

# FIXED TERM MANUFACTURING AND SUPPLY AGREEMENT

This Manufacturing and Supply Agreement (this "Agreement") is entered into and made effective as of (the "Effective Date"), by and between **[BUYER FULL LEGAL NAME]**, a Corporation organized under the laws of the State of [STATE], with an address of [BUYER ADDRESS] ("Buyer"), and **[SUPPLIER FULL LEGAL NAME]**, a Corporation organized under the laws of the State of [STATE], with an address of [SUPPLIER ADDRESS] ("Supplier"). Buyer and Supplier are each a "Party" and together the "Parties."

## Recitals

WHEREAS, Supplier is engaged in the supply of the products described herein;

WHEREAS, Buyer desires to purchase from Supplier the Products on the terms set forth in this Agreement; and

WHEREAS, the Parties intend this Agreement to be governed by Article 2 of the Uniform Commercial Code as adopted in the State of [STATE], except as expressly modified herein;

NOW, THEREFORE, in consideration of the mutual covenants and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows.

## 1. Products and Specifications

**Products.** Supplier shall supply to Buyer the following product (the "Product"):

- **Name / Description:** [PRODUCT NAME DESCRIPTION]
- **Unit of Measure:** each
- **Specifications (summary):** [PRODUCT SPECIFICATIONS SUMMARY]

**Exhibit A — Specifications.** Detailed technical specifications, drawings, bills of materials, tolerances, and applicable industry standards (including ISO, ASTM, USP, or equivalent) are set forth in Exhibit A attached hereto and incorporated by reference. Specifications shall be versioned and dated. Any change to Specifications shall be implemented only through a written Engineering Change Order mutually signed by the Parties, which shall include any resulting price or lead-time adjustment.

## 2. Orders, Volumes, and Delivery

**Purchase orders.** Buyer shall place purchase orders (each a "PO") referencing this Agreement. Supplier shall acknowledge each PO within five (5) business days; silence beyond that period constitutes

acceptance. Buyer's estimated annual volume is **10000 each**, which is a good-faith forecast and not a binding minimum except as expressly stated in a PO.

**Lead time.** Supplier shall fulfill each accepted PO within the lead time stated in the PO, or, if none is stated, within thirty (30) days after acceptance.

**Partial shipments.** Partial shipments are permitted unless a PO expressly prohibits them. Each shipment shall be treated as a separate contract for breach purposes, consistent with UCC §2-612.

### **3. Shipping, Title, and Risk of Loss (Incoterms 2020)**

**FOB Origin (Incoterms 2020).** Title to and risk of loss of the Product pass to Buyer at Supplier's loading dock upon tender to the carrier. Buyer shall select the carrier and pay all freight, insurance, and transit-related charges. Supplier shall load the Product on Buyer's carrier at Supplier's expense.

References to "Incoterms" mean Incoterms 2020 as published by the International Chamber of Commerce.

### **4. Price and Payment**

**Unit price.** The unit price of the Product is \*\*\*\* per each, exclusive of applicable sales, use, VAT, or similar taxes (which shall be borne by Buyer) but inclusive of all other costs of manufacture and, to the extent specified by the applicable Incoterm, delivery.

**Payment terms.** Net 30 days from the date of a correct invoice. Payment shall be made by wire transfer or ACH in U.S. dollars to the account Supplier designates in writing.

**Late payment.** Amounts not paid when due accrue interest at the rate of **1.5% per month**, or the maximum rate permitted by applicable law, whichever is lower. Buyer shall reimburse Supplier for reasonable costs of collection, including attorneys' fees, to the extent permitted by applicable law.

**Price escalation (CPI).** The unit price shall be adjusted once annually, on each anniversary of the Effective Date, by a percentage equal to the year-over-year change in the U.S. Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U, All Items, U.S. City Average, not seasonally adjusted) for the most recent available twelve-month period.

### **5. Inspection, Acceptance, and Rejection**

**Inspection window.** Buyer shall have **30 days** after delivery of each shipment to inspect the Product and to notify Supplier in writing of any non-conformity (the "Inspection Period"). Failure to give such notice within the Inspection Period constitutes acceptance of the shipment, notwithstanding any contrary default under UCC §§2-606 or 2-607.

**Rejection.** If Buyer rejects a shipment in whole or in part, Buyer shall hold the rejected Product in a reasonable manner pending Supplier's instructions. Supplier shall, at its election and expense, (a) replace the non-conforming Product, (b) repair the non-conforming Product, or (c) issue a refund or credit. Shipping costs for rejected Product shall be borne by Supplier.

