

IN-COMmfg06

Manufacturing agreement: customer version

[Name of party 1]

And

[Name of party 2]

Dated: [Date]

Content

1. Definitions
 2. Interpretation
 3. Entire agreement
 4. Wheely's warranties
 5. Scope of work
 6. Product testing
 7. Product specification and materials coverage
 8. Production price
 9. Packaging and delivery
 10. Transportation
 11. Taxes
 12. Visitors
 13. On site audits
 14. Wheely's manufacturing warranty
 15. Use of sub-contractors
 16. Defective product returned
 17. Confidential Information
 18. Duration and termination
 19. Change of control
 20. Assignment
 21. Indemnities
 22. Damages not adequate
 23. Uncontrollable events
 24. 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] and made between:

Champion Bikes Ltd, a company incorporated in the Republic of India [under company identification number [number] and] whose registered office is at [full address] (“Champion”);

and

Wheely Makers Ltd, a company incorporated in the Republic of India [under company identification number [number] and] whose registered office is at [full address] (“Wheely”).

Background:

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

It is now agreed as follows:

1. Definitions

In this agreement, the following words shall have the following meanings, unless the context requires otherwise:

- | | |
|----------------------------|--|
| “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; or the affairs or actions of which may be Controlled by a party to this agreement. |
| “Confidential Information” | means all information about a Party, including any information which may give a commercially competitive advantage to any other person. It includes among other things:

information about employees, their performance and their personal contact information,

data or information relating to suppliers, product plans, marketing strategies, finance, performance, operations, customer relationships, |

customer profiles, sales estimates, business plans;

information about the Intellectual Property, the Know-how and all aspects of the technology of a party;

information created or arising from this agreement;

information owned by a third party and in respect of which a party has an obligation of non-disclosure.

information, comment or implication published on any Internet social medium.

data or information relating to pre-clinical and clinical trial results, processes, formulae, procedures, designs, drawings, apparatus, specifications, and all other scientific, clinical and regulatory data;

It does not include information that it is reasonably necessary to disclose to a customer or other person in the usual course of business so far as that information is disclosed in those circumstances.

“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, the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of that corporate body.

“Incoterm”

means a pre-defined commercial term published by the International Chamber of Commerce to describe a specific set of procedures and obligations.

“Intellectual Property”

means intellectual property of every sort, whether or not registered or registrable in any country,

	including intellectual property of kinds coming into existence after today.
“Know-how”	means scientific or technical information, and other procedures and ways of working and organising which are not capable of protection as copyright.
“Party”	means one of the parties to this agreement, as set out above.
“Product”	means the Super Fizz Wheel or any other product which supersedes it or is derived from it.
“Project”	means the work to be done under the terms of this agreement.
“Services”	means end user service specification as described in Schedule 2.
“Specification”	means the detailed specification set out in Schedule 1.
“Standards”	means the standards, protocols and regulatory requirements as set out in Schedule 3.

2. Interpretation

This agreement shall be interpreted as set out below.

- 2.1. A reference to a person includes a human individual, a corporate entity and any organisation which is managed or controlled as a unit.
- 2.2. In connection with any benefit given by this agreement, a reference to a Party includes reference to its parent company, Affiliates and subsidiaries.
- 2.3. A reference to a person includes reference to that person’s successors, legal representatives, permitted assigns and any person to whom rights and obligations are transferred or pass as a result of a merger, division, reconstruction or other re-organisation involving that person.
- 2.4. A reference to a paragraph or schedule is to a paragraph or schedule to this agreement unless the context otherwise requires. The schedules form part of this agreement.

