

TOLL MANUFACTURING AGREEMENT

Agreement Type: Toll Manufacturing Agreement **Effective Date:** **Governing Law:** State of [STATE]

This Toll Manufacturing Agreement (this "Agreement") is entered into and made effective as of (the "Effective Date"), by and between [OWNER PRINCIPAL LEGAL NAME], a Corporation organized under the laws of the State of [STATE], with an address of [OWNER ADDRESS] ("Owner"), and [MANUFACTURER LEGAL NAME], a Corporation organized under the laws of [MANUFACTURER JURISDICTION OF FORMATION], with a principal manufacturing facility at [MANUFACTURER ADDRESS FACILITY] ("Manufacturer"). Owner and Manufacturer are each a "Party" and together the "Parties."

Recitals

WHEREAS, Owner has developed and owns the design, specifications, formulas, know-how, and trade secrets embodied in the Product described below and wishes to have the Product manufactured;

WHEREAS, Manufacturer represents that it possesses the qualified personnel, equipment, facilities, licenses, and expertise to manufacture the Product in accordance with Owner's specifications; and

WHEREAS, the Parties wish to establish a toll manufacturing arrangement in which Owner supplies the Materials and specifications, Manufacturer supplies the labor, equipment, and facility, Owner retains title to all Materials and finished Products throughout, and Manufacturer is compensated by a processing fee (the "Toll Fee");

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

1. Definitions

1.1 "**Confidential Information**" means all non-public technical, business, financial, and operational information disclosed by Owner to Manufacturer, including specifications, formulas, processes, know-how, drawings, batch records, customer data, pricing, and the existence and terms of this Agreement.

1.2 "**Improvements**" means any invention, discovery, modification, enhancement, derivative work, process improvement, or know-how conceived, developed, or reduced to practice by Manufacturer (alone or jointly with Owner or any third party) during the Term that relates to the Product, Owner's specifications, Owner's Materials, or Owner's intellectual property.

1.3 "**Materials**" means the raw materials, components, packaging, labels, and other feedstock supplied by Owner to Manufacturer for conversion into the Product, as further described in Section 3.

1.4 "**Product**" or "**Finished Goods**" means [NAME DESCRIPTION OF THE PRODUCT], manufactured to the Specifications.

1.5 "**Specifications**" means the technical and quality requirements for the Product set forth in Exhibit A (Exhibit A — Product Specifications), as amended from time to time by written Engineering Change Order executed by both Parties.

1.6 "**Toll Fee**" means the processing fee payable by Owner to Manufacturer as set forth in Section 5.

2. Scope of Manufacturing Services

2.1 **Services.** Manufacturer shall manufacture the Product strictly in accordance with the Specifications and this Agreement. Manufacturer's services include: [SCOPE OF MANUFACTURING SERVICES].

2.2 **Facility, labor, and equipment.** Manufacturer shall supply, at its sole cost and expense, all labor, equipment, utilities, consumables, and facility capacity necessary to manufacture the Product. Manufacturer shall maintain its facility in good operating condition and in compliance with all applicable laws, regulations, and industry standards.

2.3 **Exclusive use of Materials.** Manufacturer shall use the Materials supplied by Owner solely for the manufacture of Owner's Product and for no other purpose. Manufacturer shall not divert, sell, transfer, pledge, encumber, or commingle the Materials with Manufacturer's own inventory or that of any third party.

2.4 **Production records.** Manufacturer shall maintain complete and accurate production records, batch records, material-reconciliation records, and quality records for each production run, and shall retain such records for a period of not less than seven (7) years (or longer where required by applicable law).

2.5 **Samples and first-article approval.** Before commencing full-scale production, Manufacturer shall produce samples for Owner's inspection and written approval. Owner's approval of a sample does not waive Owner's right to reject non-conforming Products from a subsequent production run.

