NZ-COMmfg02

Development and manufacturing agreement: manufacturer version

[ABC Ltd]

AND

[DEF Ltd]

Dated: [Date]

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This agreement is dated: [date]

It is made between:

[ABC Ltd], a company incorporated in New Zealand, Company Number/NZBN [number] and whose registered [redacted] [[redacted]] ([redacted] “[redacted]”);

and

[DEF Ltd], a company incorporated in New Zealand, Company Number/NZBN [number] and whose registered [redacted] [[redacted]] ([redacted] “[redacted]”)

Background:

A. The Client is a designer, manufacturer and merchant of high performance bikes. The Manufacturer is [redacted].

B. The Client and the Manufacturer have agreed that production of the Product shall be undertaken by the Manufacturer on [redacted].

It is now agreed as follows:

1. Definitions

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

Confidential Information”	means all information about a party, including any information which may give a commercially competitive advantage to [redacted]. [redacted]:
	information about employees, their performance and [redacted],
	data or information relating to suppliers, product plans, marketing strategies, finance, performance, operations, customer [redacted], [redacted], [redacted], [redacted];
	information about the Intellectual Property, the

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Know-how and all [redacted];

information created or arising from this agreement;

information owned by a third party and in respect of which a party [redacted].

information, comment or implication published on [redacted].

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

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

"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, [redacted].

"Incoterm" means latest version of pre-defined commercial rules of international trade published by [redacted] 2020 .

"Intellectual Property" means intellectual property of every sort, whether or not registered or registrable in any country, including [redacted].

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“Know-how”	means scientific or technical information, and other procedures and ways of working and organising [redacted].
“Licensed Material”	means Intellectual Property and machines, prototypes, models, finished goods, and all other tangible and intangible things which are now or may in future be, [redacted], [redacted].
“Product”	means [describe the product briefly] or any other [redacted].
“Services”	means end user service specification as [redacted] 2.
“Detailed Specification”	means the agreed specification of work to manufacture the Product [redacted] 1.
“Standards”	means the standards, protocols and regulatory requirements as [redacted] 3.

2. Interpretation

In this agreement unless the context [redacted]:

2.1. A reference to a person includes a human individual, a corporate entity and any organisation [redacted].

2.2. In connection with any benefit given by this agreement, a reference to a party includes [redacted], [redacted].

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 [redacted], [redacted], [redacted]-[redacted].

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2.4. A reference to a paragraph or schedule is to a paragraph or schedule to this agreement unless the context [redacted]. [redacted].

2.5. The headings to the paragraphs and schedules to this agreement are inserted for convenience [redacted].

2.6. Any agreement by a party not to do or omit to do something includes an obligation not to allow some [redacted].

2.7. A reference to the knowledge, information, belief or awareness of any person shall be deemed to include the knowledge, information, [redacted].

2.8. The words “without limitation” shall be deemed to follow any use of the words “ [redacted] ” [redacted] “ [redacted] ” [redacted].

2.9. All money sums mentioned in this agreement are calculated net of GST, which [redacted].

2.10. All dollar amounts referred to in this agreement [redacted].

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 [redacted], [redacted].

3. Entire agreement

3.1. This agreement contains the entire agreement between the parties and supersedes all [redacted].

3.2. Conditions, warranties or other terms implied by statute or common law in any country, are excluded [redacted].

3.3. Each party acknowledges that, in entering into this agreement, it does not rely on any representation, warranty, information [redacted].

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3.4. As an exception to the last previous sub paragraph, the parties do rely [redacted]:

[Enter list of other docs and dates [redacted]]

4. Client's warranties

The Client warrants that:

4.1. it is either the owner of the entire right, title and interest in and to the Licensed Material or it has been granted a licence to those rights and that any such [redacted];

4.2. use of the Licensed Material by the Manufacturer does not infringe [redacted];

4.3. it has power to enter into this agreement [and has obtained [redacted]].

4.4. it is not insolvent and knows of no circumstance which would entitle any creditor to appoint a receiver or to petition for winding [redacted].

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

5. Manufacturer's warranties

The Manufacturer warrants that:

5.1. it is registered with [professional organisation, if any] and is certified to [ISO 9001] and agrees that loss of certification for a period of [28] days [redacted], [redacted].