- 2.5. The headings to the paragraphs and schedules to this agreement are inserted for convenience only and do not affect the interpretation.
- 2.6. Any agreement by Party not to do or omit to do something includes an obligation not to allow some other person to do or omit to do that same thing.
- 2.7. A reference to the knowledge, information, belief or awareness of any person shall be deemed to include the knowledge, information, belief or awareness that person would have if he had made reasonable inquiries.
- 2.8. The words “without limitation” shall be deemed to follow any use of the words “include” or “including” herein.
- 2.9. All money sums mentioned in this agreement are calculated net of GST, which will be charged when payment is due.
- 2.10. This agreement and its schedules / attachments are to be taken together so as to give effect to all of them as far as possible with each document helping to interpret the others. But if there is any conflict or inconsistency between the terms of this agreement and the terms of any other document, the terms of this agreement shall prevail.
- 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 agreement and any version or translation of this agreement in any other language, the English language version shall prevail. If a version of this agreement has been supplied in some language other than English, that is a courtesy only and that translated version is of no legal effect.

3. Entire agreement

- 3.1. This agreement contains the entire agreement between the Parties and supersedes all previous agreements and understandings between the Parties.
- 3.2. Conditions, warranties or other terms implied by statute or common law in any country, are excluded from this agreement to the fullest extent permitted by law.
- 3.3. Each Party acknowledges that, in entering into this agreement, he does not rely on any representation, warranty, information or document or other term not forming part of this agreement.

- 3.4. As an exception to the last previous sub paragraph, the Parties do rely on information provided in writing as follows:

[Enter list of other docs and dates containing information relied on]

4. Wheely's warranties

Wheely warrants that:

- 4.1. it is a registered [what, if any?] and is certified to ISO [9001] and [EN 12345] and agrees that loss of certification for a period of [28] days shall be a fundamental breach of this agreement, entitling Champion to terminate it and seek damages.
- 4.2. it is not aware of anything within its reasonable control which might or will adversely affect its ability to fulfil its obligations under this agreement.
- 4.3. it has the necessary experience, all necessary licenses and permits, equipment, facilities and personnel to properly perform its obligations as set out in this agreement.
- 4.4. it is not a party to any other agreement that would in any way conflict with, or restrict, its ability to perform this agreement.
- 4.5. it has taken out a policy of insurance against product liability in a minimum sum of Rs [ten million].

5. Scope of work

- 5.1. This agreement regulates all of the relationship between the Parties and the orders which may be placed by Champion for work to be done by Wheely.
- 5.2. Wheely will use every effort to meet the milestones and complete each order to the Specification and time requirement.

6. Product testing

- 6.1. Wheely shall test the Product in production, to the Standards.
- 6.2. So far as any Standard requires third party verification and/or certification, Wheely shall alone be responsible for obtaining it.

- 6.3. Champion shall be responsible for obtaining whatever regulatory and other governmental approvals and/or registrations it requires and shall be responsible for compliance with all laws regulating the sale of the Product.
- 6.4. Wheely shall assist Champion in every way reasonably possible, in obtaining such approvals and complying with those regulations.
- 6.5. If at any stage of design or production, a Product fails to achieve a Standard set by Champion, then Champion shall immediately give notice to Wheely of that failing.
- 6.6. After receiving such a notice, Wheely will within [30] days correct the product and re-submit for [testing / approval by Champion].
- 6.7. All cost relating in any way to obtaining Standard verification and certification shall be payable in the first place by Wheely. Champion shall re-imburse Wheely for all such costs from time to time.
- 6.8. Test data and results shall be sent by Wheely to Champion as soon as received.
- 6.9. Test data, reports and correspondence with a certification authority shall be owned by Champion and are Confidential Information.

7. Production specification and materials coverage

- 7.1. The materials specification as finally recorded on the Detailed Specification shall not be changed without the express written consent of Champion.
- 7.2. [scrap / trimmings / offcuts / surplus] materials of every sort shall belong to [Champion / Wheely].
- 7.3. [Wheely shall from time to time obtain arms length, market prices for [scrap / trimmings / offcuts / surplus] and shall put to Champion for approval. Upon approval by Champion, Wheely shall sell [it / them] for market prices, as agents of Champion and for the account of Champion].