3. Materials; Title; Risk of Loss

3.1 **Materials supplied by Owner.** Owner shall supply the following Materials to Manufacturer in sufficient quantity and quality to meet the agreed production schedule: [MATERIALS FEEDSTOCK SUPPLIED BY OWNER]. Owner shall bear the cost of the Materials and delivery to Manufacturer's facility.

3.2 **Title to Materials and Products. Title to all Materials and to all Products manufactured from such Materials (including work-in-process) shall at all times remain with Owner.** Manufacturer holds all Materials, work-in-process, and Finished Goods as bailee for Owner, not as owner. In no event shall the Materials, work-in-process, or Finished Goods be treated as inventory, assets, or property of

Manufacturer for any purpose, including in connection with any bankruptcy, insolvency, receivership, creditor proceeding, UCC filing, or tax assessment.

3.3 Risk of loss. Manufacturer bears risk of loss of the Materials, work-in-process, and Finished Goods from the time of receipt at Manufacturer's facility until delivery to Owner's designated carrier (or as otherwise specified in Section 4). Manufacturer shall insure the Materials, work-in-process, and Finished Goods at their full replacement cost while in Manufacturer's custody and shall name Owner as loss payee / additional insured.

3.4 Material reconciliation. Manufacturer shall reconcile, on a per-batch and per-period basis, the quantity of Materials received against Products produced, scrap, and rework. Unexplained variance in excess of the Specifications' stated yield tolerance is a material breach.

3.5 Return of excess Materials. Upon request of Owner or termination of this Agreement, Manufacturer shall return all unused Materials, work-in-process, and Finished Goods to Owner (or dispose of the same at Owner's written direction), at Owner's cost for transportation.

4. Delivery

4.1 Delivery schedule. Manufacturer shall manufacture and deliver Products in accordance with the delivery schedule set forth in Exhibit A or as established by mutually-accepted purchase orders.

4.2 Delivery terms. Delivery shall be FOB Manufacturer's facility unless the Parties agree otherwise in writing. Risk of loss passes to Owner upon tender to Owner's designated carrier.

4.3 Packaging and documentation. Manufacturer shall package Products in accordance with Owner's instructions and shall accompany each shipment with a packing list, bill of lading, and any required certificates (including, where applicable, Certificate of Analysis).

4.4 Late delivery. Time is of the essence. Persistent or material late delivery is a basis for termination for cause and may entitle Owner to source conforming Products from alternative suppliers, with any reasonable cost-cover differential chargeable to Manufacturer.

5. Toll Fee and Payment

5.1 Toll Fee. In consideration of Manufacturer's services, Owner shall pay Manufacturer a Toll Fee of **** per Per Unit. The Toll Fee is inclusive of all labor, facility, equipment, and overhead costs; it does **not** include the cost of Materials (which Owner supplies) or taxes assessed on Manufacturer's services (which shall be separately invoiced where applicable).

5.2 Invoicing. Manufacturer shall invoice Owner upon delivery of conforming Products. Owner shall pay undisputed amounts within **30 days** of receipt of invoice.

5.3 **Disputed amounts.** Owner may withhold payment of amounts reasonably disputed in good faith, provided Owner provides written notice of the dispute within the payment period. The Parties shall use reasonable efforts to resolve disputed amounts within thirty (30) days.

5.4 **Late payment.** Undisputed amounts not paid when due shall accrue interest at the lesser of 1.0% per month or the maximum rate permitted by applicable law.

6. Quality, Inspection, and Audit

6.1 **Quality warranty.** Manufacturer warrants that each Product will conform to the Specifications, be free from defects in workmanship, and be manufactured in compliance with all applicable laws.

6.2 **Inspection and rejection.** Owner may inspect Products upon delivery and may reject any non-conforming Product within thirty (30) days. Rejected Product shall be reworked or replaced by Manufacturer at Manufacturer's cost, or, at Owner's election, credited against the Toll Fee.