5.2. it is not aware of anything within its reasonable control which might or will adversely affect [redacted].

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5.3. it has the necessary experience, all necessary licenses and permits, equipment, facilities and personnel to [redacted].

5.4. it is not a party to any other agreement that would in any way conflict with, [redacted], [redacted].

5.5. it has taken out a policy of insurance against product liability in a [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

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work to [redacted].

7.3. The representative of a party at a design review meeting shall be a person with [redacted]. [redacted], [redacted] [redacted].

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

7.5. So far as the Client suggests changes [redacted], [redacted].

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

7.7. The materials specification as finally recorded [redacted].

8. Setup costs

8.1. The costs of tools and equipment required [redacted] 5 .

8.2. The Client has approved the list and [redacted] - [redacted].

8.3. The Client shall buy, [redacted].

8.4. The Manufacturer shall maintain all [redacted] / [redacted].

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9. Product design testing

9.1. The Manufacturer shall test the [redacted], [redacted].

9.2. So far as any Standard requires third [redacted] / [redacted], [redacted].

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].

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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].

11. Payment for Product development

The Client shall pay the Manufacturer as follows:

11.1. at acceptance by Client [redacted] $ [00 , 000]

11.2. at acceptance by Client [redacted] $ [00 , 000]

11.3. after receiving certificate of compliance with [certification, [redacted]]. $ [00 , 000]

A payment by the Client does not imply [redacted].

12. Design price and payment

12.1. Wherever a payment obligation is specified in [redacted], [redacted] [[redacted]] [redacted].

12.2. For development and testing, the Client shall pay the Manufacturer [redacted] 1 , [redacted].

12.3. For all work before commencement of commercial production, the [redacted] [1 . 5] [redacted] [1 . 9] [redacted].

12.4. In calculating the cost of materials:

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12.4.1 cost shall include all [redacted];

12.4.2 cost shall be [redacted];

12.4.3 materials shall include bought-in raw materials plus whatever spare [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]] [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].

13.2. The price payable by [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])].

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

14. Payment and interest

14.1. Payment shall be made by any of: [[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 [redacted], [redacted], [redacted] [5] [redacted], [redacted].

15. Packaging and delivery

15.1. Each Product shall be marked [redacted] 6 .

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

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

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

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 [redacted]. [redacted], [redacted]. [redacted]

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[redacted], [redacted].

15.6. Signing “Unchecked”, “ [redacted] ” [redacted].

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

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

15.9. Time for delivery specified on the order, [redacted], [redacted]. [redacted].

16. Transportation

[There are many ways and alternative deals possible. [redacted]. [redacted], [redacted] *].*

16.1. The following Incoterms [redacted]:

16.1.1 EXW [named [redacted], [redacted]] [redacted] ® 2020 .

16.1.2 FCA [named [redacted], [redacted]] [redacted] ® 2020 .

16.1.3 CPT [named [redacted], [redacted]] [redacted] ® 2020 .

16.1.4 CIP [named [redacted], [redacted]] [redacted] ® 2020 .

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16.1.5 DPU [named [redacted], [redacted]] [redacted]® 2020
.

16.1.6 DAP [named [redacted], [redacted]] [redacted]® 2020
.

16.1.7 DDP [named [redacted], [redacted]] [redacted]® 2020
.

16.1.8 FAS [named [redacted], [redacted]] [redacted]® 2020
.

16.1.9 FOB [named [redacted], [redacted]] [redacted]® 2020
.

16.1.10 CFR [named [redacted], [redacted]] [redacted]® 2020
.

16.1.11 CIF [named [redacted], [redacted]] [redacted]® 2020
.

16.2. All rights, obligations, [redacted].

16.3. Unless otherwise agreed in this agreement so far [redacted], [redacted].

17. Taxes

17.1. This paragraph relates to all sales, transfer and other taxes or import duty ("Tax") imposed on the [redacted], [redacted], [redacted], [redacted]. [redacted].

17.2. Insofar as any Tax is recoverable or can [redacted], [redacted].

17.3. Tax shall be stated separately on the Manufacturer's invoices, collected [redacted], [redacted].

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17.4. The Manufacturer will indemnify the Client against the [redacted].