8. Production price

- 8.1. The price payable by Champion for each completed unit of the Product shall be:

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

- 8.2. The price shall be increased on the first day of January in each year by the proportionate increase in the index of [state index name].
- 8.3. If Champion requires delivery to some place other than [address], then Champion shall pay any cost additional to the cost it would have paid for delivery to [address]

9. Packaging and delivery

- 9.1. Each Product shall be marked and packed in accordance with the Specification.
- 9.2. Immediately after testing each Product will be labelled on the [reverse side / underside, by tag sewn inside back collar] with the product information labels supplied by Champion.
- 9.3. Deliveries will be made by the Carrier to [the address stipulated in Champion's order / specify exact address]. Champion must ensure that someone is present to accept delivery.
- 9.4. If Wheely is not able to deliver the Product within [30] days of the date of Champion's order, Wheely shall notify Champion by e-mail to arrange another date for delivery.
- 9.5. [Goods are sent by post. Wheely will send Champion a message by email to tell Champion when Wheely has despatched Champion's order].
- 9.6. If Wheely agrees with Champion to deliver on a particular day or at a particular time, Wheely will do its best to comply. But no time given is to be treated as contractual. So Wheely is not liable to Champion for any expense or inconvenience Champion incur on account of delayed delivery or non-delivery.
- 9.7. Time for delivery specified on the order, if any, is an estimate only. Wheely cannot be responsible for any delay outside its control.

10. Transportation

[There are many ways and alternative deals possible. Select carefully and delete those that do not apply. If you use an Incoterm, make sure you delete all the alternative Incoterms]

The Products will be supplied / carried / delivered as follows:

- 10.1. EXW – Ex Works at (named place of delivery).
- 10.2. FCA – Free Carrier (name place of delivery).
- 10.3. CPT - Carriage Paid To (name place of destination).
- 10.4. CIP – Carriage and Insurance Paid to (name place of destination).
- 10.5. DAT – Delivered at Terminal (name terminal at port or place of destination).
- 10.6. DAP – Delivered at Place (name place of destination).
- 10.7. DDP – Delivered Duty Paid (name place of destination).
- 10.8. FAS – Free Alongside Ship (name port of shipment).
- 10.9. FOB – Free on Board (name port of shipment).
- 10.10. CFR – Cost and Freight (name port of destination).
- 10.11. CIF – Cost, Insurance and Freight (named port of destination).
- 10.12. All rights, obligations, conditions and matters relating to the above Incoterm shall apply to this contract. So far as any cost is not allocated by the relevant Incoterm, it shall be payable by Champion.
- 10.13. Champion shall pay any handling and shipping or other incidental costs and expenses which Wheely has incurred or will incur in relation to the Products.

11. Taxes

- 11.1. This paragraph relates to all sales, transfer and other taxes or customs import duty (“Tax”) imposed on Wheely and relating directly to the services provided, or the Products manufactured, under this agreement, or money passing as a result of this agreement. Tax does not include any tax based on capital value or income or profit.

- 11.2. Insofar as any Tax is recoverable or can be offset, the Parties shall collaborate in making appropriate lawful arrangements for recovering Tax as the applicable law provides.
- 11.3. Tax shall be stated separately on Wheely's invoices, collected from Champion and shall be remitted by Wheely to the appropriate tax authority, unless Champion provides valid proof of tax exemption.
- 11.4. Wheely will indemnify Champion against Wheely's failure to comply with relevant Tax law which failure results in an additional payment or penalty or interest.
- 11.5. In any case where Champion is prohibited by law from making a payment to Wheely without first withholding tax from that payment, and sending it to the local taxing jurisdiction, then Champion shall withhold that tax and shall pay to Wheely the remaining net amount after the tax has been withheld. Champion shall not be liable to Wheely for the amount of tax withheld.

12. Visitors

- 12.1. Wheely agrees to host visits by customers of Champion or other people whom Champion may reasonably decide to invite, to the premises where manufacturing is taking place. Visits may be during working hours. A representative of Champion shall accompany visitors.
- 12.2. There shall be no more than **[one]** visit per month. No more than **[five]** people shall visit at any one time, including a representative of Champion.
- 12.3. Champion undertakes to inform every visitor of relevant health and safety regulations, and to procure that every visitor wears appropriate clothing and behaves safely.
- 12.4. Champion must make sure that a visit does not interfere with Wheely's manufacturing operations.