6.3 **Audit rights.** Owner, upon not less than five (5) business days' prior written notice, may audit Manufacturer's facility, production records, batch records, quality records, and information-security controls, up to twice per calendar year. Owner may conduct emergency audits without advance notice upon reasonable suspicion of breach of confidentiality, IP misuse, or material non-conformity. Each Party shall bear its own audit costs, except that Manufacturer shall bear Owner's reasonable audit costs if the audit reveals material non-conformity.

6.4 **Quality management system.** Manufacturer shall maintain a documented quality management system appropriate to the industry and scale of production.

7. Intellectual Property

7.1 **Ownership by Owner.** All right, title, and interest in and to (a) the Product, its design, specifications, formulas, know-how, and trade secrets; (b) all intellectual property embodied therein, including all patents, patent applications, copyrights, trademarks, and trade secrets; and (c) all Improvements — shall be and remain the exclusive property of Owner.

7.2 **Present-tense assignment of Improvements.** Manufacturer **hereby irrevocably assigns** to Owner all right, title, and interest (including all intellectual property rights) in and to any and all Improvements, whether conceived, developed, or reduced to practice by Manufacturer or its personnel alone or jointly with others. This assignment is a present-tense conveyance effective automatically upon the conception or reduction to practice of each Improvement, without any further act or document required. Manufacturer shall promptly disclose all Improvements to Owner and shall execute such further documents (including patent assignments) as Owner reasonably requests to perfect, record, or enforce Owner's rights. This provision is intended to satisfy the present-tense-assignment requirement of *FilmTec Corp. v. Allied Signal Inc.*, 939 F.2d 1568 (Fed. Cir. 1991), and 35 U.S.C. §261.

7.3 Copyright — belt and suspenders. To the extent any deliverable, drawing, software, documentation, or other copyrightable work is created by Manufacturer for Owner, such work is a "work made for hire" under 17 U.S.C. §101 to the maximum extent permitted. To the extent any such work does not qualify as a work made for hire (including because Manufacturer is an independent contractor whose work does not fall within one of the enumerated categories in §101), Manufacturer hereby irrevocably assigns to Owner all right, title, and interest in such work, including all copyrights. Manufacturer waives all moral rights to the extent permitted by law.

7.4 Limited license to Manufacturer. Owner grants Manufacturer a limited, non-exclusive, non-transferable, non-sublicensable, royalty-free license to use Owner's Confidential Information and intellectual property solely to manufacture the Product for Owner during the Term. No other rights are granted by implication, estoppel, or otherwise.

7.5 Trademarks. Products shall bear Owner's trademarks, trade dress, and labeling as specified. Manufacturer has no right to use Owner's trademarks other than on Products manufactured for Owner. Manufacturer shall not sub-brand, co-brand, or alter Owner's trademarks.

7.6 Third-party IP indemnification. Owner represents that, to Owner's knowledge, Owner's Specifications and Materials do not infringe any third-party intellectual property right. Owner shall indemnify Manufacturer against third-party infringement claims arising solely from Manufacturer's manufacture of the Product strictly in accordance with Owner's Specifications using Owner's Materials.

8. Confidentiality; Trade Secrets; Information Security

8.1 Obligation. Manufacturer shall (a) hold all Confidential Information in strict confidence using at least a reasonable degree of care and no less than the degree of care Manufacturer uses for its own most confidential information; (b) use Confidential Information solely to perform this Agreement; (c) not disclose Confidential Information to any third party without Owner's prior written consent; and (d) limit internal access to personnel with a need to know who are bound by written confidentiality obligations at least as protective as this Agreement.

8.2 Information-security measures. Manufacturer shall implement and maintain reasonable administrative, physical, and technical safeguards protecting Confidential Information, including: (a) access controls and visitor logs at the facility; (b) encryption of Confidential Information in transit and at rest; (c) prohibition on storage of Confidential Information on personal devices or unapproved cloud services; (d) workforce training on handling of Confidential Information; and (e) incident-response procedures. Manufacturer shall notify Owner of any actual or suspected unauthorized access, disclosure, or loss of Confidential Information within seventy-two (72) hours of discovery.