17.5. Wherever any sum is chargeable by the Manufacturer to the Client for services based on [redacted], [redacted], [redacted], [redacted].

17.6. In any case where the Client is prohibited by law from making a payment to the Manufacturer without first withholding tax from that [redacted], [redacted], [redacted]. [redacted].

18. Visitors

18.1. The Manufacturer agrees to host visits by customers of the Client or other people whom [redacted], [redacted]. [redacted]. [redacted].

18.2. [one] visit per month. No [redacted] [[redacted]] [redacted], [redacted].

18.3. The Client undertakes to inform every visitor of [redacted], [redacted].

18.4. The Client must make [redacted].

19. On site audits

19.1. On notice of at least [seven] days, the Client's representative, its partners, financial supporters and its customers' representatives may attend at [redacted]

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[redacted].

19.2. The auditor shall be instructed not to disclose to [redacted] [redacted] [redacted].

20. Risk and retention of title

20.1. Ownership of the Products shall not pass to the Client until full [redacted].

OR

20.2. In spite of delivery having [redacted]:

20.2.1 the Client [redacted];

20.2.2 no other sums [redacted].

20.3. Until property in the Products passes to [redacted].

20.4. The Client must store the Products (at no cost to [redacted].

20.5. Despite any of the Products remaining the property of the Manufacturer, [redacted].

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20.6. Any sale or dealing shall be a sale or use [redacted] , [redacted] .

20.7. Until property in the Products passes from the Manufacturer the entire proceeds of sale of the [redacted] .

20.8. The Manufacturer shall be entitled to recover [redacted] .

20.9. If the Manufacturer asks [redacted] .

20.10. If, when asked, the Client [redacted] , [redacted] .

20.11. The Client must not pledge or in any way charge by way of security any [redacted] . [redacted] , [redacted] , [redacted] .

20.12. The Client must keep the Products insured [redacted] ‘ [redacted] .

20.13. If, when the Manufacturer asks, the Client fails to deliver to [redacted] , [redacted] .

20.14. While ever the Manufacturer has title to [redacted] , [redacted] , [redacted] :

20.14.1 title to [redacted] .

20.14.2 the Client shall hold those Products as [redacted] .

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20.14.3 all the Manufacturer's rights in relation to [redacted] ([redacted]) [redacted].

21. Defective Product returned

These provisions apply in the [redacted].

21.1. The Manufacturer will repair [redacted]:

21.1.1 the defect is reported to [redacted] [12] [redacted].

21.1.2 the Product is returned [redacted].

21.1.3 the defect results only from faulty manufacture;

21.2. So far [redacted], [redacted]:

21.2.1 with both Products and [redacted];

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, [redacted].

21.4. If the Manufacturer repairs or replaces a Product, neither the Client [redacted], [redacted].

22. Manufacturers manufacturing warranty

22.1. The Manufacturer warrants that for period of [24] months from date of [redacted], [redacted]

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[redacted], [redacted], [redacted].

22.2. The Manufacturer will use its best efforts to repair [redacted] [[redacted]] [redacted].

22.3. Non-warranty service pricing shall be negotiated [redacted].

22.4. If either party shall become aware of [redacted], [redacted].

23. Manufacturer's Service provision

23.1. The Services are listed in Schedule 2. Before submitting the first order to the Manufacturer for [redacted] [100] [redacted], [redacted], [redacted] 2 [redacted].

23.2. From the date of the first delivery of the Products to the Client, [redacted] [24] [redacted], [redacted].

23.3. The price payable by [redacted].

OR

23.4. The price payable by the [redacted] [[redacted] 2]

23.5. If the service provision level set out in Schedule 2 is changed so that the cost to the [redacted], [redacted] [1 . 5].

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24. Limitation of liability

24.1. The law differs from one [redacted].

24.2. The Manufacturer shall not [redacted]:

24.2.1 indirect or consequential loss; or

24.2.2 economic loss or other [redacted]; [redacted]

24.2.3 loss or damage suffered by [redacted].

The above provisions apply even if such [redacted].

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

24.4. This paragraph (and any other paragraph which excludes or restricts the liability of the Manufacturer applies [redacted], ([redacted] 2017 , [redacted].