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 manufacturing premises to observe and measure any process to audit Wheely's compliance with any requirement of this agreement. Wheely agrees that any audit report arising out of such a visit may be disclosed

to any person with an interest in the manufacturing of the Products, and to no other person.

- 13.2. The auditor shall be instructed not to disclose to Champion or to any other person any Confidential Information of Wheely which is not relevant to this agreement.

14. Wheely's manufacturing warranty

- 14.1. Wheely warrants that for a period of [24] months from date of acceptance by Champion, that all Products shall be free from any defects in Wheely design, materials, workmanship and shall conform to specification and relevant Standards.
- 14.2. Wheely will use its best efforts to repair defective products as quickly as possible and return to [Champion / ultimate customer] within [number] weeks of receipt at the Wheely facility.
- 14.3. Non-warranty service pricing shall be negotiated in good faith after those services have been identified and the associated parts and labour costs are known.
- 14.4. If either Party shall become aware of any product liability claim in respect of a Product, it shall immediately notify the other of them.

15. Use of sub-contractors

Wheely shall not sub-contract any part of its obligations under this contract to a third party.

OR

Wheely may perform any or all of its obligations under this agreement through agents or sub-contractors provided:

- 15.1. Wheely first obtains the written consent of Champion to the name and identity of any sub-contractor. Champion is under no obligation to give consent nor to give any reason for refusal.

OR

- 15.2. Wheely must first obtain the written consent of Champion to the name of the sub-contractor and to the terms of the contract agreement;
- 15.3. Wheely remains liable for the performance of this contract;

- 15.4. Wheely indemnifies Champion fully against any loss or damage suffered by Champion arising from any act or omission of any agent or sub-contractor.
- 15.5. So far as work under this contract is sub-contracted to others, it shall be supervised personally by [name].

16. Defective Product returned

These provisions apply in the event that Champion returns any Product to Wheely for any reason:

- 16.1. Wheely will repair or replace Products showing a defect in the following circumstances:
 - 16.1.1 the defect is reported to Wheely within [12] months of purchase by Champion;
 - 16.1.2 the Product is returned to Wheely as soon as any defect is discovered.
 - 16.1.3 the defect results only from faulty manufacture;
- 16.2. So far as possible, the Product should be returned:
 - 16.2.1 with both Product and all packaging as far as possible in their original condition;
 - 16.2.2 securely wrapped;
 - 16.2.3 at risk and cost to [Champion / Wheely].
- 16.3. If Wheely agrees that it is liable, it will refund the cost of return carriage and will repair or replace the Product free of charge.

17. Confidential Information

- 17.1. The Parties are aware that, as a result of this agreement, they will each have access to and be entrusted with Confidential Information of the other. All Confidential Information and other data, whether marked as confidential or not, shall be held in strict confidence by the other of them and used only for the purposes for which it was supplied. Accordingly, each now undertakes to the other that while ever this agreement subsists and for period of [five] years after its termination, it will:

- 17.1.1 except as provided in this agreement, not divulge to any person whatever, any Confidential Information;
 - 17.1.2 not use the Confidential Information in any way for itself or any other person, except in a way that is authorised by this agreement or by the proper authority of the discloser;
 - 17.1.3 not store, copy, or use the Confidential Information in any place or in any electronic form which may be accessible to any other person [except]
 - 17.1.4 keep all records only at the address as specified above (and in particular not take records in electronic form to any other place);
 - 17.1.5 use its best endeavours to keep confidential (and to make sure that their employees and agents shall keep confidential) any Confidential Information which it may acquire.
- 17.2. This paragraph does not apply to disclosure:
- 17.2.1 to any person to whom some part of it must be disclosed in order to enable this agreement to be fulfilled, provided each such person signs or has already signed, a form of agreement which embodies the terms of this paragraph.
 - 17.2.2 made with the consent in writing of a properly authorised person.
 - 17.2.3 of information or knowledge which was already in the public domain at the time of disclosure.
 - 17.2.4 by a third party who had no obligation to the other Party not to disclose such information.
 - 17.2.5 of information which can be shown to have been developed or created independently by the receiving Party.
 - 17.2.6 by order of the court or to assist in promoting a Party's case in litigation.
 - 17.2.7 of information which must be disclosed by the receiving Party to regulatory authorities in connection with filing patent applications; or registration, marketing, distribution, use, or sale of Product.
 - 17.2.8 so far as required under the rules of any stock exchange.