8.3 Employee and contractor obligations. Manufacturer shall ensure that each employee, agent, and approved contractor who may access Confidential Information has signed a written confidentiality and IP-

assignment agreement at least as protective as this Agreement. Manufacturer remains liable for breaches by its personnel.

8.4 Termination of personnel. On termination of any employee with access to Confidential Information, Manufacturer shall promptly revoke physical and logical access and recover all Owner property. **Manufacturer shall not condition payment of any final wages on return-of-property, completion of a security checklist, or any other security measure. Final wages must be paid when due under applicable wage-payment law. This Section does not require, permit, or authorize any withholding of wages.**

8.5 Defend Trade Secrets Act — Immunity Notice (18 U.S.C. §1833(b)). Notwithstanding any other provision of this Agreement, an individual shall not be held criminally or civilly liable under any federal or state trade-secret law for the disclosure of a trade secret that (i) is made in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law, or (ii) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

8.6 Perpetual trade-secret protection. Notwithstanding the confidentiality period in Section 8.7, with respect to any Confidential Information that constitutes a trade secret under applicable law (including 18 U.S.C. §1839(3) and applicable state law), Manufacturer's obligations of confidentiality and non-use shall continue for as long as such information retains trade-secret status, which may be indefinitely.

8.7 Survival period. Except as provided in Section 8.6, Manufacturer's obligations under this Section 8 survive termination of this Agreement for a period of **7 year(s)**.

8.8 Return or destruction. Upon termination or Owner's written request, Manufacturer shall promptly return or destroy all Confidential Information in all forms and media (physical, electronic, cloud, email, and backup), retain no copies (except one archival copy as required by law), and certify compliance in writing.

9. Restrictive Covenants

9.1 No subcontracting. Manufacturer shall not subcontract, assign, or delegate any portion of its manufacturing obligations under this Agreement to any third party without Owner's prior written consent. Any Owner-approved subcontractor must execute a written agreement with Owner (or with Manufacturer on terms approved by Owner) containing confidentiality, IP-assignment, and compliance obligations at least as protective as this Agreement. Manufacturer remains fully responsible for its subcontractors.

9.2 B2B Non-Compete. During the Term and for **2 year(s)** thereafter, Manufacturer shall not, directly or indirectly, manufacture, produce, supply, or assist any third party to manufacture, produce, or supply any product that is the same as or substantially similar to the Product for any person other than Owner, in any geographic market in which Owner sells the Product. This covenant is a B2B covenant between

independent businesses, is narrowly tailored to protect Owner's legitimate interests in its Confidential Information and Improvements, and shall be construed (and if necessary reformed) to the minimum extent necessary to be enforceable under applicable law.

10. Representations, Warranties, and Compliance With Laws

10.1 Mutual. Each Party represents that it is duly organized, has full authority to enter into this Agreement, and that its performance does not breach any other agreement.

10.2 Manufacturer warranties. Manufacturer represents and warrants that (a) it holds all licenses, permits, and certifications required to operate its facility and manufacture the Product; (b) it will comply with all applicable federal, state, and local laws and regulations, including environmental (EPA/RCRA/CERCLA/CAA/CWA), occupational safety (OSHA), labor and employment, and anti-corruption laws; (c) the Product will conform to the Specifications; and (d) Products will not be adulterated, misbranded, or otherwise in violation of applicable law when delivered.

10.3 Owner warranties. Owner represents and warrants that (a) it has the right to provide the Specifications and Materials; (b) the Materials and Specifications, when used by Manufacturer as directed, do not to Owner's knowledge infringe any third-party intellectual property right; and (c) Owner has obtained all consents and regulatory approvals necessary for Manufacturer to manufacture the Product on Owner's behalf.

