manufacturer will manufacture, for the Customer, Products of the family, class, line, and type, as ordered by Customer, to the tolerances and within the specifications herein defined.

XII. TERM. The term of this Agreement shall commence on the date first written above and shall automatically renew on each anniversary of the Effective Date unless terminated by one Party giving written notice of termination to the other, no sooner than 60 days prior to an anniversary but no later than 30 days prior to an anniversary or as otherwise terminated pursuant to another provision set forth hereunder.

XIII. TERMINATION. Termination, Generally. Parties shall have the right to terminate this Contract at any time 1) for any material breach that remains uncured for at least 30

days after a Party provides written notice of such breach; 2) by mutual agreement, having been put in writing and attached hereto as an amendment; or 3) upon written notice provided to the other Party no fewer than 30 days prior to an anniversary of the Term.

XIV. NO CREDIT TERMS. No part of this Agreement may be so construed as to establish credit terms or a credit arrangement by or between Manufacturer and Customer. Manufacturer may extend credit to Customer separate from this Agreement and in accordance with its internal policies and procedures. Customer is obligated to make payments within the timeframe indicated on Manufacturer issued invoices. Manufacturer reserves the right to hold any shipment pending required payment by Customer.

XV. PRODUCTS. Products to be manufactured for Customer under this Agreement shall be documented in "Exhibit A: Products". Exhibit A shall include all descriptions, specifications, references and attachments, tolerances, details, drawings, and any other information reasonably required by Manufacturer to identify and produce a given Product or to perform its obligations hereunder. Customer may add new Products to Exhibit A from time to time with Manufacturer's approval. Any change to an existing Product may only be accomplished pursuant to the Provisions of this Agreement.

XVI. PRICING. Prices shall be documented in "Exhibit B: Pricing", shall be in US Dollars, and shall detail any costs that are excluded from prices (i.e. shipping, sales or use tax, duties, tariffs, etc.). Exhibit B shall include all relevant information necessary for Customer to submit a Purchase Order for Products covered under this Agreement which may include: Minimum Order Quantities, Multiples of Packaging Quantities, Product identification number(s), Lead Times, Prices, and price breaks.

Manufacturer may adjust Pricing from time to time in a reasonable manner that adequately compensates Parties for changes in Manufacturer's cost or time required to perform its obligations hereunder.

XVII. SAMPLE FOR APPROVAL. Manufacturer may, at its discretion, require Customer to approve a sample of any Product before putting it into regular production. Customer shall work with Manufacturer in good faith throughout the approval process. Manufacturer may reasonably charge Customer for approval samples including shipping.

XVIII. QUALITY. Manufacturer shall obtain and maintain all necessary registrations, licenses, and approvals required to manufacture, for Customer, Products covered by this Agreement.

When deemed necessary by Manufacturer, Customer shall provide a Bill of Materials for each Product, that identifies parts, components, and materials, acceptable alternates, and approved primary and alternate suppliers of components and materials. At no time shall Manufacturer use alternate or substitute parts, components, or materials that have

not been approved by Customer.

At Customer's expense, and with reasonable notice to Manufacturer, Customer, or qualified third party, may inspect Manufacturer's facilities and records related to this Agreement at any time during normal business hours.

XIX. OBSOLETE AND EXCESS INVENTORY. To the extent that Manufacturer makes or obtains components or materials in quantities based on Customer forecasts; if such components or materials should remain unused 1) upon the end-of-life of any Product they are specific to, or 2) upon termination of this Agreement, whichever shall occur first, Customer shall be obligated to compensate Manufacturer for their actual cost plus a reasonable markup except for those components that are in excess or have been made obsolete as a result of Manufacturer's failure to deliver under Paragraph VI. Any such components or materials, once paid for by Customer, shall be shipped to Customer at Customer's expense or disposed of by Manufacturer at Customer's request and expense.

XX. DISPUTE RESOLUTION. Any dispute, controversy, or claim arising from or relating to this Agreement, or the breach, termination, or invalidity hereof, shall be submitted for negotiation and resolution to the Manufacturer and Customer, by delivery of written notice from either of the Parties to the other Party. If the Parties are unable to resolve any dispute within 10 business days after delivery of the applicable notice of dispute, either Party may file suit in a court of competent jurisdiction.