- 17.2.9 required by applicable laws or governmental regulations or judicial or regulatory process or in connection with any judicial process. In this case the disclosing Party must give as much notice as possible to the other Party and make every effort to protect confidentiality.
- 17.3. The financial terms of this agreement are the Confidential Information of both Parties and must not be disclosed.
- 17.4. The provisions of this paragraph apply to any act or omission of an employee of a Party acting outside of his employment as it would had he been acting within it.
- 17.5. Each Party now undertakes to the other to make all relevant employees agents and sub-contractors aware of the confidentiality of information and the provisions of this paragraph and to take all such steps as shall from time to time be necessary to ensure compliance by those people with these provisions.
- 17.6. Each Party now undertakes for itself and every employee or sub-contractor whose services it may use while ever the licences envisaged by this agreement subsist, that it will not divulge to any person whatever or otherwise make use of (and will use its best endeavours to prevent the publication or disclosure of) any trade secret or Confidential Information.

18. Duration and termination

This agreement continues to regulate any order given by Champion, until terminated. Termination does not affect any obligation by one party to the other which existed at the date of termination. This agreement may be terminated:

- 18.1. By mutual agreement on an agreed date.
- 18.2. On [number] months' notice by one Party to the other.
- 18.3. After [five] years from [date / today].
- 18.4. Without prejudice to any other right or remedy it may have, either of the Parties shall be entitled to terminate this agreement immediately by notice in writing to the other Party in any one or more of the following circumstances:
- 18.4.1 if the other Party shall commit any breach of any of its obligations under this agreement and shall fail to remedy such

breach [if capable of remedy] within 30 days after being given notice by the first Party so to do; or

- 18.4.2 convenes a meeting of its creditors or proposes or makes any arrangement or composition with them;
- 18.4.3 a petition is presented or a meeting is convened for the purpose of considering a resolution, or other steps are taken for the winding up of the other Party, except for the purpose of and followed by a voluntary reconstruction or amalgamation;
- 18.4.4 a mortgagee or charge takes possession of any part of the assets of [name party] in exercise of an administration order or power of sale;
- 18.4.5 a trustee, receiver, liquidator, administrator, administrative receiver or similar officer is appointed in respect of all or any part of its business or assets;

19. Change of Control

- 19.1. Any change of Control of Wheely whether in contract or by operation of law is a fundamental breach of this contract entitling Champion to terminate it.
- 19.2. If Champion terminates the contract, Wheely shall refund of all money paid for development work and damages which include the cost of management and other time in finding an alternative supplier.
- 19.3. The fact that after the change of Control, Wheely may continue to be willing to complete the contract shall not be a relevant consideration.
- 19.4. Wheely agrees that this provision is fair.

20. Assignment

- 20.1. Neither Party may assign, delegate, sub-contract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this agreement without the prior written consent of the other Party.

OR

- 20.2. A Party may assign and transfer all its rights and obligations under this agreement to any person to which it transfers all of its business,

provided that the assignee undertakes in writing to the other Party to be bound by the obligations of the assignor under this agreement.

OR

- 20.3. Neither of the Parties to this agreement shall be entitled to assign this agreement or any of its rights and obligations under this agreement except by a transfer:
- 20.3.1 [of that Party's shares in Champion which is permitted under the express terms of this agreement] or
 - 20.3.2 which is made in accordance with the articles of association; and / or
 - 20.3.3 which is approved in writing by the other Party; and / or
 - 20.3.4 on terms that the transferee shall undertake with the other Parties to perform the obligations of the transferor set out in this agreement.

