

MODEL CONTRACTS FOR SMALL FIRMS

LEGAL GUIDANCE FOR DOING INTERNATIONAL BUSINESS

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International Contract Manufacture Agreement

Introduction

This Model Contract is a framework for a so-called **contract manufacture agreement**, i.e. when the Client wishes the Manufacturer to design, manufacture and deliver goods which the Client intends to integrate into its own final products or services, and therefore must meet certain specific requirements of the Client.

1. As most of the Model Contracts of this handbook, this Model Contract provides a series or “*menu*” of possibilities depending on the background and the nature of the production. Many provisions may not be relevant to the particular contract and should, if not relevant, be deleted.
2. The Model Contract provides for a *basic scheme*, and two main options. The basic scheme is based on the assumption that the *Manufacturer is fully equipped* and has the technology to produce conforming goods, in its position as most specialized party.

The *options*, which do not exclude the basic scheme but may be combined with it and with each other, are tailored to cases in which (i) the *Client has to supply the Manufacturer* with certain specific equipment or tooling (Article 1.5) and (ii) *the Client has to transfer parts* of its own technology to the Manufacturer to enable him to finalize the products (Article 1.4).

3. The model agreement also covers the situation/*option* where the Parties have agreed that the *Manufacturer shall submit samples* before production is launched (Article 1.6).
4. These initial options may of course be adapted to the specific needs of the Parties, or deleted. They are not exclusive of each other and may be combined.
5. Articles 1.4, 5 and 6 deal with issues of *intellectual property*. It is assumed that the intellectual property rights are properly protected by appropriate registration. Moreover, Article 9 imposes a duty of confidentiality upon both parties, which should provide additional protection in particular if know-how is communicated by one party to the other. It is suggested to verify that the regime set out in Article 6 for improvements is acceptable in the light of any applicable anti-trust/competition law.
6. The cooperation of the Parties might be a contract of *duration*. It is therefore important to establish the duration of the alliance (see Article 7.1). An option (not addressed in the model) could be that the contract has a specific term with subsequent renewal requiring mutual agreement.

7. As far as the law applicable to the contract is concerned (Article 19), it is suggested to remind expressly that the UN Convention on the International Commercial Sale of Goods (CISG) *does not apply* to that type of agreement, "in which the preponderant part of the obligations of the party which furnishes the Goods consists in the supply of labour or other services" (Article 3 (2) CISG).

This Model Contract is a general framework only and must be tailored to specific circumstances.

ITC MODEL INTERNATIONAL CONTRACT MANUFACTURE AGREEMENT

PARTIES:

Manufacturer

Name (name of company)

.....

Legal form (e.g. limited liability company)

.....

Country of incorporation and (if appropriate) trade register number

.....

Address (address of place of business of the Manufacturer, phone, fax, e-mail)

.....

.....

Represented by (surname and first name, address, position, legal title of representation)

.....

.....

Client

Name (name of company)

.....

Legal form (e.g. limited liability company)

.....

Country of incorporation and (if appropriate) trade register number

.....

Address (address of place of business of the Client, phone, fax, e-mail)

.....

.....

Represented by (address of place of business of the Client, phone, fax, e-mail)

.....

.....

Collectively “the Parties”

Background

- A. The Client carries on business in the *[field/provision/supply of – specify]*.
- B. The Manufacturer undertakes as part of its business the production/manufacture and the supply of *[- specify the Goods/products]*.
- C. The Manufacturer has experience and expertise in the design, engineering and manufacture of goods and the Client, relying on such representation, wishes to engage the Manufacturer to manufacture and supply such goods in relation to the Client’s business, and the Manufacturer is willing to manufacture and supply such goods for the Client, on the terms of this contract.
- D. To the extent required by the performance of this contract, the Parties shall exchange information on their respective technology and equipment *[if not necessary, delete this sub-section D]*.
- E. *[If necessary, give an additional short explanation of the reason for the contract. If not necessary, delete this sub-section E].*

Operative provisions

1. Manufacture and supply of the Goods

1.1 Subject to the terms agreed in this contract and the more detailed specifications contained in schedule 1, the Manufacturer shall manufacture and supply the following good(s) to the Client (hereinafter: “the Good” or “the Goods”): *[provide short description of The Good(s) – detailed technical specification is to be found in schedule 1]*:

-
-
-

1.2 The Good(s) to be manufactured and supplied to the Client by the Manufacturer under this contract shall be delivered at/in *[specify place(s) of delivery – delete sub-Article 1.2 if not relevant]*:

-
-

1.3 The Good(s) to be manufactured and supplied to the Client by the Manufacturer under this contract shall be delivered on *[specify date/time of performance]*.

