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ACME GLOBAL  
company

# Manufacturing Agreement

This Manufacturing Agreement (hereinafter referred to as "Agreement,") is entered into and made effective as of the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_. (the "Execution Date") by and between the following: \_\_\_\_\_, a company established under the laws of the state of \_\_\_\_\_, having its principal address at: \_\_\_\_\_ (hereinafter known as "Supplier");

and

\_\_\_\_\_, a company established under the laws of the state of \_\_\_\_\_, having its principal address at: \_\_\_\_\_ (hereinafter known as "Buyer");

The parties may be referred to individually as "Party" and collectively as the "Parties."

**RECITALS:**

**WHEREAS**, Supplier is a manufacturer and seller of goods needed by the Buyer;

**WHEREAS**, the Parties desire to enter into an agreement whereby the Supplier shall manufacture and supply certain Goods for the Buyer;

**WHEREAS**, the Parties desire to set into writing the terms and conditions of such agreement;

**NOW, THEREFORE**, for and in consideration of the foregoing premises and covenants contained herein, the Parties do hereby agree as follows:

# 1. Scope of the Work

Supplier hereby agrees to manufacture the following goods (the "Goods") for which the Buyer shall purchase:

## 2. Intellectual Property and Licenses

- The Buyer shall own all rights, titles and interests in and to, all patents, copyrights, trademarks, trade secrets and other intellectual property rights related to:
  - (a) the Products;
  - (b) all manufacturing processes, know-how and other information and materials provided by the Buyer to the Supplier before and after the Effective Date of this Agreement herein, including information to design, manufacture or test of the products;
  - (c) any inventions, ideas, discoveries, modifications, enhancements, improvements or derivative works conceived, made, created, developed or reduced to practice by the Supplier, solely or jointly, or in whole or in part, during the term of this Agreement that relate to the Products, Information or Product Tooling, or to any services provided under this Agreement.
- The Supplier hereby irrevocably transfers and assigns to the Buyer all of right, title and interest in and to, and all Intellectual Property Rights in, the Products, the Information, the Assigned Inventions and the Products Tooling (collectively, the "Assigned Rights"). In addition, the parties expressly agree to consider as works made for hire all copyrightable works included in the Assigned Rights. The Assigned Rights shall be kept in confidence by Manufacturer and shall be used by the Supplier only in performing this Agreement and may not be used by Supplier for other purposes except upon such terms as may be agreed upon between the parties in writing.
- The Supplier also agrees to acquire from its employees, agents and contractors, rights and covenants as to assure that the Buyer shall receive the rights provided for in this section.

- Supplier grants Buyer a limited, non-exclusive license to use Buyer's trademark, trade name, and other Intellectual Property. The license grant herein shall not be used by buyer for any economic activity other than for the purpose of the interest of the Buyer. Upon request from the Buyer, Seller shall provide Buyer with documents reasonably necessary for Buyer to document and duplicate Assigned Rights.

### **3. Buyer Trademarks**

Buyer authorizes Supplier to apply the Customer Trademarks to the Products for the sole purpose of manufacturing the Products pursuant to this Agreement. Supplier shall not use Buyer Trademarks for any other purpose and only in such manner as to preserve all rights of Customer. Seller acquires no right to Buyer Trademarks by its use and all uses by Supplier of the Buyer Trademarks will inure to Buyer's sole benefit. As used herein, "Buyer Trademarks" means those trademarks, trade names, service marks, slogans, designs, distinctive advertising, labels, logos, and other trade-identifying symbols as are or have been developed and used by Buyer or any of its subsidiaries or affiliate companies and which Buyer owns or has the right to use.

### **4. Warranties**

- Supplier warrants to Buyer that, on the date of delivery, the Product will conform to the Product Specifications as specified in the annexes of this Agreement herein. All other warranties, express or implied, including without limitation, warranties of merchantability and fitness for a particular purpose are hereby excluded.
- Within 90 days after receipt of any Product at the facility specified by Supplier, the Buyer may reject any Product that it reasonably believes fails to meet the Product Specifications by sending Supplier notice of the lot numbers of the rejected Product, together with an explanation of the specific basis for rejection. Buyer shall within ninety (90) days of notification return to Supplier, any such rejected Product. Appropriate credits are required when product is returned to the Supplier for proper accounting purposes on both sides of the relationship. Both Buyer and Supplier agree that the issuance of a credit by the Supplier will not be the sole indicator for determining Supplier's culpability for the rejected product.

## 5. Payment

Seller shall sell the Goods to Buyer for the amount of \_\_\_\_\_ per unit.

Supplier shall provide Buyer an invoice payable in full within \_\_\_\_\_ days of the invoice date.

If Buyer defaults under this Agreement after specified payment date, and such default continues for \_\_\_\_\_ days following written notice from Supplier, Buyer agrees that an interest rate of \_\_\_\_\_ shall be applied to the Purchase Price for every day the Buyer fails to do the payment.

The Purchase Price includes:

## 6. Inspection

Buyer will have \_\_\_\_\_ days to inspect the Products delivered. During this period, Buyer shall be given an opportunity to notify the Supplier, in writing, that the Products do not conform to the specifications required by Buyer and Supplier. The lapse of the inspection period shall be deemed to be the acceptance of the Buyer over the quality of the Products sold.

## 7. Indemnification

- Buyer shall defend, indemnify, and hold Supplier, its officers, directors, employees, and agents harmless against any and all claims, demands, proceedings, losses, damages, obligations, liabilities, deficiencies, fines, costs, or expenses (including, without limitation, reasonable attorneys' fees) (collectively, "Losses") arising directly or indirectly as a result of, or relating to:
  - (a) any material breach of this Agreement by Supplier or its officers, trustees, employees, or agents;

(b) any negligence by Supplier in the manufacture of the Product or any failure to manufacture the Product in accordance with the Product Specifications; or

(c) any negligence or wrongful acts of Supplier or its officers, trustees, employees, or agents, except to the extent that any such Losses are due to the negligence or wrongful acts of Buyer, its officers, trustees, employees, or agents.

