Prototype development agreement

[ABC Ltd]

AND

[DEF Ltd]

Dated: [Date]

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Schedule 1 Detailed specification and phases

Schedule 2 Standards

Schedule 3 List of setup tools and equipment

Schedule 4 Press release

This	agreement is dated: [date]						
lt is ı	made between:						
regis		d in England and Wales [under company whose •••• [••••					
and							
regis		d in England and Wales [under company whose •••• [••••					
Back	kground:						
A.	The Client is a designer, manufacturer and merchant of high performance cycles. Wheely is •••••••••••••••••••••••••••••••••••						
B.	The Client has ideas and p	reliminary drawings of a wheel it ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■					
C.	The Parties have agreed that the Manufacturer will undertake the detailed design of the Super Fizz Wheel and the manufacture						
It is ı	now agreed as follows:						
1.	Definitions						
	In this agreement, the following words shall have the following meanings, \blacksquare						
	"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 \blacksquare
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
(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 latest version of pre-defined commercial rules of international trade published by \blacksquare
"Intellectual Property"	means intellectual property of every sort, whether or not registered or registrable in any country, including
	and including:
	patents, trade marks, unregistered marks, designs, copyrights, software, domain names, discoveries, know-how, creations and inventions, moral rights, together with all rights
	concepts, ideas, designs, inventions, improvements, discoveries, data, processes, methods, techniques, know-how, and information,
	••••
"Know-how"	means scientific or technical information, and other procedures and ways of working and organising
"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,
"Party"	means one of the parties to this agreement,
"Product"	means the [Super Fizz Wheel] or any other product which

. "Project" "Specification" means the detailed specification set out "Stage" means one of a series of stages in making Prototypes of the Product, "Standards" means the standards, protocols and regulatory 2. Interpretation This agreement shall be interpreted as $\blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare$. 2.1. A reference to a person includes a human individual, a corporate entity and any organisation 2.2. In connection with any benefit given by this agreement, a reference to a Party includes ----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 - - - - - - - - - - - - - -... 2.4. A reference to a paragraph or schedule is to a paragraph or schedule ----------------... 2.5. The headings to the paragraphs and schedules to this agreement are inserted for convenience 2.6. Any agreement by Party not to do or omit to do something includes an

2.

obligation not to allow some other

2.7.	A reference to the knowledge, information, belief or awareness of any person shall be deemed to include the knowledge, information,
2.8.	The words "without limitation" shall be deemed to follow any use of the words " \blacksquare
2.9.	All money sums mentioned in this agreement are calculated net of VAT, which
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
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
Enti	re agreement
3.1.	This agreement contains the entire agreement between the Parties and supersedes all
3.2.	Conditions, warranties or other terms implied by statute or common law in any country, are excluded • • • • • • • • • • • • • • • • • •
3.3.	
	Each Party acknowledges that, in entering into this agreement, he does not rely on any representation, warranty, information
3.4.	
3.4.	not rely on any representation, warranty, information

4. Client's warranties

5.

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
4.2.	use of the Licensed Material by the Manufacturer does not infringe ;
4.3.	it has power to enter • • • • • • • • • • [• • • • • • • •
4.4.	it is not insolvent and knows of no circumstance which would
4.5.	it has taken out a policy \blacksquare
Man	ufacturer's warranties
	ufacturer's warranties lanufacturer warrants that:
The M	lanufacturer warrants that: It is a registered [what, if any?] and is certified to [ISO 9001]
The M	It is a registered [what, if any?] and is certified to [ISO 9001] • • • • • • • • • • • • • • • • • • •

5.5.	it has taken out a policy $\blacksquare \blacksquare \blacksquare$
Sco	pe of work
The I	Manufacturer shall:
6.1.	complete the design of the Product.
6.2.	prepare a series
6.3.	for each Prototype Stage, submit
6.4.	complete the
Rep	resentative liaison and design reviews
7.1.	With effect from today each of the parties will nominate a representative who will be
7.2.	At completion of each Stage, the Manufacturer shall call a design review
7.3.	The representative of a Party at a design review meeting shall be a person with
7.4.	If the Client fails to attend a design review meeting after notice ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■

	7.5.	So far as the Client suggests changes • • • • • • • • • • • • • • • • • • •
	7.6.	After each change to any part of the design or \blacksquare
8.	Pro	duct design testing
	8.1.	The Manufacturer shall test
	8.2.	So far as any Standard requires third ,
	8.3.	All cost relating in any way to obtaining Standard verification and certification
	8.4.	Test data and results provided to Wheely
	8.5.	If at any stage of development, a Product fails • • • • • • • • • • • • • • • • • • •
	8.6.	After receiving such a notice, the Manufacturer will $\blacksquare \blacksquare \blacksquare \blacksquare [30] \blacksquare \blacksquare$
	8.7.	Test data, reports and correspondence