[Alternative 1: If the Good(s) are to be supplied during a certain (limited) period of time:

“1.3.1 The Good(s) to be manufactured and supplied to the Client by the Manufacturer under this contract shall be delivered between and [specify timeframe/duration of performance], with the following intervals [specify if necessary – delete if not relevant].”]

[Alternative 2: If the Good(s) are to be supplied at regular intervals, with no limitation in time:

“1.3.1 The Good(s) to be manufactured and supplied to the Client by the Manufacturer under this contract shall be delivered as from [specify date of first delivery], with the following intervals [specify schedule or intervals].”]

[Alternative 3: If the Good(s) are to be manufactured and supplied upon orders of the Client:

“1.3.1 The Good(s) to be manufactured and supplied to the Client by the Manufacturer under this contract shall be delivered within days/weeks [specify number of days/weeks] following each of the Client’s orders. The Client’s orders shall be placed with the Manufacturer not less than weeks [specify number of weeks] before the beginning of each quarter/month [select what is relevant], and shall cover all goods to be manufactured and supplied to the Client during that quarter/month [select what is relevant]. Each of the Client’s orders shall be final, except that the Manufacturer shall give reasonable consideration to any amendment to an order requested by the Client before the beginning of the quarter/month for which the order was placed. The orders shall be given in writing or, if given orally, shall be confirmed by the Client in writing within a reasonable period.”]

1.4 *[Only for contracts/situations where the Client has to disclose to the Manufacturer such of its technology as is necessary to enable the Manufacturer to manufacture the Goods in accordance with the specification listed in schedule 1. If this Article 1.4 applies, check whether Article 5 should also apply – this sub-Article 1.4, or parts of it, shall be deleted if not relevant/not applicable.]*

As soon as practicable after the execution of this contract the Client shall at its own cost disclose to the Manufacturer such of its technology as is necessary to enable the Manufacturer to manufacture the Goods in accordance with the specification in schedule 1.

1.4.1 Any such disclosure of technology shall be subject to the confidentiality provisions of Article 9, but nothing in this contract shall require the Client specially to prepare any technology or to engage in any research or development on the Manufacturer’s behalf.

1.4.2 The Client shall permit the Manufacturer to send, at the Manufacturer’s expense, appropriately qualified employees of the Manufacturer to visit the Client’s premises for training with the Client’s technology. The numbers of the Manufacturer’s employees who are to visit any premises of the Client and the timing of any visits, as well as any other relevant issue such as security, safety, indemnification in case of negligence, etc. shall be as agreed in advance between the Client and the Manufacturer.

1.4.3 The Manufacturer shall not supply the Goods produced through the use of the Client’s technology to any person other than the Client.

1.5 *[Only for contracts/situations where the Client has to supply the Manufacturer with certain specific equipment – the sub-Article, or parts of it shall be deleted if not relevant/not applicable.]*

As soon as practicable after the execution of this contract the Client shall at its own cost supply the Manufacturer with any equipment which is necessary for the proper manufacture of the Goods under this contract, and install it at the Manufacturer's premises.

- 1.5.1 The Client warrants that, at the time of installation at the Manufacturer's premises, the equipment will be in good working order and fit for its purpose for a period of production hours [*specify number of hours*], subject to fair wear and tear and except in the case of improper maintenance or use or any other default on the part of the Manufacturer.
- 1.5.2 The equipment shall remain the absolute property of the Client but shall, for so long as it is in the possession or control of the Manufacturer, be at the sole risk of the Manufacturer. The Manufacturer shall accordingly ensure that it is properly and securely stored and identified as the property of the Client, and shall not part with possession of it, or make it available, to any third party.
- 1.5.3 The Manufacturer shall maintain with a reputable insurance company insurance cover for the replacement cost or the repair of the equipment and damages, and shall have the Client's interest noted on the policy.
- 1.5.4 The Client shall, from time to time during the period of this contract and at the Manufacturer's reasonable and duly documented request, reimburse the Manufacturer in respect of the reasonable costs of any tooling required for the maintenance and the repair or replacement of the equipment, except in the case of any default on the part of the Manufacturer.
- 1.5.5 The Manufacturer shall not use the Client's equipment except for the purposes of supplying the Goods to the Client under this contract, and he shall not supply the Goods produced through the use of the Client's equipment to any person other than the Client.