- Customer shall defend, indemnify, and hold Manufacturer, its officers, directors, employees, and agents harmless against any and all claims, demands, proceedings, losses, damages, obligations, liabilities, deficiencies, fines, costs, or expenses (including, without limitation, reasonable attorneys' fees) (collectively, "Losses") arising directly or indirectly as a result of, or relating to:

(a) defects in the Product Specifications; or

(b) Manufacturer's complying with the Product Specifications, except to the extent that any such Losses are due to the negligence or wrongful acts of the Manufacturer, its officers, trustees, employees, or agents; or

(c) any negligence or wrongful acts of Manufacturer or its officers, trustees, employees, or agents, except to the extent that any such Losses are due to the negligence or wrongful acts of Manufacturer, its officers, trustees, employees, or agents.

## **8. Term and Termination**

### **TERMINATION:**

- This Agreement shall commence as of the Execution Date set above and shall continue until the year thereafter or until any of the Parties express their written manifestation to cease this Agreement.

- This Agreement may be terminated by either Party immediately upon notice to the other party in the event of any of the following:
  - (a) the other party makes a general assignment for the benefit of its creditors, or a receiver or similar officer is appointed to take charge of any of the other party's assets; (b) the other party ceases to carry on its business or operations; or (c) a bankruptcy or similar petition is filed by or against the other party, and in the case of an involuntary petition, the proceeding is not dismissed within \_\_\_\_\_ days.
- Upon material breach by either party of its obligations under this Agreement, the other party may terminate the Agreement if the breach remains uncured for more than \_\_\_\_\_ days after a party gives written notice of the breach, such notice to be effective upon the date of mailing. For purposes of a breach by Supplier, "material breach" includes without limitation Supplier's failure to satisfy its obligation to deliver the Product as specified in Buyer's purchase orders for \_\_\_\_\_ consecutive \_\_\_\_\_.

## 9. Miscellaneous

- **Governing Law**  
This Agreement shall be governed and construed in all respects by the laws of the state of \_\_\_\_\_ and any applicable federal law.
- **Assignment:**  
This Agreement, or the rights and obligations of the Parties hereunder, may not be assigned, sold, leased, or otherwise transferred in whole or part by either Party in absence of any written authorization. Any purported assignment or delegation by Executive in violation of the foregoing shall be null and void ab initio and of no force and effect.
- **Amendments:**  
No portion of this Agreement can be revised or amended without the express written consent by both the Parties hereto.

- No Waiver:

The failure of any Party to exercise their rights under this Agreement shall not be construed as a waiver. No waiver shall be considered as having been made by any Party unless such waiver is written and signed by the waiving party.

- Severability:

If any provision or term in this Agreement is held to be invalid or unenforceable, such invalidity only shall affect the said provision and the rest of the Agreement shall remain valid and enforceable.

- Counterparts:

This Agreement may be executed in two or more counterparts, each counterpart may constitute a separate agreement but all of which shall constitute as one and the same.

- Force Majeur:

Force majeure shall mean any circumstance that is beyond the control of any of the Parties hereto such as national emergencies including riots, insurrection, war, acts of public enemies, government declarations including embargoes, floods, hurricanes, and other catastrophic events considered as acts of God. In such cases, Supplier shall not be held liable for failure to perform their obligations due to such causes.

IN WITNESS WHEREOF, the parties have duly affixed their signatures on the date of \_\_\_\_\_ for the purpose of executing this Agreement herein.

**Supplier**

**Buyer**

**Date**

**Date**

**Signature**

**Signature**

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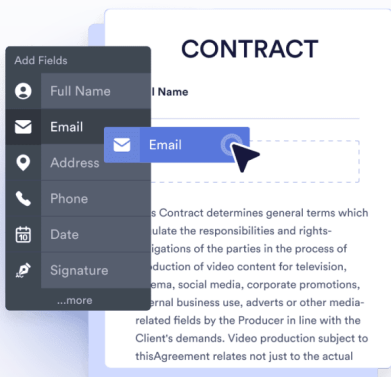


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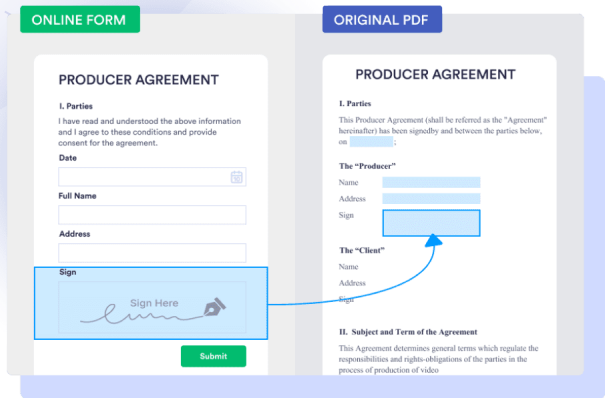
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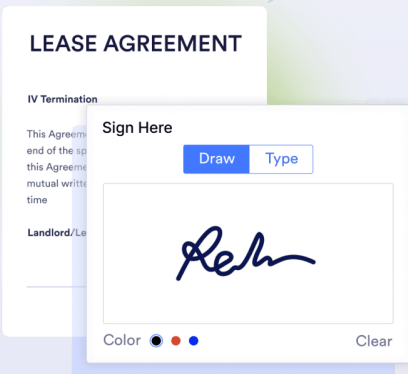
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