24.5. The Manufacturer is not [redacted]:

24.5.1 the Product [redacted];

24.5.2 the Product that has been [redacted];

24.5.3 the model or serial number [redacted].

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25. Use of sub-contractors

[redacted] - [redacted].

OR

[redacted] - [redacted]:

25.1. [redacted] - [redacted]. [redacted].

OR

25.2. [redacted] - [redacted] - [redacted];

25.3. [redacted];

25.4. [redacted] - [redacted].

25.5. [redacted] - [redacted], [redacted] [[redacted]].

26. Confidential Information

26.1. [redacted], [redacted], [redacted]. [redacted], [redacted], [redacted]. [redacted], [redacted]

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[redacted] [redacted]:

26.1.1 [redacted];

26.1.2 [redacted];

26.1.3 [redacted] [redacted]. . . ..].

26.1.4 [redacted];

26.1.5 [redacted] ([redacted]);

26.1.6 [redacted] ([redacted]) [redacted].

26.2. This paragraph does not apply to disclosure:

26.2.1 [redacted].

26.2.2 [redacted].

26.2.3 [redacted].

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26.2.4 [redacted].

26.2.5 [redacted].

26.2.6 [redacted].

26.2.7 [redacted]; [redacted], [redacted], [redacted], [redacted], [redacted].

26.2.8 [redacted].

26.2.9 [redacted]. [redacted].

26.3. [redacted].

26.4. [redacted].

26.5. [redacted], [redacted]-[redacted].

26.6. [redacted]-[redacted], [redacted] ([redacted]

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[redacted]).[redacted].

27. Existing Intellectual Property

27.1. [redacted].

27.2. [redacted], [redacted], [redacted], [redacted] ([redacted]").

27.3. [redacted].

27.4. [redacted].

27.5. [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted]-[redacted], [redacted]-[redacted], [redacted], [redacted], [redacted] ([redacted]-[redacted]) [redacted].

28. New IP

[redacted], [redacted]

28.1. [redacted], [redacted], [redacted], [redacted], [redacted], [redacted]:

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28.1.1 [redacted];

28.1.2 [redacted];

28.1.3 [redacted];

28.2. [redacted].

28.3. [redacted].

28.4. [redacted].

29. Protection of Intellectual Property

[redacted].

[redacted]:

29.1. [redacted];

29.2. [redacted];

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29.3. [redacted] - [redacted];

29.4. [redacted], [redacted].

29.5. [redacted];

29.6. [redacted] [[redacted]] [redacted], [redacted], [redacted], [redacted];

29.7. [redacted], [redacted];

29.8. [redacted].

29.9. [redacted].

29.10. [redacted], [redacted]:

29.10.1 [redacted], [redacted], [redacted], [redacted];

29.10.2 [redacted].

30. Third party infringement

30.1. [redacted]

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[redacted], [redacted].

30.2. [redacted], [redacted], [redacted], [redacted], [redacted], [redacted].

30.3. [redacted] [28] [redacted], [redacted].

30.4. [redacted] - [redacted]. [redacted] - [redacted], [redacted].

30.5. [redacted] - [redacted] [[redacted]] [redacted].

30.6. [redacted], [redacted].

30.7. [redacted]. [redacted], [redacted]. [redacted].

30.8. [redacted], [redacted]. [redacted], [redacted], [redacted].

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30.9. [redacted], [redacted].

30.10. [redacted], [redacted]. [redacted], [redacted].

30.11. [redacted], [redacted], [redacted]. [redacted], [redacted], [redacted], [redacted].

31. Duration and termination

31.1. This agreement may be terminated:

31.1.1 by mutual agreement on an agreed date.

31.1.2 [redacted] [[redacted]] [redacted].

31.1.3 [redacted] [[redacted]] [redacted] [[redacted]/[redacted]].

31.2. [redacted], [redacted]:

31.2.1 [redacted] 30 [redacted]; [redacted]

31.2.2 [redacted], [redacted], [redacted]

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[redacted] ([redacted]).

31.2.3 [redacted];

32. Change of Control

32.1. [redacted].

32.2. [redacted], [redacted].