1.6 [*Only for contracts/situations where the Client has requested the Manufacturer submit samples before production is launched. – the entire sub-Article shall be deleted if not relevant/not applicable*]. The Manufacturer shall, within days/weeks [*specify number of days/weeks*] after the execution of this contract [*Alternative: As soon as practicable after the disclosure of the Client's technology and the supply and installation of the equipment under Article 1.4*] submit to the Client for approval pre-production samples of the Good(s). The Manufacturer shall not commence the manufacture of the Goods until the Client has communicated its approval of the samples to the Manufacturer in writing. Approval shall not be unreasonably withheld or delayed by the Client and, once given, shall constitute irrevocable confirmation that the Goods manufactured in conformity with the samples (or differing only within normal industrial limits) will comply with the specification in schedule 1 and will meet the requirements of quality specified in Article 4, except in respect of defects which are not capable of being revealed on reasonable inspection by the Client.

1.7 Either party may at any time request that the Goods be adapted/amended in order to comply with any applicable safety or other statutory requirements. If the changes induced by such adaptation/amendment materially affect the nature or quality of the Goods, the Parties shall

renegotiate in good faith the relevant parameters of this contract and any relevant schedule.

2. Payment of price

2.1 All sales of the Goods under this contract shall be:

2.1.1 At the prices calculated in accordance with schedule 2; and

2.1.2 Subject to the terms of sale set out in schedule 4, to the exclusion of any other terms, except as provided in this contract or agreed in writing between the Parties.

2.2 The Manufacturer shall invoice the Client for the price in respect of all goods supplied under this contract on or at any time after each delivery to the Client.

2.3 Subject to its rights under Article 4, the Client shall pay the price stated in each invoice submitted by the Manufacturer under Article 2.2 within 30 days of the date of the invoice.

3. Late payment and interest

If payment is not made on the due date, the supplier shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgment) at the rate of *[specify]* % per annum.

[Comment: The Parties should take into consideration that in some legal systems payment of interest is unlawful, or is subject to a legal maximum rate, or there is provision for statutory interest on late payments.]

4. Quality of the products

4.1 In entering into this contract, the Client relies on the Manufacturer's expertise to manufacture the Goods, and the Manufacturer accordingly warrants to the Client that all goods under this contract shall:

4.1.1 Conform in all respects to the specifications in schedule 1;

4.1.2 For a period of *[specify duration]* from delivery, be of the quality required by the contract and free from defects in design, workmanship or materials; in case of delivery of defective or non-conforming goods, the Manufacturer shall remedy the defect or the non-conformity within 30 days after receipt of a written notice giving full particulars of the defect or the non-conformity and requiring it to be remedied. If the defect or the non-conformity amounts to a material breach of any of the provisions of this contract and the Manufacturer fails to remedy the breach within 30 days after receipt of the aforesaid written notice, the Client shall be entitled to terminate this contract in conformity with Article 7.2.1.

4.1.3 Comply with all standards and applicable statutes and regulations relating to the Goods *[specify type of standards/statutes/regulations – delete sub-Article if not applicable]*.

4.2 *[Only if samples are to be submitted to the Client]* Subject to Article 1.6, the Client may reject any of the Goods that do not comply with Article 4.1.

4.3 For the purposes of assuring to the Client the quality of the Goods required under this contract the Manufacturer shall permit the duly authorized representative of the Client, at any time during normal working hours and on reasonable notice, to inspect any premises of the Manufacturer or any third party where any of the Goods, or any labelling or packaging for them, are manufactured or stored by or for the Manufacturer.

4.4 If any claim is made against the Client arising out of or in connection with the manufacture of or any defect in the Goods, the Manufacturer shall, except to the extent that the claim is due to any defect in the specification made by the Client or the technology or the equipment provided by the Client, indemnify the Client against all damages or other compensation awarded against the Client in connection with the claim or paid or agreed to be paid by the Client in settlement of the claim and all legal or other expenses incurred by the Client in or about the defence or settlement of the claim. The Client shall notify the Manufacturer as soon as practicable after becoming aware of the claim, and take all action reasonably requested by the Manufacturer to avoid, compromise or defend the claim and any proceedings in respect of the claim, subject to the Client being indemnified and secured to its reasonable satisfaction against all costs and expenses which may be incurred in doing so.