9.	Regu	latory	app	rova	S
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	9.1.	The Client shall be responsible for obtaining whatever regulatory and other
	9.2.	The Manufacturer shall assist the Client
10.	Setu	ıp costs
	10.1.	The costs of tools and
	10.2.	The Client has approved the list and , , , , , , , , , , , , ,
	10.3.	The Client shall buy,
	OR	
	10.4.	The Manufacturer = = = = = = = = = = = = = = = = = =
11.	Des	ign price and payment
	11.1.	Wherever a payment obligation is specified in •••••, ••••
	11.2.	For development and testing, the Client shall pay the Manufacturer = = = = = = = 1, = = = = = = = = = = =
	11.3.	The rate of payment shall be:
		11.3.1 For work to completion of Stage 1: [1 . 5]

	12.3.	prices f	anufacturer shall from time to time obtain arms length, market for [scrap / trimmings / • • • • / • • • •] • • • • • • • • •
	12.2.	[scrap /	/ trimmings / • • • • / • • • •] • • • • • • • • •
		••••	
	12.1.	The ma	aterials specification as finally recorded
12.	Prod	ductio	n specification and materials coverage
		11.5.3	a fixed sum of \mathfrak{L} [\blacksquare
		11.5.2	the design team • • • • • • • • • • • • • • • • • • •
		11.5.1	all production cost shall be included;
	11.5.	In calcu	ulating the cost of labour:
			••••••
		11. 4 .3	finished parts,
		11 4 3	materials shall include bought-in raw materials plus whatever
		11.4.2	cost shall be
		11.4.1	cost shall include all
	11.4.	In calcu	ulating the cost of materials:
		[Contin	ue or substitute alternative method of payment]
			••••••••••••••••••••••••••••••••••••••
		11.3.3	For work to completion of Stage 3: [1 . 5]
			••••••••••••••••••••••••••••••••••••••
		11.3.2	For work to completion of Stage 2: [1 . 5]

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very	7					

13. Delivery

13 1	Deliveries will be made by the carrier to •••••••••••••••••••••••••••••••••••
10.1.	
13.2.	If the Manufacturer is not able to deliver the Product within [30] ■ ■ ■ ■
13.3.	Signing "Unchecked", " = = = = = = " = = = = = = = = = = =
13.4.	[Goods are sent by post. The
].
13.5.	Time for delivery specified on the order,

14. Transportation

-		ny ways and alternative deals possible. ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■
■ ■ ■ <i>].</i>	■■■,■	
14.1.		owing Incoterms
	14.1.1	EXW [named = = = , = = = = = = =] = = = ® 2020 .
	14.1.2	FCA [named • • • • , • • • • • • • •] • • • • ® 2020 .
	14.1.3	CPT [named • • • • , • • • • • • • • •] • • • • ® 2020 .

	14.1.4	CIP [named • • • • , • • • • • • • • •] • • • • ® 2020 .
	14.1.5	DPU [named • • • • , • • • • • • • • •] • • • • ® 2020 .
	14.1.6	DAP [named • • • • , • • • • • • • • • • • •] • • • • ® 2020 .
	14.1.7	DDP [named • • • • , • • • • • • • • • •] • • • •
	14.1.8	FAS [named • • • • , • • • • • • • • • • •] • • • •
	14.1.9	FOB [named • • • • , • • • • • • • • •] • • • • ® 2020 .
	14.1.10	CFR [named • • • • , • • • • • • • • •] • • • • ® 2020
	14.1.11	CIF [named ■ ■ ■ , ■ ■ ■ ■ ■ ■ ■ ■ ■ ■] ■ ■ ■ ® 2020
14.2.	All right	s, obligations,
14.3.	Unless	otherwise agreed in this agreement so far
	••••	

15. Taxes

15.1.	This paragraph relates to all sales, transfer and other taxes or customs import duty ("Tax") imposed on										
15.2.	Insofar as any Tax is recoverable or can •••••, •••••										
15.3.	Tax shall be stated separately on the Manufacturers invoices, collected										

15.4.	Wheely will indemnify the Client against the Manufacturer's
15.5.	Wherever any sum is chargeable by the Manufacturer to the Client for services based on
15.6.	In any case where the Client is prohibited by law from making a payment to the Manufacturer without first withholding tax from that
Visi	tors
Visi :	The Manufacturer agrees to host visits by prospective large customers, licensees and regulators or other
16.1.	The Manufacturer agrees to host visits by prospective large customers, licensees and regulators or other
16.1. 16.2.	The Manufacturer agrees to host visits by prospective large customers, licensees and regulators or other