21. Indemnities

- 21.1. Wheely agrees to indemnify Champion against any claim arising out of, or resulting from, Wheely's design, engineering, fabrication, manufacture, packaging or labelling of the Product, provided that the Product is used for its intended purpose and Champion has not interfered with that Product.
- 21.2. Wheely agrees to indemnify Champion against any loss, damage or liability suffered by Champion resulting from either a breach of this agreement by Wheely or from some other act or omission by Wheely, including:
- 21.2.1 any act, neglect or default by Wheely's agent or employee;
 - 21.2.2 Wheely's breach of the intellectual property rights of any person;
 - 21.2.3 Wheely's failure to comply with the law of any applicable jurisdiction;
- 21.3. This paragraph (and any other paragraph which excludes or restricts the liability of Champion or provides an indemnity to it) applies to the directors, officers, employees, subcontractors, agents and Affiliated companies of Champion as well as to the Party restricting liability.

22. Damages not adequate

Without prejudice to any other rights or remedies which a Party may have, the Parties now acknowledge and agree that damages would not be an adequate remedy for any breach of the terms of this agreement and that in the event of breach, the Party claiming shall be entitled, in addition to damages, to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach by the Party offending or any other relevant person.

23. Uncontrollable events

23.1. If either Party cannot perform this agreement for any reason beyond his reasonable control for a continuous period of [three] months then either Party may, at his discretion, terminate this agreement by notice in writing at the end of this period.

AND/OR

23.2. Neither Party shall be liable for any failure or delay in performance of this agreement which is caused by circumstances beyond his reasonable control, [including any labour dispute between a Party and his employees].

OR

23.3. If any uncontrollable event delays or prevents the performance of the obligations of either Party for a continuous period of more than [three months], the other Party may give notice to terminate this agreement. The notice must specify a date at least [28] days ahead, when the termination will take effect.

23.4. A termination notice is irrevocable unless both Parties agree to re-instate this agreement.

23.5. If the agreement is terminated, all money due from one Party to the other becomes due immediately [. . . .and other arrangements];

23.6. Costs arising from the delay or stoppage will be borne by the Party incurring those costs;

23.7. Regardless of the reason for stoppage or delay, if it continues for more than [30] days, [either Party] may terminate this agreement with immediate effect on giving written notice to the other.

- 23.8. The Party claiming the uncontrollable event will take all necessary steps to perform this agreement despite the uncontrollable event.

24. Miscellaneous matters

- 24.1. A Party to this agreement shall not be liable for his default if caused by the action of any judicial authority provided it uses its best endeavours lawfully to circumvent the prohibition and comply with this agreement.
- 24.2. No amendment or variation to this agreement is valid unless in writing, signed by each of the Parties or his authorised representative.
- 24.3. The Parties acknowledge and agree that this agreement has been jointly drawn by them and accordingly it should not be construed strictly against either Party.
- 24.4. So far as any time, date or period is mentioned in this agreement, time shall be of the essence.
- 24.5. If any term or provision of this agreement is at any time held by any jurisdiction to be void, invalid or unenforceable, then it shall be treated as changed or reduced, only to the extent minimally necessary to bring it within the laws of that jurisdiction and to prevent it from being void and it shall be binding in that changed or reduced form. Subject to that, each provision shall be interpreted as severable and shall not in any way affect any other of these terms.
- 24.6. The rights and obligations of the Parties set out in this agreement shall pass to any permitted successor in title.
- 24.7. Any obligation in this agreement intended to continue to have effect after termination shall so continue.
- 24.8. No failure or delay by any Party to exercise any right, power or remedy will operate as a waiver of it nor indicate any intention to reduce that or any other right in the future.
- 24.9. The Parties agree that electronic communications satisfy any legal requirement that such communications be in writing.
- 24.10. Any communication to be served on either of the Parties by the other shall be delivered by hand or sent by first class post or recorded delivery or by fax or by e-mail.