4.5 Notwithstanding anything to the contrary in this contract, the Manufacturer shall not, except in respect of death or personal injury caused by the negligence of the Manufacturer, be liable to the Client for any loss of profit or any indirect, special or consequential loss or damage, costs, expenses or other claims (whether occasioned by the negligence of the Manufacturer or its employees or agents or otherwise) arising out of or in connection with the manufacture or supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with this contract or at all), their use or resale by the Client or their use by any customer of the Client, and the total liability of the Manufacturer for any other loss, damage, costs, expenses or other claims which so arise shall not exceed the price of the Goods in question.

5. Intellectual property and trademarks

[Only for contracts/situations where the Client has disclosed technology to the Manufacturer (see sub-Article 1.4 above), which is protected by intellectual property rights – the Article, or parts of it shall be deleted if not relevant/not applicable.]

5.1 The Client authorizes the Manufacturer, for the purposes of exercising its rights and performing its obligations under this contract:

5.1.1 To use the technology disclosed under Article 1.4 and any intellectual property of the Client in respect of the technology; and

5.1.2 To apply the Client's trademarks to the Goods.

5.2 Subject to Article 5.1, the Manufacturer shall have no rights in respect of any of the technology disclosed under Article 1.4, any intellectual property of the Client in respect of it or any of the trademarks, and the Manufacturer shall not use any of that technology or intellectual property except for the purposes specified in Article 5.1 and otherwise in accordance with this contract.

5.3 The Manufacturer shall use the trademarks on or in relation to the Goods in the form and manner specified by the Client from time to time, and not otherwise.

5.4 All artwork supplied by the Client from time to time for use in relation to the Goods or their labelling and packaging, and all intellectual property in respect of it, shall belong exclusively to the Client.

5.5 The Manufacturer shall at the request and expense of the Client take all such steps as the Client may reasonably require to assist the Client in maintaining the validity and enforceability of any intellectual property referred to in Article 5.1 or 5.4 and the trademarks, and shall enter into such formal licences as the Client may reasonably request for this purpose. The Manufacturer shall not represent that it has any title in or right of ownership to any of the trademarks or do or suffer to be done any act or thing which may in any way impair the rights of the Client in any of the trademarks or bring into question the validity of its registration.

5.6 The Manufacturer shall promptly and fully notify the Client of any actual or threatened infringement of any of the intellectual property referred to in Article 5.1 or 5.4 or of the trademarks which comes to the Manufacturer's notice, or which the Manufacturer suspects has taken or may take place.

5.7 If any claim is made against the Manufacturer that the manufacture or sale of the Goods infringes the intellectual property or other rights of any third party, the Client shall, except to the extent that the claim is due to the default of the Manufacturer, indemnify the Manufacturer against all damages or other compensation awarded against the Manufacturer in connection with the claim or paid or agreed to be paid by the Manufacturer in settlement of the claim and all legal or other expenses incurred by the Manufacturer in or about the defence or settlement of the claim. The Manufacturer shall notify the Client forthwith after becoming aware of the claim, and take all action reasonably requested by the Client to avoid, compromise or defend the claim and any proceedings in respect of the claim, subject to the Manufacturer being indemnified and secured to its reasonable satisfaction against all costs and expenses which may be incurred in so doing.

6. Cooperation of the Parties for improvements and modifications

6.1 The Client and the Manufacturer shall meet once in each quarter to review any matters likely to be relevant in relation to the manufacture, sale, use or development of the Goods.

6.2 Without limiting the general scope of Article 6.1:

6.2.1 The Client shall provide the Manufacturer with details of any improvement belonging to the Client which it wishes to be incorporated into the Goods or any other modification which it wishes to be made to the Goods from time to time; and

6.2.2 The Manufacturer shall provide the Client with details of any improvement which is made, developed or acquired by the Manufacturer from time to time.

6.3 An improvement as referred to in this section means any development, enhancement or derivative of the Good, or its design or manufacturing process, which would make The Good cheaper, more effective, more useful or more valuable, or would in any other way render the Good preferable in commerce.

6.4 The title to and all intellectual property rights in respect of any improvement made, developed or acquired by either party shall belong to that party, but the Client may use any improvement which is made, developed or acquired by the Manufacturer, and any applicable intellectual property of the Manufacturer, for its own purposes by way of a non-exclusive, royalty-free licence without limit of time.