17. On site audits

17.1.	On notice of at least [seven] days, the Client 's, its partners, financial supporters and its customers' representatives may attend at
17.2.	On notice of at least [seven] days, the Client and/or any professional advisor, may attend at •••••••••••••••••••••••••••••••••••
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OR	
17.3.	The Parties agree that within [number] days after the end of each period of [six] months, based on the financial year of the Client/ • • • • • • • • • • • • • • • • • • •
AND	
17.4.	The auditor shall be instructed not to disclose to
17.5.	The provisions of this paragraph apply equally to any sub-
17.6.	If any discrepancy is found in \blacksquare

18. Limitation of liability

18.1.	The law differs from one										
18.2.	The Manufacturer shall not										
	18.2.1 indirect or consequential loss; or										
	18.2.2 economic loss or other • • • • • • • • • • • • • • • • • • •										
	18.2.3 loss or damage suffered by										
	The above provisions apply even if such										
18.3.	Except in the case of death or personal injury, the total liability of the Manufacturer under										
18.4.	This paragraph (and any other paragraph which excludes or restricts the liability of the Manufacturer) applies to the Manufacturer's directors 1										
18.5.	Conditions, warranties or other terms implied by										
18.6.	The Manufacturer is not										
	18.6.1 the Product										

		18.6.2 the Product that has been a a a a a a a a a a a a a a a a a a
		18.6.3 the model or serial number • • • • • • • • • • • • • • • • • • •
19.	Use	of sub-contractors
	The M	/anufacturer shall not sub- ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■
	OR	
	The M	Manufacturer may perform any or
	19.1.	The Manufacturer first obtains the written consent of the Client to
	OR	
	19.2.	The Manufacturer must first obtain the written consent
	19.3.	The Manufacturer • • • • • • • • • • • • • • • • • •
	19.4.	The Manufacturer indemnifies the Client fully against any
	19.5.	So far as work under this • • • • • • • • • • • • • • • • • • •
20.	Con	fidential Information
	20.1.	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

	, 	
	20.1.1	except as provided in this •••, ••••;
	20.1.2	not use the Confidential Information in any way for itself
	20.1.3	not store, copy, or use the Confidential
	20.1.4	keep all records of
	20.1.5	keep all records only at the address • • • • • • • • • • • • • • • • • •
	20.1.6	use its best endeavours to keep confidential (
20.2.	This pa	ragraph does not apply to disclosure:
	20.2.1	to any person to whom some part of it must be disclosed in , , , , , , , , , , , , , , , , , , ,
	20.2.2	made with the = = = = = = = = = = = = = = = = = = =
	20.2.3	of information or knowledge
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21. "Work made for hire"

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25. Third party infringement

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26. Duration and termination

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26.1.	By mutual	agreemen	t on an a	greed d	ate.					_
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26.3.										
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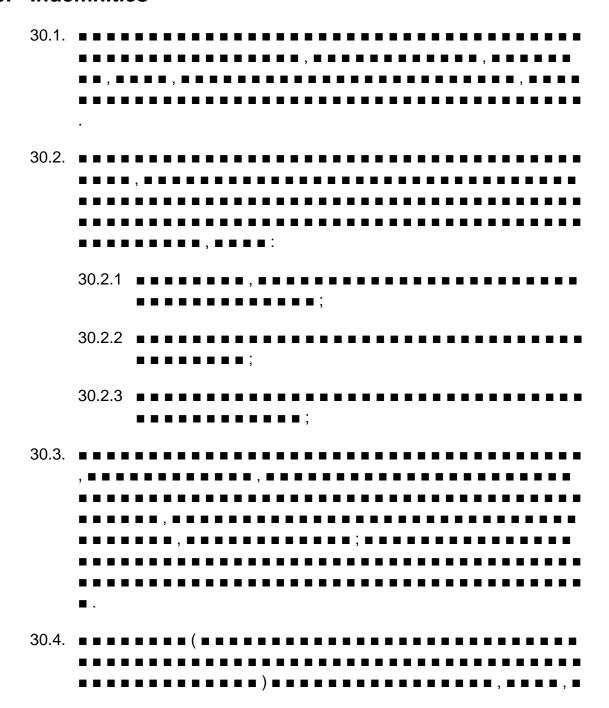
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28.	Pub	licity	/ An	nou	Inc	em	en	ts													
	28.1.							•				-		•	 •	•	-		•		
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	OR																				