11. Indemnification; Limitation of Liability; Insurance

11.1 Manufacturer indemnity. Manufacturer shall indemnify, defend, and hold harmless Owner from and against all third-party claims, damages, fines, and expenses (including reasonable attorneys' fees) arising out of (a) Manufacturer's negligence, willful misconduct, or breach of this Agreement; (b) product-liability claims to the extent caused by Manufacturer's manufacturing defect (as distinguished from Owner's design); (c) breach of Sections 7 (IP) or 8 (Confidentiality); or (d) violation of applicable law by Manufacturer.

11.2 Owner indemnity. Owner shall indemnify, defend, and hold harmless Manufacturer from and against all third-party claims to the extent arising out of (a) defects in Owner's Specifications or Materials; (b) infringement of third-party IP by the Specifications or Materials; or (c) Owner's negligence, willful misconduct, or breach of this Agreement.

11.3 Limitation of liability. EXCEPT FOR (a) BREACHES OF SECTIONS 7 (IP), 8 (CONFIDENTIALITY), 9 (RESTRICTIVE COVENANTS), 10.4 (EXPORT), AND 10.5 (ANTI-BRIBERY); (b) INDEMNIFICATION OBLIGATIONS; (c) GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; AND (d) AMOUNTS OWED UNDER SECTION 5 — EACH PARTY'S AGGREGATE LIABILITY FOR DIRECT DAMAGES IS CAPPED AT THE TOTAL TOLL FEES PAID OR PAYABLE BY OWNER IN THE **12 MONTHS** PRECEDING THE CLAIM, AND NEITHER PARTY SHALL BE

LIABLE FOR CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES.

11.4 **Insurance.** Manufacturer shall maintain, throughout the Term and for two (2) years thereafter, (a) Commercial General Liability of not less than \$2,000,000 per occurrence / \$5,000,000 aggregate; (b) Products Liability of not less than \$5,000,000; (c) Workers' Compensation at statutory limits; (d) Property insurance covering Owner's Materials and Products in Manufacturer's custody at full replacement cost; and (e) Umbrella coverage of not less than \$5,000,000. Owner shall be named as additional insured on the CGL and Products Liability policies, and Manufacturer shall provide certificates of insurance upon request.

12. Term and Termination

12.1 **Term.** This Agreement commences on the Effective Date and continues for an initial term of **3rd (3) year(s)**, and shall renew automatically for successive one-year terms unless either Party gives written notice of non-renewal not less than ninety (90) days prior to the end of the then-current term.

12.2 **Termination for cause.** Either Party may terminate this Agreement for material breach upon **30 days'** written notice specifying the breach, if the breach is not cured within such period. Immediate termination is permitted, without cure period, for (a) breach of Sections 7, 8, 10.4, or 10.5; (b) insolvency, bankruptcy, assignment for the benefit of creditors, or appointment of a receiver; or (c) loss of a license or permit required for performance.

12.3 **Termination for convenience — Owner.** Owner may terminate for convenience on **60 days'** prior written notice.

12.4 **Termination for convenience — Manufacturer.** Manufacturer may terminate for convenience on **180 days'** prior written notice (the longer period reflects the time needed for Owner to qualify an alternative manufacturer).

12.5 **Effect of termination.** Upon termination: (a) Manufacturer shall immediately cease use of Owner's Confidential Information and intellectual property; (b) Manufacturer shall return all Materials, work-in-process, Finished Goods, and Confidential Information to Owner at Owner's cost; (c) Owner shall pay Manufacturer for conforming Products delivered and for work-in-process to the extent permitted by Owner's outstanding purchase orders; and (d) Sections 3.2 (title), 7 (IP), 8 (confidentiality), 9 (restrictive covenants), 10.4–10.5 (export/FCPA), 11 (indemnification / limitation of liability), 13 (dispute), and 14 (general) survive.

13. Dispute Resolution

13.1 **Good-faith negotiation.** Before commencing formal proceedings, the Parties shall attempt in good faith to resolve any dispute by executive-level negotiation for ten (10) business days.