It shall be deemed to have been delivered:

if delivered by hand: on the day of delivery;
if sent by post to the correct address: within 72 hours of posting;
if sent by fax to the correct number: within 24 hours;
if sent by e-mail to the address from which the receiving Party has last sent e-mail: within 24 hours if no notice of non-receipt has been received by the sender. *[Take care before agreeing to accept service by e-mail. It may be convenient, but you could miss or accidentally delete the message]*

- 24.11. In the event of a dispute between the Parties to this agreement, then they undertake to attempt to settle the dispute by engaging in good faith with the other in a process of mediation before commencing arbitration or litigation.
- 24.12. Unless otherwise stated, this agreement does not give any right to any third party.
- 24.13. In the event of any conflict between any term of this agreement and the provisions of the articles of a limited company or any comparable document intended to regulate any other corporate or collective body, then the terms of this agreement shall prevail.
- 24.14. Each Party shall bear its own legal costs and other costs and expenses arising in connection with the negotiation and drafting of this agreement.
- 24.15. The validity, construction and performance of this agreement shall be governed by the laws of the Republic of India and the Parties agree that any dispute arising from it shall be litigated only in the Republic of India.

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

For, and on behalf of [\[Champion Bikes Ltd\]](#)

[print name](#)

For, and on behalf of [\[Wheely Makers Ltd\]](#)

[print name](#)

Schedule 1 Detailed specification and phases

Schedule 2 Services: end user service specification

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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 fit the text you have left in place.

Please read the general notes sent along with the document.

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

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 in order to enable the manufacturer to work from it.

If you do change any defined word, **make sure it applies to every use of it in the document.**

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. Many of them strengthen the framework within which the agreement operates.

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 here, so that both Parties know the basis of the deal.

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 them, by all means do so.

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, around which the rest of the agreement is detailed.

6. Product testing

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

7. Production specification and materials coverage

Replace our words by those better suited to your industry and the arrangements you wish to make.

8. Production price

A framework of practical business provisions. Whatever cost that will incur during the production of the products. Please illustrate and edit as you require.

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, the product will be delivered at your given address.

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 website of the International Chamber of Commerce to see more information.

Rules for Any Mode(s) of Transport

The eleven rules defined by Incoterms 2010 for any mode(s) of transportation are:

EXW – Ex Works (named place of delivery)

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 party wishes

the seller to be responsible for the loading of the goods on departure and to bear the risk and all costs of such loading, this must be made clear by adding explicit wording to this effect in the contract of sale.

FCA – Free Carrier (named place of delivery)

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 seller pays for carriage to the named point of delivery, and risk passes when the goods are handed over to the first carrier.

CPT - Carriage Paid To (named place of destination)

The seller pays for carriage. Risk transfers to buyer upon handing goods over to the first carrier.

CIP – Carriage and Insurance Paid to (named place of destination)

The containerized transport/multimodal equivalent of CIF. Seller pays for carriage and insurance to the named destination point, but risk passes when the goods are handed over to the first carrier.

DAT – Delivered at Terminal (named terminal at port or place of destination)

Seller pays for carriage to the terminal, except for costs related to import clearance, and assumes all risks up to the point that the goods are unloaded at the terminal.

DAP – Delivered at Place (named place of destination)

Seller pays for carriage to the named place, except for costs related to import clearance, and assumes all risks prior to the point that the goods are ready for unloading by the buyer.

DDP – Delivered Duty Paid (named place of destination)

Seller is responsible for delivering the goods to the named place in the country of the buyer, and pays all costs in bringing the goods to the destination including import duties and taxes. This term places the maximum obligations on the seller and minimum obligations on the buyer.

Rules for Sea and Inland Waterway Transport

The four rules defined by Incoterms 2010 for international trade where transportation is entirely conducted by water are:

FAS – Free Alongside Ship (named port of shipment)

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 but NOT for multimodal sea transport in containers (see Incoterms 2010, ICC publication 715) this term is typically used for heavy-lift or bulk cargo.

