

AU-COMmfg02

## **Development and manufacturing agreement: manufacturer version**

**[ABC Pty Ltd]**

**AND**

**[DEF Pty Ltd]**

**Dated: [Date]**

## Contents

1. Definitions
  2. Interpretation
  3. Entire agreement
  4. Client's warranties
  5. Manufacturer's warranties
  6. Scope of work
  7. Representative liaison and design reviews
  8. Setup costs
  9. Product design testing
  10. Production specification and materials coverage
  11. Payment for Product development
  12. Design price and payment
  13. Production price
  14. Payment and interest
  15. Packaging and delivery
  16. Transportation
  17. Taxes
  18. Visitors
  19. On site audits
  20. Risk and retention of title
  21. Defective Product returned
  22. Manufacturer's manufacturing warranty
  23. Manufacturer's Service provision
  24. Limitation of liability
  25. Use of sub-contractors
  26. Confidential Information
  27. Existing Intellectual Property
  28. New IP
  29. Protection of Intellectual Property
  30. Third party infringement
  31. Duration and termination
  32. Change of control
  33. Publicity / Announcements
  34. Assignment
  35. Indemnities
  36. Damages not adequate
  37. Uncontrollable events
  38. Miscellaneous matters
- 
- Schedule 1 Detailed Specification and phases
  - Schedule 2 Services: end user service specification
  - Schedule 3 Standards
  - Schedule 4 Example purchase order
  - Schedule 5 List of setup tools and equipment

Schedule 6 Packaging and labelling  
Schedule 7 Press release

This agreement is dated: [date]

It is made between:

[ABC Pty Ltd], a company incorporated in Australia, ACN [number] and whose registered office [ ] ( [ ] “ [ ] ”);

and

[DEF Pty Ltd], a company incorporated in Australia, ACN [number] and whose registered office [ ] ( [ ] “ [ ] ”)

**Background:**

- A. The Client is a designer, manufacturer and merchant of high performance bikes. The Manufacturer is [ ] .
- B. The Client and the Manufacturer have agreed that production of the Product shall be undertaken by the Manufacturer on [ ] .

It is now agreed as follows:

## 1. Definitions

In this agreement, the following words shall have the following meanings, [ ] :

“Confidential Information” means all information about a party, including any information which may give a commercially competitive advantage to [ ] .

[ ] :

information about employees, their performance and [ ] ,

data or information relating to suppliers, product plans, marketing strategies, finance, performance, operations, customer [ ] , [ ] , [ ] , [ ] ;

information about the Intellectual Property, the Know-how and all [ ]











5.5. it has taken out a policy of insurance against product liability in a [redacted] [redacted] \$ [redacted].

## 6. Scope of work

The Manufacturer shall:

- 6.1. complete the design of the Product.
- 6.2. complete the testing procedures and qualify the [redacted].
- 6.3. complete the quality assurance procedure according [redacted].
- 6.4. on receipt of a purchase order in the style of the example in Schedule 4, immediately allocate resources and commence manufacture [redacted].
- 6.5. use every effort to meet the milestones and complete each order to the Detailed [redacted].
- 6.6. provide the Services to end users [redacted].

## 7. Representative liaison and design reviews

- 7.1. With effect from today each of the parties will nominate a representative who will be authorised to make decisions relating to the Product and who will be responsible for providing all [redacted].
- 7.2. [\[Periodically / once each month\]](#), the Manufacturer shall call a design review meeting in order to obtain the approval of the Client to design work to [redacted].
- 7.3. The representative of a party at a design review meeting shall be a person with authority to bind that party in law to any decision he makes. At any meeting, [redacted].

.....  
.....

7.4. If the Client fails to attend a design review meeting after notice of .....  
..... [ ..... ] ....., .....  
.....  
.....

7.5. So far as the Client suggests changes .....  
....., .....  
.....

7.6. After each change to any part of the design or ....., .....  
..... [ 7 ] .....  
.....

7.7. The materials specification as finally recorded .....  
.....  
.....

## 8. Setup costs

8.1. The costs of tools and equipment required .....  
.....  
..... 5 .

8.2. The Client has approved the list and ..... - .....  
.....  
.....

8.3. The Client shall buy, .....  
.....

8.4. The Manufacturer shall maintain all .....  
... / .....

## 9. Product design testing

9.1. The Manufacturer shall test the .....  
....., .....

9.2. So far as any Standard requires third ..... / .....  
....., .....  
.....

- 9.3. The Client shall be responsible for obtaining whatever regulatory and [REDACTED] / [REDACTED] .
- 9.4. The Manufacturer shall assist the Client [REDACTED] , [REDACTED] .
- 9.5. If at any stage of design or production, a [REDACTED] , [REDACTED] .
- 9.6. After receiving such notice, the Manufacturer will within [ 30 ] [REDACTED] - [REDACTED] [REDACTED] / [REDACTED] ].
- 9.7. All cost relating in any way to obtaining Standard verification and shall [REDACTED] . [REDACTED] .
- 9.8. Test data and results shall [REDACTED] .
- 9.9. Test data, reports and correspondence [REDACTED] .