6.5 The Manufacturer shall not unreasonably withhold its consent to the incorporation into the Goods of any improvement belonging to the Client or any other modification to the Goods referred to in Article 6.2.1, or of any improvement belonging to the Manufacturer referred to in Articles 6.2.2 and 6.4.

6.6 To the extent necessary, the incorporation of any improvement or any other modification to the Goods, which is agreed between the Client and the Manufacturer, shall be recorded in writing in Schedule 1 as an amendment to the contractually agreed specification of the Goods.

7. Duration and termination

7.1 This contract shall take effect on the date of its signature by both parties or, if signatures do not occur simultaneously, when the latest signature is given. Unless sooner terminated pursuant to Articles 7.2 or 7.3, this contract shall continue for a period of [*specify – check that provision is in line with Article 1.3*].

7.2 Either party shall be entitled forthwith to terminate this contract by giving written notice to the other if:

7.2.1 The other party commits any continuing or material breach of any of the provisions of this contract and fails to remedy the breach within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied.

7.2.2 An encumbrancer takes possession or a receiver is appointed over any of the property or assets of the other party;

7.2.3 The other party makes any voluntary arrangement with its creditors or becomes subject to an administration order;

7.2.4 The other party goes into liquidation (except for the purposes of an amalgamation, reconstruction or other reorganization and in such manner that the company resulting from the reorganization effectively agrees to be bound by or to assume the obligations imposed on that other party under this contract); or

7.2.5 The other party ceases, or threatens to cease, to carry on business.

7.3 [Only if samples have to be submitted to the Client pursuant to Article 1.6] – if not, delete this Article 7.3.]

The Client may at its option terminate this contract forthwith by giving written notice to the Manufacturer, if the latter fails to produce samples of the Good(s) under Article 1.6 in accordance with the specification and to the reasonable satisfaction of the contractor on or before [specify date].

7.4 Any waiver by either party of a breach of any provision of this contract shall not be considered as a waiver of any subsequent breach of the same or any other provision.

7.5 The rights to terminate this contract given by this Article shall not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.

8. Consequences of termination

8.1 On the termination of this contract for any reason, the Manufacturer shall offer to sell to the Client all goods which have been manufactured by the Manufacturer but not delivered to the Client at the date of termination, and all usable but unused stocks of labelling and packaging for the Goods bearing any of the trademarks, at a price equal to their cost to the Manufacturer.

8.2 Subject to Article 8.1, on the termination of this contract for any reason the Manufacturer shall:

8.2.1 Subject to Article 1.4, cease to manufacture and sell the Goods or to use, either directly or indirectly, any of the technology referred to in Article 1.4 or intellectual property referred to in Article 5 and forthwith return to the Client any documents in its possession or control which contain or record any part of any of that technology or intellectual property;

8.2.2 Cease to use any of the trademarks;

8.2.3 Consent to the cancellation of any formal licence granted to it, or of any record of it in any register, in respect of any intellectual property of the Client or any of the trademarks; and

8.2.4 At its own cost forthwith return the equipment to the Client;

8.3 Subject as provided in this Article and except in respect of any accrued rights, neither party shall have any further obligation to the other.

8.4 The provisions of Articles 9, 18 and 19 shall continue in force in accordance with their terms, notwithstanding termination of this contract for any reason.

8.5 The termination of this contract for any reason shall not affect the coming into force or the continuance in force of any provision of this contract that is expressly or by implication intended to come into or continue in force on or after termination.

9. Confidentiality

9.1 Both parties understand and acknowledge that, by virtue of the present contract, they may both receive or become aware of technology as well as information belonging or relating to the other party, its business, business plans, affairs or activities, which information is confidential and proprietary to the

other party and/or its Manufacturers and/or customers and in respect of which they are bound by a strict duty of confidence (“Confidential Information”).

9.2 As a consequence thereof, neither party shall, either during the period of this contract or at any subsequent time, disclose to any other person any technology or other Confidential Information disclosed to it by the other party under this contract, and shall use its best endeavours to keep such technology or other information confidential (whether marked as such or not), except as provided by Article 9.3 or 9.4.

