

IE-COMmfg06

Manufacturing agreement: customer version

[Name of party 1]

And

[Name of party 2]

Dated: [Date]

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This agreement is dated [date] :

Champion Bikes Ltd, a company incorporated in the Republic of Ireland [under company registration number [number] and] (“ ”);

and

Wheely Makers Ltd, a company incorporated in the Republic of Ireland [under company registration number [number] and] (“ ”).

Background:

- A. Champion is a designer and wholesaler of high performance bicycles. Wheely
- B. Champion and Wheely have agreed that production of the Super Fizz Bike shall be undertaken by Wheely on

It is now agreed as follows:

1. Definitions

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

“Affiliate” means, with respect to any person, any human individual, or corporate body, or organisation of people acting together, who is able to Control its affairs or actions;

“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 ;

information created or arising from this agreement;

information owned by a third party and in respect of which a party

information, comment or implication published on

data or information relating to pre-clinical and clinical trial results, processes, formulae, procedures, designs, drawings, apparatus, , ;

It does not include information that it is reasonably necessary to disclose to a customer or other person in the usual course

“Control”

(including all derived terms), means, with respect to the relationship between two or more corporate bodies, the possession, directly or indirectly, of the power to direct the affairs or management of a corporate body, whether through the ownership of voting securities, as trustee or executor, by contract or otherwise, including, without limitation,

“Incoterm”

means a pre-defined commercial term published by the International Chamber of Commerce to

“Intellectual Property”	means intellectual property of every sort, whether or not registered or registrable in any country, including
“Know-how”	means scientific or technical information, and other procedures and ways of working and organising
“Party”	means one of the parties to this agreement,
“Product”	means the Super Fizz Wheel or any other product which supersedes
“Project”	means the work to be done under the
“Services”	means end user service specification as 2 .
“Specification”	means the detailed specification set out 1 .
“Standards”	means the standards, 3 .

2. Interpretation

This agreement

- 2.1. A reference to a person includes a ,
- 2.2. In connection with any benefit given by ,
- 2.3. A reference to a person includes reference to that person’s successors, legal representatives,

- 2.4. A reference to a paragraph or schedule is to

- 2.5. The headings to the paragraphs and

- 2.6. Any agreement by Party not to do or omit

- 2.7. A reference to the knowledge, information, belief or awareness

- 2.8. The words “without limitation” shall

- 2.9. All money sums mentioned in this

- 2.10. This agreement and its schedules / attachments are to be taken together so as to give effect to all of

- 2.11. This agreement is made only in the English language. If there is any conflict in meaning between the English language version of this

3. Entire agreement

3.1. This agreement contains the entire

3.2. Conditions, warranties or other terms implied by

3.3. Each Party acknowledges that, in entering into this agreement,

3.4. As an exception to the last

*[Enter list
]*

4. Wheely's warranties

Wheely warrants that:

4.1. it is a registered *[what, if any?]* and is certified to ISO *[9001]* *[*
12345]

[28]

4.2. it is not aware of anything within

4.3. it has the necessary experience, all necessary

4.4. it is not a party to any other

4.5. it has taken out a policy

€[].

5. Scope of work

5.1. This agreement regulates all of the relationship between

5.2. Wheely will use every effort

6. Product testing

6.1. Wheely shall test

6.2. So far as any Standard requires

6.3. Champion shall be responsible for obtaining whatever regulatory and other

6.4. Wheely shall assist Champion in

6.5. If at any stage of design or production,

6.6. After receiving such a notice, Wheely will [30]
[/]
].

6.7. All cost relating in any way to obtaining Standard verification and

6.8. Test data and results

6.9. Test data, reports and

7. Production specification and materials coverage

7.1. The materials specification as finally recorded

7.2. [Scrap / trimmings / offcuts /]
[/].

7.3. [Wheely shall from time to time obtain arms length, market prices for
[scrap / trimmings / /]
[/] ,
].

8. Production price

8.1. The price payable by

:

For the first [1000] units	€ [number]
For the next [5000] units	€ [number]
For each additional unit	€ [number]

8.2. The price shall be increased on the first

[].

8.3. If Champion requires delivery to some place other than [],

[].

9. Packaging and delivery

9.1. Each Product shall

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

- 9.3. Deliveries will be made by the Carrier to [/].
- 9.4. If Wheely is not able to deliver the Product within [30]
- 9.5. [Goods are sent by post.].
- 9.6. If Wheely agrees with Champion to deliver on a particular day or at a particular time, Wheely will
- 9.7. Time for delivery specified on the order,

10. Transportation

[There are many ways and alternative deals possible.]

- The Products will / / :
- 10.1. EXW – ().
- 10.2. FCA – ().
- 10.3. CPT - ().
- 10.4. CIP – Carriage ().
- 10.5. DAT – Delivered at ().
- 10.6. DAP – ().