13.2 Mediation, then Arbitration. If unresolved, the Parties shall attempt non-binding mediation in [VENUE CITY SEAT OF ARBITRATION OR], [STATE] administered by the American Arbitration Association (or JAMS) for thirty (30) days. If still unresolved, the dispute shall be finally settled by binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, seated in [VENUE CITY SEAT OF ARBITRATION OR], [STATE], before a single arbitrator (or three arbitrators if the amount in controversy exceeds \$1,000,000). Judgment on the award may be entered in any court of competent jurisdiction.

13.3 Injunctive relief carve-out. Notwithstanding the foregoing, each Party acknowledges that a breach of Section 7 (IP), Section 8 (Confidentiality), or Section 9 (Restrictive Covenants) would cause irreparable harm for which monetary damages would be inadequate, and either Party may seek emergency injunctive, provisional, or equitable relief in any court of competent jurisdiction without the necessity of posting bond or exhausting the mediation or arbitration procedures above.

13.4 Governing law. This Agreement is governed by the laws of the State of [STATE], without regard to its conflict-of-laws principles. The Parties exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.

14. General Provisions

14.1 Force majeure. Neither Party is liable for failure or delay caused by events beyond its reasonable control, including acts of God, war, terrorism, civil unrest, pandemic or epidemic, government-mandated shutdown, supply-chain disruption, utility failure, labor dispute, or natural disaster. The affected Party shall give prompt notice and use reasonable efforts to resume performance. If force majeure continues for more than one hundred twenty (120) days, either Party may terminate by written notice without liability (other than accrued obligations).

14.2 Assignment. Neither Party may assign this Agreement without the other Party's prior written consent, except that Owner may assign to an affiliate or in connection with a merger, reorganization, or sale of all or substantially all of its equity or assets, provided the assignee agrees in writing to be bound.

14.3 Relationship. The Parties are independent contractors. This Agreement does not create an agency, partnership, joint venture, or employment relationship.

14.4 Notices. Notices shall be in writing and delivered by hand, overnight courier, certified mail, or email with confirmation of receipt, to the addresses in the preamble (or as updated in writing). Notices are effective upon receipt.

14.5 Severability. If any provision is held invalid or unenforceable, the remainder shall continue in full force, and the invalid provision shall be modified to the minimum extent necessary to be enforceable while preserving the Parties' intent.

14.6 **Waiver.** No waiver is effective unless in a writing signed by the waiving Party. No failure or delay in exercising a right is a waiver.

14.7 **Entire agreement.** This Agreement, together with Exhibit A (Specifications) and any other exhibits referenced herein, constitutes the entire agreement between the Parties on its subject matter and supersedes all prior and contemporaneous agreements, understandings, and communications. Amendments must be in writing and signed by both Parties.

14.8 **Counterparts; electronic signatures.** This Agreement may be executed in counterparts, each of which is an original. Electronic signatures are valid and binding under the federal ESIGN Act (15 U.S.C. §§7001–7006) and applicable state law.

Signatures

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

OWNER — [OWNER PRINCIPAL LEGAL NAME]

Owner

_____ PRINTED NAME

_____ SIGNATURE

_____ DATE

Name: [OWNER AUTHORIZED SIGNATORY NAME] Title: [OWNER SIGNATORY TITLE]

MANUFACTURER — [MANUFACTURER LEGAL NAME]

Manufacturer

_____ PRINTED NAME

_____ SIGNATURE

_____ DATE

Name: [MANUFACTURER AUTHORIZED SIGNATORY NAME] Title: [MANUFACTURER SIGNATORY TITLE]

Exhibit A — Product Specifications

[To be attached. Reference: Exhibit A — Product Specifications.]

Specifications shall include, at minimum: (a) detailed technical description (dimensions, tolerances, composition, performance criteria); (b) acceptance criteria; (c) sampling and testing protocols; (d) batch-record requirements; (e) packaging and labeling; (f) delivery schedule; and (g) change-control (Engineering Change Order) procedure.