9.3 Any of the technology or other Confidential Information referred to in Article 9.1 may be disclosed to:

9.3.1 Any contractor of or supplier to the party in question of any equipment or products;

9.3.2 Any governmental or other authority or regulatory body; or

9.3.3 Any directors or employees of the party in question; to such extent only as is necessary for the purposes of this contract or as required by law, and subject in each case (other than under Article 9.3.2) to the party in question first obtaining (and submitting to the other a copy of) a written undertaking from the person to whom the disclosure is made, as nearly as practicable in the terms of this Article, to keep it confidential and to use it only for the purposes for which the disclosure is made.

9.4 Any of the technology or other Confidential Information referred to in Article 9.1 may be used by the party in question for any purpose, or disclosed by that party to any other person, to the extent only that any part of it is at the date of this contract or subsequently becomes public knowledge through no fault of the party in question, provided that in so doing that party does not disclose any part of that technology or other Confidential Information which is not public knowledge.

9.5 This undertaking, and the obligations contained herein, will continue without limit of period.

10. ***Force majeure*** – excuse for non-performance

10.1 “*Force majeure*” means war, emergency, accident, fire, earthquake, flood, storm, industrial strike or other impediment which the affected party proves was beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of this contract or to have avoided or overcome it or its consequences.

10.2 A party affected by *force majeure* shall not be deemed to be in breach of this contract, or otherwise be liable to the other, by reason of any delay in performance, or the non-performance, of any of its obligations under this contract to the extent that the delay or non-performance is due to any *force majeure* of which it has notified the other party in accordance with Article 10.3. The time for performance of that obligation shall be extended accordingly, subject to Article 10.4.

10.3 If any *force majeure* occurs in relation to either party which affects or is likely to affect the performance of any of its obligations under this contract, it shall notify the other party within a reasonable time as to the nature and extent of the circumstances in question and their effect on its ability to perform.

10.4 If the performance by either party of any of its obligations under this contract is prevented or delayed by *force majeure* for a continuous period in excess of three [*specify any other figure*] months, the other party shall be entitled to terminate this contract by giving written notice to the party affected by the *force majeure*.

[Alternative: If preferred, replace 10.4 with the following alternative:

*“10.4 If the performance by either party of any of its obligations under this contract is prevented or delayed by force majeure for a continuous period in excess of three [*specify any other figure*] months, the Parties shall negotiate in good faith, and use their best endeavours to agree upon such amendments to this contract or alternative arrangements as may be fair and reasonable with a view to alleviating its effects, but if they do not agree upon such amendments or arrangements within a further period of 30 [*specify any other figure*] days, the other party shall be entitled to terminate this contract by giving written notice to the party affected by the force majeure.”.]*

11. Change of circumstances (hardship)

[Comment: The Parties should be free to consult each other in the event of a major change in circumstances – particularly one creating hardship for a particular party. However, an SME should only include the option at the end of Article 11.4 (right to refer to the courts/arbitral tribunal to make a revision or to terminate the contract) if (i) the SME considers that it is not likely to be used against that party’s interests by a party in a stronger tactical position or (ii) the right to refer to a court/tribunal is already an existing right under the applicable governing law in the event of hardship.]

11.1 Where the performance of this contract becomes more onerous for one of the Parties, that party is nevertheless bound to perform its obligations subject to the following provisions on change of circumstances (hardship).

11.2 If, however, after the time of conclusion of this contract, events occur which have not been contemplated by the Parties and which fundamentally alter the equilibrium of the present contract, thereby placing an excessive burden on one of the Parties in the performance of its contractual obligations (hardship), that party shall be entitled to request revision of this contract provided that:

11.2.1 The events could not reasonably have been taken into account by the affected party at the time of conclusion of this contract;

11.2.2 The events are beyond the control of the affected party; and

11.2.3 The risk of the events is not one which, according to this contract, the Party affected should be required to bear.

11.3 Each party shall in good faith consider any proposed revision seriously put forward by the other party in the interests of the relationship between the Parties.

[Option: Add if wished, otherwise delete if not applicable or not enforceable under the law governing the contract – see comment at beginning of Article 11.]

“11.4 If the Parties fail to reach agreement on the requested revision within [specify time limit if appropriate], a party may resort to the dispute resolution procedure provided in Article 18. The [court/arbitral tribunal] shall have the power to make any revision to this contract that it finds just and equitable in the circumstances, or to terminate this contract at a date and on terms to be fixed.”.]