- 10.7. DDP – ().
- 10.8. FAS – ().
- 10.9. FOB – ().
- 10.10. CFR – ().
- 10.11. CIF – Cost, ().
- 10.12. All rights, obligations, conditions and matters relating to the above
- 10.13. Champion shall pay any handling and shipping

11. Taxes

- 11.1. This paragraph relates to all sales, transfer and other taxes or customs import duty (“Tax”) imposed on
- 11.2. Insofar as any Tax is recoverable or can
- 11.3. Tax shall be stated separately on Wheely’s invoices, collected
- 11.4. Wheely will indemnify Champion against Wheely’s failure
- 11.5. In any case where Champion is prohibited by law from making a payment to Wheely without first withholding tax from that

12. Visitors

12.1. Wheely agrees to host visits by customers of Champion or other people whom

12.2. There shall be no more than [one] visit
[]

12.3. Champion undertakes to inform every visitor of

12.4. Champion must make sure

13. On site audits

13.1. On notice of at least [seven] days, Champion's, its partners, financial supporters and its customers' representatives may attend at Wheely's

13.2. The auditor shall be instructed not to disclose

14. Wheely's manufacturing warranty

14.1. Wheely warrants that for a period of [24] months from date

14.2. Wheely will use its best efforts to repair defective products

[/]

14.3. Non-warranty service pricing shall be negotiated

14.4. If either Party shall become aware of

15. Use of sub-contractors

Wheely shall not sub-

OR

Wheely may perform any or

15.1. Wheely first obtains the written consent of Champion to the

OR

15.2. Wheely must first obtain the written consent

15.3. Wheely remains

15.4. Wheely indemnifies Champion fully against any loss

15.5. So far as work under this

[].

16. Defective Product returned

These provisions apply in

:

16.1. Wheely will repair

:

16.1.1 [12]

;

16.1.2

.

16.1.3 the defect results only from faulty manufacture;

16.2.

,

:

16.2.1

;

16.2.2 securely wrapped;

16.2.3 [/].

16.3.

,

.

17. Confidential Information

17.1.

,

,

.

,

,

.

,

[]

,

:

17.1.1

,

,

;

17.1.2

,

;

17.1.3

, ,

[...]

17.1.4

(

);

17.1.5

(

)

17.2. This paragraph does not apply to disclosure:

17.2.1

,

,

17.2.2

17.2.3

17.2.4

17.2.5

17.2.6

17.2.7

17.2.8

17.2.9

17.3.

17.4.

17.5.

17.6.

18. Duration and termination

18.1. By mutual agreement on an agreed date.

18.2. []

18.3. [] [/].

18.4.

,

:

18.4.1

] 30

[

;

18.4.2

;

18.4.3

,

,

;

18.4.4

[]

;

18.4.5

, , , ,

19. Change of Control

19.1.

19.2.

19.3.

19.4. Wheely agrees that this provision is fair.

20. Assignment

20.1.

OR

20.2.

OR

20.3.

:

20.3.1 [

]

20.3.2

; /

20.3.3

; /

20.3.4

21. Indemnities

21.1.

21.2.

21.2.1

21.2.2

21.2.3

21.3.

22. Damages not adequate

23. Uncontrollable events

23.1.

[]

AND/OR

23.2.

, []

OR

23.3.

[]

[28]

23.4.

23.5.

[...]

];

23.6.

;

23.7.

[30]

, [

]

23.8.

24. Miscellaneous matters

24.1.

24.2.

24.3.

24.4.

24.5.

24.6.

24.7.

24.8.

24.9.

24.10.

It shall be deemed to have been delivered:

;

72

;

:

-

-

:

24

-

. [

-

.

,

].

24.11.

,

24.12.

,

24.13.

24.14.

24.15.

,

Signed by / on behalf of the named Parties by their representatives who personally accept liability for the proper authorisation by their respective employer or principal to enter into this agreement

,

[

]

print name

,
print name

[]

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

Explanatory notes:

Manufacturing agreement: customer version

Drafting notes, referring to paragraph numbers

1. Definitions

You should first decide on the contents of the document, then return to check what definitions are needed and whether they really

Please read the general notes sent along with

Here we have provided a very full menu of items to cover in “Confidential Information”. Depending on your business,

There is no copyright in know-how.

We have not included a specific, extensive licence by the customer (you?) to the manufacturer, but as a matter of law, you will license your IP

If you do change any defined word, **make sure it applies to every use**

2. Interpretation

Leave these items in place unless there is a good reason to edit or remove. Each of these items has been carefully considered in the context of this agreement and has been included for a purpose.