**Cure.** Consistent with UCC §2-508, Supplier may seasonably notify Buyer of an intention to cure a non-conforming tender and, within the time originally provided for performance, make a conforming delivery.

**Perfect tender.** The Parties acknowledge the perfect tender rule of UCC §2-601 applies to single-lot contracts; UCC §2-612 governs installment contracts.

## 6. Warranties

**Express warranty.** Supplier warrants to Buyer that, for a period of **12 months** from the date of delivery, the Product shall: (a) conform to the Specifications; (b) be free from defects in materials and workmanship; (c) be merchantable and fit for the ordinary purposes for which such goods are used; and (d) be manufactured and delivered in compliance with all applicable federal, state, and local laws and regulations.

**Compliance warranty.** Supplier further warrants that the Product complies with applicable laws including, as relevant, OSHA, EPA, FDA, CPSC, and customs regulations, and that Supplier has all licenses and permits required to manufacture and supply the Product.

**Warranty exclusions.** The foregoing warranties do not apply to defects or damage caused by (i) misuse, abuse, or negligence by Buyer or any third party; (ii) modification or repair by any person other than Supplier or its authorized representative; or (iii) normal wear and tear.

## 7. Indemnification

**Supplier indemnity.** Supplier shall defend, indemnify, and hold harmless Buyer and its officers, directors, employees, and agents from and against any and all third-party claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to: (a) Supplier's breach of any representation, warranty, or covenant in this Agreement; (b) any defect in the Product (including manufacturing defects); (c) infringement or misappropriation of any third-party intellectual-property right by Supplier's manufacturing processes or, except to the extent caused by Buyer's specifications, by the Product; or (d) Supplier's negligence or willful misconduct.

**Buyer indemnity.** Buyer shall defend, indemnify, and hold harmless Supplier and its officers, directors, employees, and agents from and against any and all third-party claims arising out of or relating to: (a) Buyer's breach of this Agreement; (b) defects in the Product arising solely from Buyer's written specifications (design defect, not manufacturing defect); (c) Buyer's misuse or modification of the Product after delivery; or (d) Buyer's negligence or willful misconduct.

**Procedure.** The indemnified Party shall give prompt written notice of any indemnified claim, grant the indemnifying Party control of the defense and settlement (provided that no settlement imposing non-monetary obligations on the indemnified Party may be made without the indemnified Party's prior written consent), and cooperate reasonably in the defense at the indemnifying Party's expense.

## 8. Limitation of Liability

**Exclusion of consequential damages.** EXCEPT FOR THE CARVE-OUTS BELOW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY LOST PROFITS, LOST REVENUE, LOSS OF DATA, BUSINESS INTERRUPTION, OR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

**Cap on damages.** EXCEPT FOR THE CARVE-OUTS BELOW, EACH PARTY'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE AGGREGATE FEES PAID OR PAYABLE BY BUYER TO SUPPLIER UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

**Carve-outs.** The foregoing limitations do not apply to (i) a Party's indemnification obligations for third-party IP-infringement or product-defect claims; (ii) breach of confidentiality; (iii) a Party's gross negligence or willful misconduct; (iv) fraud; (v) death or personal injury; or (vi) Buyer's obligation to pay for conforming Product delivered.

## 9. Insurance

Supplier shall, at its own cost, maintain throughout the Term and for two (2) years after termination the following insurance with carriers rated A- or better by A.M. Best:

- Commercial General Liability: not less than **\$1,000,000.00** per occurrence and **\$2,000,000.00** aggregate;
- Product Liability: not less than **\$2,000,000.00** per occurrence;
- Workers' Compensation as required by applicable state law, with employer's liability not less than \$1,000,000;
- Cargo / Transit insurance where Supplier is responsible for shipment under the applicable Incoterm.

Buyer shall be named as additional insured on the CGL and Product Liability policies on a primary and non-contributory basis. Supplier shall provide certificates of insurance upon execution and annually thereafter, and shall give Buyer at least thirty (30) days' prior written notice of any cancellation or material reduction.

## 10. Confidentiality

Each Party (as "Receiving Party") shall hold in strict confidence all non-public information disclosed by the other Party (as "Disclosing Party") in connection with this Agreement, including specifications, pricing, customer data, trade secrets, and business plans ("Confidential Information"). Receiving Party shall use Confidential Information solely for performance of this Agreement, shall not disclose it to any third party without prior written consent, and shall protect it with at least the same care as its own confidential information (and no less than reasonable care). Confidentiality obligations survive termination for five (5) years, and indefinitely with respect to trade secrets for so long as they remain trade secrets. Upon termination, Receiving Party shall return or certify destruction of Confidential Information, subject to one archival copy as required by law. Breaches of confidentiality entitle the Disclosing Party to seek injunctive relief without bond or proof of actual damages.