12. No partnership or agency

Nothing in this contract shall (i) be deemed to constitute a partnership in law between the Parties, (ii) constitute either party the agent of the other for any purpose or (iii) entitle either party to commit or bind the other (or any member of its respective group) in any manner.

13. Assignment and subcontracting

13.1 This contract is personal to the Parties and [include only where relevant, except to the extent necessary for the collection of outstanding bills through a factoring agent,] neither party shall without the prior written approval of the other:

- 13.1.1 Assign, mortgage, charge or otherwise transfer or deal in, or create any trust over, any of its rights; or
- 13.1.2 Subcontract or otherwise delegate the whole or any part of its rights or obligations under this contract to another person.

14. Notices

14.1 Any notice under this contract shall be in writing (which may include e-mail) and may be served by leaving it or sending it to the address of the other party as specified in Article 14.2 below, in a manner that ensures receipt of the notice can be proved.

14.2 For the purposes of Article 14.1, notification details are the following, unless other details have been duly notified in accordance with this Article:

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15. Entire agreement

15.1 This contract sets out the entire agreement between the Parties. Neither party has entered into this contract in reliance upon any representation, warranty or undertaking of the other party that is not expressly set out or referred to in this contract. This Article shall not exclude any liability for fraudulent misrepresentation. [Option, add where relevant: “This contract supersedes any previous agreement or understanding relating to its subject matter”.]

15.2 This contract may not be varied except by an agreement of the Parties in writing (which may include e-mail) [add where Article 11.4 or equivalent is included: “Or in accordance with Article 11.4”].

If any provision of this contract is held by any court or other competent authority to be invalid or unenforceable in whole or in part, this contract shall continue to be valid as to its other provisions and the remainder of the affected provision, unless it can be concluded from the circumstances that, in the absence of the provision found to be null and void, the Parties would not have concluded this contract. The Parties shall use all reasonable efforts to replace all provisions found to be null and void by provisions that are valid under the applicable law and come closest to their original intention.

Authorizations

17.1 This contract is conditional upon the following authorizations first being obtained *[specify the authorization(s) or other conditions required e.g. of governmental or regulatory authority]*:

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17.2 The relevant party shall use all reasonable efforts on its part to obtain such authorizations and shall notify the other party promptly of any difficulty encountered.

18. Dispute resolution

Any dispute, controversy or claim arising out of or relating to this contract, including its conclusion, interpretation, performance, breach, termination or invalidity, shall be finally settled under the rules of *[specify the arbitration institution]* by *[specify the number of arbitrators, e.g. sole arbitrator or, if appropriate, three arbitrators]* appointed in accordance with the said rules. The place of arbitration shall be *[specify]*. The language of the arbitration shall be *[specify]*.

[The following are alternatives to a specified arbitral institution under Article 18:

Alternative 1: Ad hoc arbitration

“Any dispute, controversy or claim arising out of or relating to this contract, including its conclusion, interpretation, performance, breach, termination or invalidity, shall be finally settled under the rules of UNCITRAL [specify other rules] by [specify the number of arbitrators, e.g. sole arbitrator or, if appropriate, three arbitrators] appointed by [specify name of appointing institution or person]. The place of arbitration shall be [specify]. The language of the arbitration shall be [specify].”.]

[Alternative 2: State courts

“Any dispute, controversy or claim arising out of or relating to this contract, in particular its conclusion, interpretation, performance, breach, termination or invalidity, shall be finally settled by the courts of (specify place and country) which will have exclusive jurisdiction.”.]

19. Applicable law

[Specify national law] law shall apply to the contract. The application of the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention of 1980 – CISG) is excluded.

Schedule 1: Specifications of the Goods to be manufactured

This schedule shall describe the Goods to be manufactured and supplied by the Manufacturer to the Client, along with all necessary technical data, tolerances, etc.

Schedule 2: Price

- (1) The price for the Goods shall be a delivered price calculated as follows (specify currency)
 - (2) Specify method of invoicing (periodicity, etc.)
 - (3) *[If applicable]* The price for the Goods is exclusive of any applicable value added tax.
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Schedule 3: Equipment

[If applicable (see Article 1.5), specify the Client's equipment that is placed at Manufacturer's disposal]

Schedule 4: Terms of sale

DATE AND SIGNATURE OF THE PARTIES

| Manufacturer | Client |
|--------------|-----------|
| Date..... | |
| Name..... | |
| Signature | Signature |