XXI. INDEMNIFICATION. Subject to the terms and conditions of this Agreement, Manufacturer shall indemnify, defend, and hold harmless Customer and its officers, directors, employees, agents, affiliates, successors, and permitted assigns against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, fees, and the cost of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers, relating to any claim of a third party or Party alleging material breach or non-fulfillment of any representation, warranty, or covenant set forth in this Agreement.

Notwithstanding anything to the contrary in this Agreement, any indemnifying Party is not obligated to indemnify or defend the indemnified Party against any claim (whether direct or indirect) if such claim or corresponding losses arise out of or result from the indemnified Party's gross negligence or more culpable act or omission (including recklessness or willful misconduct) or bad faith failure to materially comply with any of its obligations set forth in this Agreement.

XXII. INTELLECTUAL PROPERTY LICENSE. Customer hereby grants Manufacturer a non-exclusive, non-transferable license to use, produce, or reproduce Customer trademarked, patented, or copyrighted works for the term of this Agreement solely for the purpose of allowing Manufacturer to perform its obligations hereunder.

XXIII. PRODUCT RECALLS. Customer shall be solely responsible for, and obligated to remedy, any recall whether voluntary or involuntary, that occurs for any reason.

XXIV. CONFIDENTIAL INFORMATION. For the purposes of this Agreement, the term “Confidential Information” shall include, but not be limited to, documents, records, information and data (whether verbal, electronic, or written), tooling, drawings, models, apparatus, sketches, designs, schedules, product plans, marketing plans, technical procedures, manufacturing processes, analyses, compilations, studies, software, prototypes, samples, formulas, methodologies, formulations, product developments, patent applications, know-how, experimental results, specifications, and other business information, relating to the disclosing Party’s Products, business, assets, operations or contracts, furnished to the other Party and/or the other Party’s affiliates, employees, officers, owners, agents, consultants or representatives, in the course of the work contemplated in this Agreement, regardless of whether such Confidential Information has been expressly designated as confidential or proprietary. Confidential Information also includes any and all products, methods, tooling, studies, and other material designed, created, or prepared by either Party in connection with the performance of its responsibilities and obligations hereunder. However, Confidential Information does not include (a) information generally available to the public; (b) widely used manufacturing practices or techniques; (c) information rightfully in possession of the receiving Party prior to signing this Agreement; and (d) information independently developed without the use of any of the provided Confidential Information.

The obligations of the Parties shall be to always hold and maintain the Confidential Information in the strictest of confidence and to their agents, employees, representatives, affiliates, and any other individual or entity that is on a “need to know” basis. If any such Confidential Information shall reach a third (3rd) party, or become public, all liability will be on the Party that is responsible. Neither Party shall, without the written approval of the other Party, publish, copy, or use the Confidential Information for their sole benefit.

This Provision shall survive this Agreement and remain in full force and effect, in perpetuity or until such time as any confidential information covered herein becomes publicly known or is deemed by the disclosing party, in writing, to no longer be confidential, whichever shall occur first.

XXV. FORCE MAJEURE. Any delay of either Party’s performance under this Agreement due to unforeseeable events beyond their control (including but not limited to riots, war, flood, famine, terrorist attacks, pandemics, severe weather, and earthquakes) shall not constitute a breach hereunder. Should a Party’s performance be delayed due to a Force Majeure event, the Party may defer said performance hereunder for a period equal to the delay.

XXVI. RELATIONSHIP OF PARTIES. Manufacturer and Customer are independent contractors for the purpose of this Agreement. Neither the execution, delivery nor performance of this Agreement will be construed to constitute either party as an agent

or representative of the other for any purpose. Neither the execution, delivery nor performance of this Agreement will be deemed to establish a joint venture or partnership between the Parties.

XXVII. SEVERABILITY. If any provision of this Agreement is held or made invalid or unenforceable by a court decision, statute, or rule, or shall be otherwise rendered invalid, the remainder of this Agreement shall not be rendered invalid thereby.

XXVIII. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between Parties with respect to the subject matter contained herein and supersedes all prior agreements, understandings, and negotiations between the parties.

XXIX. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same Agreement.

XXX. ASSIGNMENT. Neither this Agreement nor any obligation hereunder may be assigned without the prior written consent of the other Parties, and any attempted assignment without the required written consent shall be void provided however that such consent shall not be reasonably withheld.

XXXI. HEADINGS. The headings contained within this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

XXXII. GOVERNING LAW AND JURISDICTION. This Agreement shall be governed by and construed in accordance with the laws of the State of _____ without giving effect to principles of conflict of law.