## 11. Intellectual Property

**Buyer IP.** Buyer retains all right, title, and interest in and to the Specifications, designs, drawings, trademarks, trade dress, and other intellectual property provided by Buyer to Supplier ("Buyer IP"). Buyer grants Supplier a limited, non-exclusive, royalty-free, non-transferable license to use Buyer IP solely to manufacture and supply the Product to Buyer under this Agreement. All goodwill arising from use of Buyer's trademarks inures to Buyer.

**Supplier IP.** Supplier retains all right, title, and interest in and to its manufacturing processes, tooling designs (subject to Section 12), know-how, and background IP existing prior to or developed independent of this Agreement ("Supplier IP"). Nothing in this Agreement transfers Supplier IP to Buyer except to the extent, if any, necessary to exercise rights expressly granted herein.

**Foreground IP.** Any intellectual property conceived or reduced to practice by Supplier specifically for Buyer and based on Buyer IP ("Foreground IP") shall be owned by Buyer. To the extent such Foreground IP does not automatically vest in Buyer as a work made for hire under 17 U.S.C. §101, Supplier hereby irrevocably assigns to Buyer all right, title, and interest in Foreground IP, and shall execute all further documents reasonably necessary to perfect such assignment.

**No other licenses.** Except as expressly granted in this Agreement, no licenses are granted by either Party to the other, whether by implication, estoppel, or otherwise.

## 13. Audit Rights

Upon not less than **30 days'** prior written notice (or such shorter notice as may be required by applicable regulatory authority or in response to a confirmed quality issue), Buyer or its designated representatives shall have the right, during Supplier's normal business hours and no more than twice per calendar year (except in cases of for-cause audit), to enter Supplier's manufacturing facility and to inspect Supplier's manufacturing processes, quality records, batch records, calibration records, and compliance records

relating to the Product. Audits shall be conducted in a manner that does not unreasonably interfere with Supplier's operations, and Buyer's auditors shall execute Supplier's standard visitor confidentiality obligations. Supplier shall promptly implement a written corrective action plan to address any material non-conformities identified by the audit.

#### **14. Force Majeure**

Neither Party shall be liable for any delay or failure to perform (other than obligations to make payment) caused by events beyond its reasonable control, including acts of God, natural disasters, war, terrorism, civil unrest, government action, embargoes, labor strikes or lockouts, **pandemics, epidemics, and public-health emergencies** (including governmental quarantine and shutdown orders), cyber incidents, transportation or logistics disruptions, and raw-material or utility shortages (each a "Force Majeure Event"). The affected Party shall promptly notify the other Party, shall use commercially reasonable efforts to mitigate and resume performance, and shall keep the other Party informed of developments. If a Force Majeure Event continues for more than ninety (90) consecutive days, either Party may terminate this Agreement upon written notice without liability, except for obligations accrued prior to termination. Payment obligations for Product already delivered are not excused by Force Majeure.

#### **15. Term and Termination**

**Initial Term.** This Agreement commences on the Effective Date and continues for a period of 2nd (2) years (the "Initial Term").

**Auto-renewal.** This Agreement shall automatically renew for successive one-year periods (each a "Renewal Term," and together with the Initial Term, the "Term") unless either Party gives written notice of non-renewal at least **90 days** before the end of the then-current term.

**Termination for cause.** Either Party may terminate this Agreement immediately upon written notice if the other Party (a) materially breaches this Agreement and fails to cure such breach within thirty (30) days after written notice, or (b) becomes insolvent, files or has filed against it a petition in bankruptcy not dismissed within sixty (60) days, makes an assignment for the benefit of creditors, or has a receiver or similar officer appointed.

**Termination for convenience.** Either Party may terminate this Agreement for convenience upon ninety (90) days' prior written notice. Buyer shall pay for all Product in Supplier's work-in-process or finished inventory that was ordered in good-faith reliance on accepted POs or binding forecasts at the time of notice.