3. Entire agreement

This paragraph prevents a party from later saying he was relying on some other document or web site or what was said. If other documents are to be relied on, let them be listed

4. Wheely’s warranties

This paragraph covers a number of points which may be very important to the customer. If you can delete any of

5. **Scope of work**

This paragraph is concerned with the basics of what each side is expected to do and not do. It is intended to be a summary,

6. **Product testing**

Treat this paragraph as a menu. There are options on who is responsible for what and who pays for

7. **Production specification and materials coverage**

Replace our words by those better suited to your industry and the arrangements

8. **Production price**

A framework of practical business provisions. Whatever cost that will incur during the production of the products. Please

9. **Packaging and delivery**

Delivery of the product will be made once the product design is finalised and has gone through the quality assurance procedure. When it is ready for dispatch,

10. **Transportation**

We have left the mode of transport open. We strongly advise that you use an Incoterm because the courts of almost every country recognise them. You can refer to the

Rules for Any Mode(s) of Transport

The eleven rules defined by Incoterms 2010 for any mode(s)

:

EXW – Ex Works (named place)

The seller makes the goods available at its premises. This term places the maximum obligation on the buyer and minimum obligations on the seller. The Ex Works term is often used when making an initial quotation for the sale of goods without any costs included. EXW means that a seller has the goods ready for collection at his premises (works, factory, warehouse, plant) on the date agreed upon. The buyer pays all transportation costs and also bears the

risks for bringing the goods to their final destination. The seller doesn't load the goods on collecting vehicles and doesn't clear them for export. If the seller does load the good, he does so at buyer's risk and cost. If either

FCA – Free Carrier (named place)

The seller hands over the goods, cleared for export, into the disposal of the first carrier (named by the buyer) at the named

CPT - Carriage Paid To ()

The seller pays for carriage. Risk transfers to

CIP – Carriage and Insurance Paid ()

The containerized transport/multimodal equivalent of CIF. Seller pays for carriage and insurance to the

DAT – Delivered at Terminal (named)

Seller pays for carriage to the terminal, except for costs related to import clearance,

DAP – Delivered at Place ()

Seller pays for carriage to the named place, except for costs related to import clearance,

DDP – Delivered Duty Paid ()

Seller is responsible for delivering the goods to the named place in the country of the buyer, and pays all costs in bringing the

Rules for Sea and Inland Waterway Transport

The four rules defined by Incoterms 2010 for international

:

FAS – Free Alongside Ship ()

The seller must place the goods alongside the ship at the named port. The seller must clear the goods for export. Suitable only for maritime transport

(
2010 , 715)

FOB – Free on Board ()

The seller must load themselves the goods on board the vessel nominated by the buyer. Cost and risk are divided when the goods are actually on board of the vessel (this rule is new!). The seller must clear the goods for export. The term is applicable for maritime and inland waterway transport only but NOT for multimodal sea transport in containers (see Incoterms 2010, 715).

1980

CFR – Cost and Freight ()

Seller must pay the costs and freight to bring the goods to the port of destination. However, risk is transferred to the buyer once the goods are loaded on (!).

(&).

CIF – Cost, Insurance and ()

Exactly the same as CFR except that the seller must in

11. Taxes

This paragraph is relevant only to export orders. A basis of taxation can change at the whim of a government. Because you can never know exactly

what tax may be charged nor how it will be collected,

12. Visitors

We have made this provision for the practical convenience of the customer.

13. On site audits

See last note. The same applies.

14. Wheely's manufacturing warranty

A framework of practical business provisions. The last sub-paragraph refers to product liability. It is very difficult to plan in advance for a

15. Use of sub-contractors

A framework of practical business provisions. Edit as you require. This paragraph gives the

16. Defective Product returned

We have provided a sound arrangement but this is a commercial provision,

17. Confidential Information

We have given you a very full

18. Duration and termination

It really does not matter how you want to end

Leave the insolvency provisions. As soon as there is any involvement of a court

19. Change of Control

This draconian provision helps you to avoid the transfer of

20. Assignment

Give careful thought to this. Consider the circumstances on both sides which may

21. Indemnities

These mutual indemnities are reasonable. However,

22. Damages not adequate

In a contract dispute, the Court will usually look for a

23. Uncontrollable events

Often referred to as “force majeure”. We advise that you

24. Miscellaneous matters

A number of special points. We have identified each of these as important to

These are just as valid in

Schedule 1 Detailed specification and phases

The schedules may be “typed in” or be contained in some document attached.

Schedule 2 Services: end user service specification

We have no comment.

Schedule 3 Standards

These could be international engineering standards, or specification of cloth to be used, ().

Schedule 4 Example purchase order

This schedule is worth including in

Schedule 5 List of setup tools and equipment

This should

Schedule 6 Packaging and labelling

Specify fully.

Schedule 7 Press release

We have no comment.

Ends of Notes