## 10. Production specification and materials coverage

- 10.1. The materials specification as finally recorded [REDACTED] .
- 10.2. [scrap / trimmings / offcuts / [REDACTED] ] [REDACTED] / [REDACTED] .
- 10.3. The Manufacturer shall from time to time obtain arm's length, market prices for [scrap / trimmings / [REDACTED] / [REDACTED] ] [REDACTED] . [REDACTED] , [REDACTED] , [REDACTED] .



12.5. In calculating the cost of labour:

12.5.1 all production cost shall be included;

12.5.2 the design team [redacted]  
[redacted].

12.5.3 a fixed sum of \$ [redacted]  
[redacted], [redacted] - [redacted].

## 13. Production price

13.1. When the Client has accepted the completion of the design and orders the Product in a quantity [redacted] [ 100 ] [redacted], [redacted]  
[redacted]  
[redacted]. [redacted]  
[redacted].

13.2. The price payable by [redacted]  
[redacted]:

For the first [ 1000 ] [redacted] \$ [redacted]

For the next [ 5000 ] [redacted] \$ [redacted]

For each additional unit \$ [number]

13.3. The price shall be increased on the first [redacted] [redacted]  
[redacted] [redacted]  
[redacted] ( [redacted] ).

13.4. If the Client requires delivery to some place other than [redacted], [redacted]  
[redacted]  
[redacted] [redacted].

## 14. Payment and interest

14.1. Payment shall be made by any of: [redacted], [redacted]  
[redacted] [redacted]  
[redacted].

14.2. The Manufacturer reserves the right to charge the Client interest in respect of the late payment of any sums due [ 5 ] .

## 15. Packaging and delivery

15.1. Each Product shall be marked 6 .

15.2. Immediately after testing, each Product will be labelled on [ / , ] .

15.3. Deliveries will be made by the carrier to [the / ] .

15.4. If the Manufacturer is not able to deliver the Product within [30] , - .

15.5. All Products must be signed for on delivery by an adult aged 18 years or over. If no one of that age is at the address when the . , . , .

15.6. Signing “Unchecked”, “ ” .

15.7. [Products are sent by courier. The ] .

15.8. If the Manufacturer agrees with the Client to deliver on a particular day or at a particular time, the Manufacturer .









## 20. Risk and retention of title

20.1. Ownership of the Products shall not pass to the Client until full payment has been received by the Manufacturer from the Client in respect of the Products. The Client shall be deemed to have received the Products when the same are delivered to the Client's premises or to any other place specified by the Client in writing to the Manufacturer.

OR

20.2. In spite of delivery having taken place, the title to the Products shall remain in the Manufacturer until the Client has paid the sum of £..... to the Manufacturer:

20.2.1 the Client has paid the sum of £..... to the Manufacturer;

20.2.2 no other sums have been paid to the Manufacturer.

20.3. Until property in the Products passes to the Client, the Client shall be deemed to be the owner of the Products for all purposes, including the payment of taxes and duties, and shall be liable for any loss of or damage to the Products.

20.4. The Client must store the Products (at no cost to the Manufacturer) in a secure place and shall be responsible for the safekeeping of the Products until they are delivered to the Client's premises or to any other place specified by the Client in writing to the Manufacturer.

20.5. Despite any of the Products remaining the property of the Manufacturer, the Client shall be deemed to be the owner of the Products for all purposes, including the payment of taxes and duties, and shall be liable for any loss of or damage to the Products.

20.6. Any sale or dealing shall be a sale or use of the Products by the Client and shall be deemed to be a sale or use of the Products by the Manufacturer.

20.7. Until property in the Products passes from the Manufacturer the entire proceeds of sale of the Products shall be paid to the Manufacturer and shall be deemed to be the proceeds of sale of the Products for all purposes, including the payment of taxes and duties.

20.8. The Manufacturer shall be entitled to recover the full value of the Products from the Client in the event of any loss of or damage to the Products.

- 20.9. If the Manufacturer asks .....  
.....
- 20.10. If, when asked, the Client ....., .....  
.....
- 20.11. The Client must not pledge or in any way charge by way of security any  
.....  
....., .....  
....., .....  
.....
- 20.12. The Client must keep the Products insured .....  
.....  
.....
- 20.13. If, when the Manufacturer asks, the Client fails to deliver to .....  
.....  
....., .....  
.....
- 20.14. While ever the Manufacturer has title to .....  
, .....  
....., .....:
- 20.14.1 title to .....  
.....
- 20.14.2 the Client shall hold those Products as .....  
.....  
.....
- 20.14.3 all the Manufacturer's rights in relation to ..... ( ..... ) .....  
.....

## 21. Defective Product returned

These provisions apply in the .....  
.....