**Effect of termination.** Upon termination or expiration: (a) Buyer shall pay for all Product delivered and accepted prior to termination; (b) outstanding POs for Product that can reasonably be delivered within ninety (90) days shall be honored, unless terminated for Supplier's cause; (c) each Party shall return or destroy the other's Confidential Information; and (d) Sections 6 (warranties, for their stated period), 7

(indemnification), 8 (limitation of liability), 10 (confidentiality), 11 (IP), 12 (tooling, as applicable), 16 (compliance), and 18 (general provisions) survive.

## 16. Compliance with Laws

Each Party shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement, including export-control, anti-bribery, environmental, labor, data-privacy, and product-safety laws.

**Anti-corruption (FCPA / UK Bribery Act).** Each Party represents and warrants that it has not, and covenants that it will not, directly or indirectly, offer, promise, pay, or give (or authorize the offering, promise, payment, or giving of) anything of value to any government official, political party, or private individual for the purpose of obtaining or retaining business or securing an improper advantage, in violation of the U.S. Foreign Corrupt Practices Act (15 U.S.C. §78dd-1 et seq.), the UK Bribery Act 2010, or any other applicable anti-bribery law. Each Party shall maintain accurate books and records and shall cooperate with any reasonable audit or investigation by the other Party in this regard.

## 17. Representations and Warranties of Both Parties

Each Party represents and warrants as of the Effective Date that: (a) it is duly organized, validly existing, and in good standing under the laws of its jurisdiction of formation; (b) it has full corporate power and authority to execute and perform this Agreement; (c) execution and performance do not violate its organizational documents or any agreement or law by which it is bound; and (d) no pending or threatened litigation would materially impair its performance.

## 18. General Provisions

**Governing Law.** This Agreement is governed by the laws of the State of [STATE], including Article 2 of the Uniform Commercial Code as adopted therein, without regard to conflict-of-laws principles. The U.N. Convention on Contracts for the International Sale of Goods does not apply.

**Dispute escalation.** The Parties shall first attempt in good faith to resolve any dispute by negotiation between senior executives for thirty (30) days, then by non-binding mediation administered by the AAA in [VENUE CITY], [STATE] for an additional thirty (30) days. If unresolved, the dispute shall be resolved by binding AAA Commercial Arbitration in [VENUE CITY], [STATE] before one arbitrator (or three, if the amount in controversy exceeds \$1,000,000). Either Party may seek provisional injunctive relief in court.

**Assignment.** Neither Party may assign this Agreement without the other Party's prior written consent, except that either Party may assign to a successor in interest in connection with a merger, reorganization, or sale of all or substantially all of its equity or assets to which this Agreement relates, or to an affiliate

under common control, provided the successor assumes this Agreement in writing. Any unpermitted assignment is void.

**Notices.** All notices must be in writing and delivered by (a) hand, (b) overnight courier, (c) certified mail return receipt requested, or (d) email with confirmed receipt, to the addresses in the preamble. Notice is effective upon receipt.

**Relationship of the Parties.** The Parties are independent contractors. This Agreement creates no employment, agency, partnership, or joint venture. Neither Party has authority to bind the other.

**Entire Agreement.** This Agreement (together with the exhibits and any accepted purchase orders referencing this Agreement) constitutes the entire agreement of the Parties concerning its subject matter and supersedes all prior and contemporaneous oral, written, and course-of-dealing understandings. Pre-printed terms on any PO, invoice, or acknowledgment that conflict with this Agreement are of no force or effect.

**Amendment.** No amendment is binding unless in a writing signed by authorized representatives of both Parties. No course of dealing, course of performance, or trade usage modifies the written terms without such a signed amendment.

**Waiver.** No failure or delay in exercising any right constitutes a waiver. Waivers must be in a signed writing.

**Severability.** If any provision is held invalid, the remainder continues in full force, and the invalid provision shall be reformed to the minimum extent necessary to be enforceable while preserving the Parties' intent.

**Counterparts; Electronic Signatures.** This Agreement may be executed in counterparts (including by PDF or electronic signature). Electronic signatures are valid and binding under the federal ESIGN Act (15 U.S.C. §7001 et seq.) and applicable state law.

## Signatures

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

### Buyer

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

**Supplier**

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PRINTED NAME

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SIGNATURE

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DATE

**Exhibit A — Product Specifications**

[Detailed specifications, drawings, bills of materials, tolerances, applicable industry standards (ISO, ASTM, USP, IATF, ISO 13485, etc.), acceptance criteria, and packaging/labeling requirements for the Product described in Section 1. Incorporated by reference into this Agreement.]

**Exhibit B — Ordering and Forecasting Procedure**

[Purchase-order form, rolling forecast mechanics, lead times by SKU, and any minimum order quantities.]