FOB – Free on Board (named port of shipment)

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, ICC publication 715). The buyer must instruct the seller the details of the vessel and the port where the goods are to be loaded, and there is no reference to, or provision for, the use of a carrier or forwarder. This term has been greatly misused over the last three decades ever since Incoterms 1980 explained that FCA should be used for container shipments.

CFR – Cost and Freight (named port of destination)

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 the vessel (this rule is new!). Maritime transport only and Insurance for the goods is NOT included. This term is formerly known as CNF (C&F).

CIF – Cost, Insurance and Freight (named port of destination)

Exactly the same as CFR except that the seller must in addition procure and pay for the insurance. Maritime transport only.

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, you should use this paragraph to make certain, as far as possible, that you do not end up out of pocket. Here is a very full menu from which you can select what is applicable to you.

12. Visitors

We have made this provision for the practical convenience of the customer. However, you may delete entirely if the customer has not raised these points.

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 totally unknowable situation but if you think you need to expand on this provision, by all means do so. Edit the whole paragraph as you require.

15. Use of sub-contractors

A framework of practical business provisions. Edit as you require. This paragraph gives the customer control over the sub-contracting process to some extent. Delete if not required.

16. Defective Product returned

We have provided a sound arrangement but this is a commercial provision, so you may edit freely to reflect the agreement you intend to make.

17. Confidential Information

We have given you a very full provision suitable for manufacturing a technical product requiring a high level of secrecy. Carefully edit by deletion to what you really need.

18. Duration and termination

It really does not matter how you want to end the agreement. We strongly advise that you do provide an end date. It enables both sides to make plans. Those may include re-negotiating the deal for a new time period.

Leave the insolvency provisions. As soon as there is any involvement of a court or administrator, you need to be able to terminate instantly and, if you are an unpaid seller, collect your goods. If you are the pre-paying customer, you may wish to pick up your tools and production manuals, designs and so on.

19. Change of Control

This draconian provision helps you to avoid the transfer of your secrets to a third party, who may be your competitor or with whom you simply do not wish to trade or whose essential sub-contractors you do not trust.

20. Assignment

Give careful thought to this. Consider the circumstances on both sides which may require an assignment. You should not make rules and regret them later, but equally, you may not be happy to see the other side passing on either right or obligations under this contract. Check that sub contracting is not necessary.

21. Indemnities

These mutual indemnities are reasonable. However, they are very powerful. Each side should consider carefully the words used and be happy that they cover the possibilities reasonably and thoroughly.

22. Damages not adequate

In a contract dispute, the Court will usually look for a simple financial solution in damages. Often however, one of the Parties may be far more concerned to prevent the other from using his designs, software or customer list. This provision makes that point clear.

23. Uncontrollable events

Often referred to as “force majeure”. We advise that you should look at this list carefully and delete those which you do not need. Remember that it works both ways. You may need to add new provisions as to what shall happen in different circumstances of delay.

24. Miscellaneous matters

A number of special points. We have identified each of these as important to protect you. Some are relevant to particular paragraphs in the document, some apply more generally. Some are included to strengthen your position, some to minimise disruption and expense. Do not delete unless you are quite positive of the legal effect of doing so.

These are just as valid in law as if we had written them at great length, as you see in so many poorly drawn legal documents.

Schedule 1 Detailed specification and phases

The schedules may be “typed in” or be contained in some document attached. If you attach a document which is not obviously part of the agreement, make sure it carries identification which associates it with the reference to it in the body of the agreement. It is a good idea also to initial each page in the right hand margin. The

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, or food quality standards, or absolutely any other. It is most important to get this right (and tested and inspected before shipping). If the customer has paid in advance there is no recourse if the specification returns goods which are unsalable.

Schedule 4 Example purchase order

This schedule is worth including in any manufacturing agreement. It costs nothing and might reveal points of misunderstanding about quantity, delivery, Incoterm, and so on.

Schedule 5 List of setup tools and equipment

This should include every cost which you expect your customer to pay.

Schedule 6 Packaging and labelling

Specify fully.

Schedule 7 Press release

We have no comment.

Ends of Notes