32.3. [redacted], [redacted].

32.4. The Manufacturer agrees that this provision is fair.

33. Publicity / Announcements

33.1. [redacted].

OR

33.2. Neither party shall:

33.2.1 make any public announcement; or

33.2.2 disclose any information; or

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33.2.3 [redacted];

[redacted].[redacted],[redacted].

OR

33.3. [redacted]7,[redacted].

34. Assignment

34.1. [redacted],[redacted],[redacted]-[redacted],[redacted],[redacted],[redacted].

OR

34.2. [redacted]:

34.2.1 [[redacted][redacted]][redacted][redacted]

34.2.2 [redacted];[redacted]/[redacted]

34.2.3 [redacted];[redacted]/[redacted]

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34.2.4 [redacted].

35. Indemnities

35.1. [redacted], [redacted], [redacted]'s [redacted], [redacted], [redacted], [redacted], [redacted], [redacted] [redacted].

35.2. [redacted], [redacted]:

35.2.1 [redacted];

35.2.2 [redacted];

35.2.3 [redacted];

35.3. [redacted], [redacted], [redacted], [redacted], [redacted], [redacted].

35.4. [redacted], [redacted], [redacted], [redacted], [redacted]; [redacted].

35.5. [redacted], [redacted]

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[redacted].

36. Damages not adequate

[redacted], [redacted], [redacted], [redacted], [redacted], [redacted].

37. Uncontrollable events

37.1. [redacted] [[redacted]] [redacted], [redacted], [redacted].

AND/OR

37.2. [redacted], [[redacted]].

OR

37.3. [redacted] [[redacted]], [redacted]. [redacted] [28] [redacted], [redacted].

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37.4. [redacted] - [redacted].

37.5. [redacted], [redacted] [. . . . . [redacted]];

37.6. [redacted];

37.7. [redacted].

38. Miscellaneous matters

38.1. [redacted], [redacted].

38.2. [redacted].

38.3. [redacted], [redacted].

38.4. [redacted], [redacted], [redacted].

38.5. [redacted], [redacted], [redacted], [redacted]. [redacted], [redacted].

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38.6. [redacted].

38.7. [redacted].

38.8. [redacted], [redacted].

38.9. [redacted].

38.10. [redacted], [redacted], [redacted]. [redacted]: [redacted], [redacted] 72 [redacted], [redacted] 24 [redacted] - [redacted].

38.11. [redacted], [redacted].

38.12. [redacted], [redacted] 2017 [redacted], [redacted], [redacted], [redacted], [redacted]. [redacted].

38.13. [redacted], [redacted].

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38.14. [redacted].

38.15. [redacted], [redacted].

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 Ltd]

print name

For, and on behalf of [DEF Ltd]

print name

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Schedule 1: Detailed Specification and phases

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■ ■ ■ ■ 2 : ■ ■ ■ ■ : ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■

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Schedule 3: Standards

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Schedule 4: Example purchase order

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Schedule 5: List of setup tools and equipment

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Schedule 6: Packaging and labelling

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Schedule 7: Press release

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Explanatory notes:

Development and manufacturing agreement: manufacturer version

General notes

1. Like all lawyers, we draw documents to suit the party which normally buys that document and presents it to the other side either as a done-deal or with a view to allowing amendments. For example, ■ ■ ■

Paragraph specific notes

Notes numbering refers 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 ■ ■ ■

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

6. 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, ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■

A useful provision to promote fast payment. The rate and cumulating period are for negotiation, but you should remember that the period of cumulation [redacted].

By all means edit as you require.

15. Packaging and delivery

Delivery of the product will be made once the product design is finalised and has gone through the quality [redacted]. [redacted], [redacted].

16. Transportation

This and the following paragraph are relevant only to [redacted]. [redacted].

We have left the mode of transport open. We strongly advise that you use an Incoterm because delivery, risks and costs are considered critical points in a sale contract cross the border. Parties to a contract are often unaware that there are different trading practices in their respective countries, for example FOB for an American company [redacted]. [redacted], [redacted], [redacted]. [redacted]. [redacted] 2020 [redacted]:

https://iccwbo.org/resources-for-business/incoterms-rules/incoterms-2020/

Incoterms are not legally binding, unless they are incorporated into an agreement by express reference to the specific Incoterm. We have worded Incoterms in this paragraph prescribed by the International [redacted]. [redacted].