- 21.1. The Manufacturer will repair .....  
.....:

- 21.1.1 the defect is reported to [ 12 ] .
- 21.1.2 the Product is returned .
- 21.1.3 the defect results only from faulty manufacture;
- 21.2. So far , :
- 21.2.1 with both Products and ;
- 21.2.2 securely wrapped;
- 21.2.3 including the delivery slip;
- 21.2.4 at risk and cost the Manufacturer/the Client
- 21.3. If the Manufacturer agrees that it is liable, .
- 21.4. If the Manufacturer repairs or replaces a Product, neither the Client , .

## 22. Manufacturers manufacturing warranty

- 22.1. The Manufacturer warrants that for period of [24] months from date of , , , .
- 22.2. The Manufacturer will use its best efforts to repair [ ] .
- 22.3. Non-warranty service pricing shall be negotiated .



24.2.2 economic loss or other , , ;

24.2.3 loss or damage suffered by .

The above provisions apply even if such .

24.3. Except in the case of death or personal injury, the total liability of the Manufacturer under , , \$ [ 100 , 000 ]. , .

24.4. This paragraph (and any other paragraph which excludes or restricts the , , , , , , .

24.5. The Manufacturer is not :

24.5.1 the Product ;

24.5.2 the Product that has been ;

24.5.3 the model or serial number , , .

### **25. Use of sub-contractors**

The Manufacturer shall not sub-

OR

- :









.....  
..... (“.....”).

27.3. ....  
.....  
.....

27.4. ....  
.....

27.5. ...., ....., .....  
.....  
..., ....., ....., .....  
.....  
, ..... - ....., ..... - ....., ....., .....  
..... (..... - .....) .....  
.....

## 28. New IP

.....  
.....  
..., .....

28.1. ...., ....., ....., .....  
....., .....  
.....:

28.1.1 ..... , .....  
, .....

28.1.2 .....  
.....

28.1.3 .....  
.....  
.....;

28.2. ....  
.....  
.....























**Signed by/** on behalf of the name of the parties by their representative who personally accepts liability for the proper authorisation by their respective employer or principal to enter into this agreement.

For, and on behalf of [ABC Pty Ltd]

print name

For, and on behalf of [DEF Pty Ltd]

print name

## **Schedule 1: Detailed Specification and phases**



## **Schedule 3: Standards**



## **Schedule 4: Example purchase order**

## **Schedule 5: List of setup tools and equipment**

## **Schedule 6: Packaging and labelling**

## **Schedule 7: Press release**











The seller makes the goods available at a named place of delivery. This can either be the seller's premises or any other place. This term places the maximum obligation on the buyer and minimum obligations on the seller. EXW is often used when making an initial quotation for the sale of goods without any costs included. The buyer pays all transportation costs and also bears the risks for bringing the goods to their final destination.

**FCA – Free Carrier**

The seller hands over the goods, cleared for export, into the disposal of the first carrier (named by the buyer) at the named place. The carrier can be anyone i.e., buyer, seller or third party. The passing of risk depends on the where the goods are delivered. If the goods are delivered at seller's premises, the risk passes to the carrier at the time the goods are handed over to the carrier. If the goods are delivered at another place, the risk passes to the carrier at the time the goods are loaded on the carrier's vehicle.

**CPT - Carriage Paid To**

The seller pays for the carriage and delivers the goods to the buyer by handing them over to the carrier at the named place of destination.

**CIP – Carriage and Insurance Paid to**

The seller pays for carriage and insurance to the named destination point, and the risk passes to the buyer when the goods are handed over to the carrier.

**DAP – Delivered at Place**

The seller pays for carriage to the named place, except for costs related to import clearance, and the risk passes to the buyer when the goods are delivered to the named place.

.....  
.....

**DPU – Delivered at Place Unloaded**

The seller pays for carriage, except for costs related to import clearance, and assumes all risks .....  
.....  
.....

**DDP – Delivered Duty Paid**

The seller is responsible for delivering the goods to the named place. The seller must pay all costs in bringing the goods .....  
.....  
.....

**Rules for Sea and Inland Waterway Transport**

The four rules defined by Incoterms 2020 for international .....  
..... :

**FAS – Free Alongside Ship**

The seller is responsible for delivering goods to the buyer by placing the goods alongside the ship at the named port. ....  
.....  
..... - ..... .

**FOB – Free on Board**

The seller is responsible for loading the goods on board the vessel nominated by the buyer. The seller must .....  
.....  
..... .

**CFR – Cost and Freight**

The seller must deliver the goods to the buyer and pay the costs and freight to bring the goods to the port of destination . . . , .....  
.....  
..... .

**CIF – Cost, Insurance and Freight**

CIF is exactly the same as CFR except that the seller must pay for the insurance cover against .....











## **Schedule 6: Packaging and labelling**

Specify fully.

## **Schedule 7: Press release**

We have no comment.

**End of notes**