XXXIII. ADDITIONAL TERMS AND CONDITIONS. Additional terms and conditions, if any, are as follows:

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first written above.

Customer Signature

Printed Name and Date

Title

Manufacturer Signature

Printed Name and Date

Title



EXHIBIT A: PRICING

Date: _____

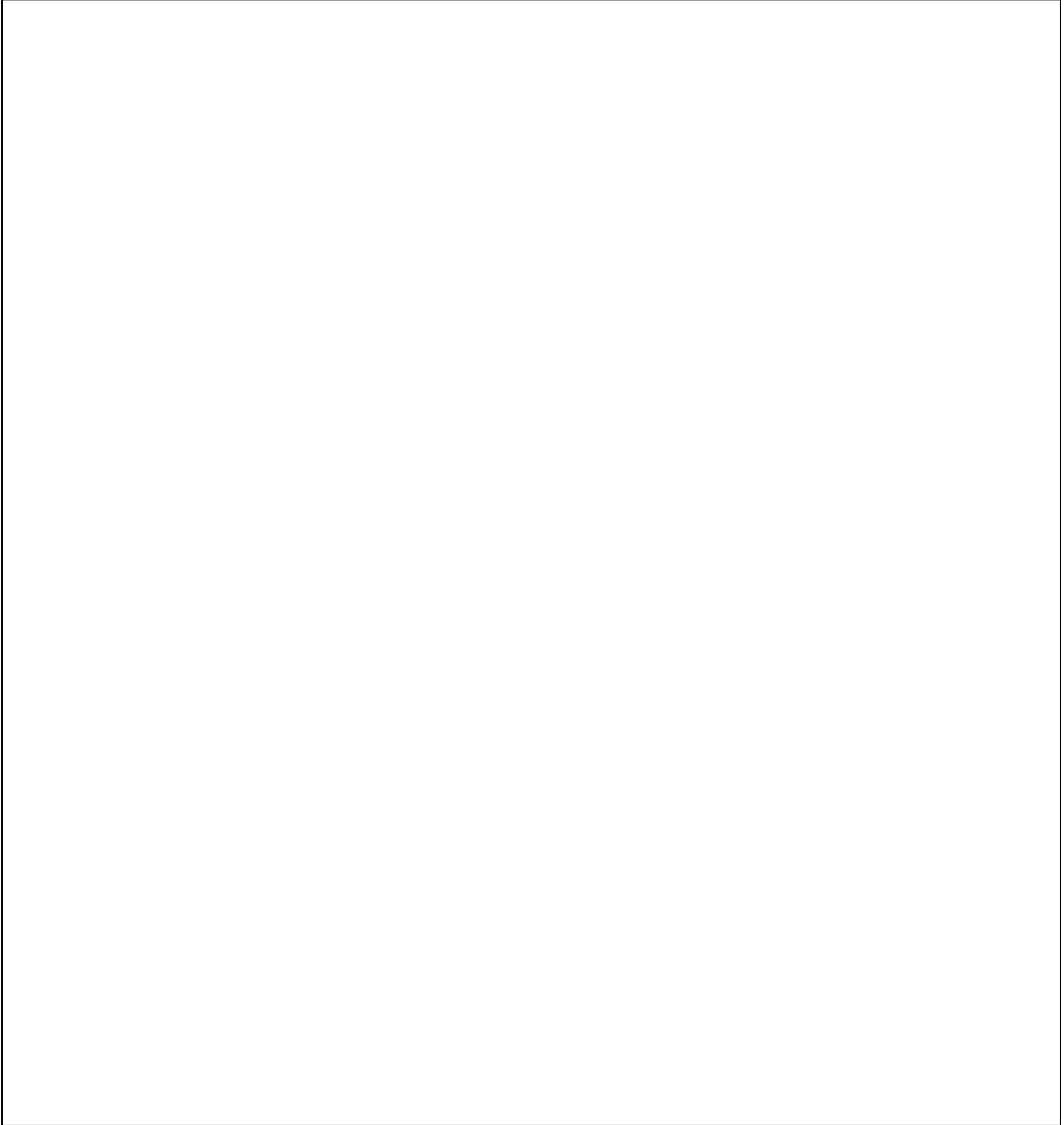


EXHIBIT B: PRODUCTS

Date: _____

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