Below is a basic summary [redacted].

The seven rules defined by Incoterms 2020 for [redacted] ([redacted]) [redacted]:

EXW – Ex Works

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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 [redacted].

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 [redacted],

CPT - Carriage Paid To

The seller pays for the carriage and delivers the goods to the buyer by handing them [redacted].

CIP – Carriage and Insurance Paid to

The seller pays for carriage and insurance to the named destination point, [redacted].

DAP – Delivered at Place

The seller pays for carriage to the named place, except for costs related to import clearance, [redacted]

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[redacted] .

DPU – Delivered at Place Unloaded

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

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 [redacted] . [redacted] .

Rules for Sea and Inland Waterway Transport

The four rules defined by Incoterms 2020 for international [redacted] :

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. [redacted] . [redacted] - [redacted] .

FOB – Free on Board

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

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 . [redacted] , [redacted] . [redacted] .

CIF – Cost, Insurance and Freight

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

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[redacted].

17. 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, [redacted], [redacted], [redacted]. [redacted] [redacted].

18. Visitors

We have made this provision for the practical convenience of the customer. [redacted], [redacted].

19. On site audits

See last note. The same applies.

20. Risk and retention of title

This important paragraph reflects current law. The paragraph is designed to protect you in [redacted].

If you are paid up front, delete.

If you need this paragraph at all, [redacted].

21. Defective Product returned

We have provided a sound arrangement but this is a commercial provision, [redacted].

22. Manufacturers 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 [redacted], [redacted]. [redacted].

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23. Manufacturer's Service provision

We have provided for you to service the product which is the subject matter of this [redacted] . [redacted] .

Details of the service provision, if [redacted] , [redacted] . [redacted] . [redacted] .

24. Limitation of liability

This is powerful protection for the manufacturer. It is usual to have some limit [redacted] , [redacted] , [redacted] , [redacted] , [redacted] . [redacted] , [redacted] .

25. Use of sub-contractors

A framework of practical business provisions. [redacted] . [redacted] - [redacted] . [redacted] .

26. Confidential Information

We have given you a very full [redacted] . [redacted] .

27. Existing Intellectual Property

Depending on the value and extent of the [redacted] , [redacted] . [redacted] .

28. New IP

This is another area on which much litigation is based. This paragraph and the next are options. [redacted] , [redacted] . [redacted] , [redacted] . [redacted]

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[redacted].

29. Protection of Intellectual Property

Please see last paragraph. The same applies.

If you fail to protect your IP, someone will steal it. They may just steal it at the edges, or they may [redacted]. [redacted], [redacted]. [redacted], [redacted]. [redacted]. [redacted]. [redacted]. [redacted].

30. Third party infringement

Who sues? You need to be [redacted]. [redacted] 50 % [redacted].

31. Duration and termination

It really does not matter how you want to end [redacted]. [redacted]. [redacted]. [redacted] - [redacted].

Leave the insolvency provisions. As soon as there is any involvement of a court [redacted], [redacted], [redacted], [redacted]. [redacted] - [redacted], [redacted], [redacted].

32. Change of Control

This draconian [redacted]. [redacted].

33. Publicity / Announcements

We advise that publicity [redacted], [redacted] “[redacted]”.

34. Assignment

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

35. Indemnities

These mutual indemnities are reasonable. However, [redacted].

36. Damages not adequate

In a contract dispute, the Court will usually look for a [redacted].

37. Uncontrollable events

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

38. Miscellaneous matters

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

These are just as valid in [redacted].

Dispute resolution

There are many ways to settle a dispute. But an action in court is the least desirable because it takes a long [redacted]

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[redacted]

Schedule 1: Detailed specification and phases

The schedules may be “typed in” or be contained in some document [redacted]

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, [redacted]

Schedule 4: Example purchase order

This schedule is worth including in [redacted]

Schedule 5: List of setup tools and equipment

This should [redacted]

Schedule 6: Packaging and labelling

Specify fully.

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Schedule 7: Press release

We have no comment.

End of notes

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