	28.2.	Neither	Party sna	II:							
		28.2.1	make any	public a	innounc	ement	; or				
		28.2.2	disclose a	any infor	mation;	or					
		28.2.3		• • • •						• • • •	
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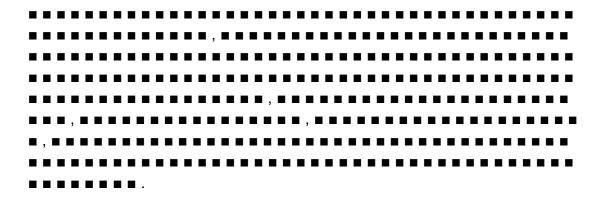
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30. Indemnities



31. Damages not adequate



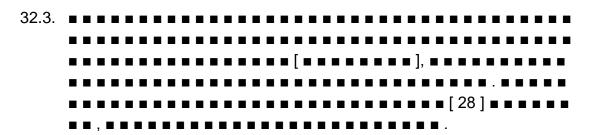
32. Uncontrollable events

32.1.	 		 	 	
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AND/OR

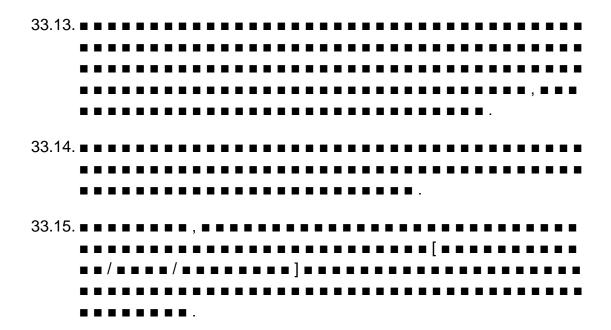
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32.5.]				
32.6.						
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Signed by / on behalf of the named Parties by their representatives who personally accept liability for the proper authorisation by their respective employer or principal to enter into this agreement



Schedule 1: Detailed specification and phases

Schedule 2: Standards

Schedule 3: List of setup tools and equipment

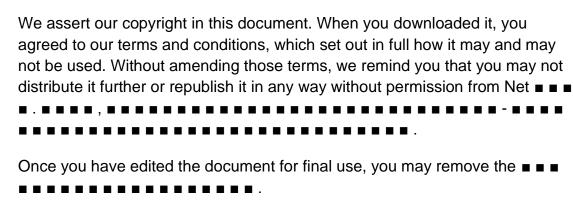
Schedule 4: Press release

Explanatory notes:

Prototype development agreement

General notes:

1. Recognition of our copyright in this document



2. Document review service

Please contact our support team at support@netlawman.co.uk for further information.

Paragraph specific notes:

Notes numbering refers to paragraph numbers.

1. Definitions

If your counter-party is in the UK, you may decide to remove or abbreviate the lists in "Intellectual Property". We have included them, first to make sure your

counter-party is under no illusions about IP, and second because some ■ ■ ■
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 ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■
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.
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
Client's warranties
If you are the customer, you may delete this, but keep the words, in case
The main reason for inclusion of this paragraph is that you really do need the next paragraph - warranties by the manufacturer. Your willingness to give these warranties may make
Manufacturer's warranties
This paragraph covers a number of points which may be very important to you. It is not enough to see them in the agreement. You should also check each one

6. Scope of work

2.

3.

4.

5.

7. Representative liaison and design reviews

8. Product design testing

We have provided a simple and logical system for testing to a standard and payment on reaching it. It is a framework of practical business provisions, to ensure that the product quality is adequate and meets the specification. This avoid the

9. Regulatory approvals

So many products in our daily lives have to be tested or qualified in some way that it is impossible for us to specify. Please regard this paragraph as a reminder that you should specify who must do what. Your list should tie up with the schedule setting out your standards. Standards could include the regulatory approvals you also list here. If

10. Setup costs

11. Design price and payment

12. Production specification and materials coverage

13. Delivery

We have included a full delivery provision for you to edit. 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 to your given address. If the prototype versions will

be delivered in
Transportation
This and the following paragraph are relevant only to \blacksquare
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
2020
http://www.ukcustomssolutions.co.uk/incoterms/
https://iccwbo.org/resources-for-business/incoterms-rules/incoterms-2020/
https://www.gov.uk/guidance/international-trade-paperwork-the-basics#export-documentation
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
Below is a basic summary $\blacksquare \blacksquare \blacksquare$
The seven rules defined by Incoterms 2020 for ••••• (••••) •••
EXW – Ex Works
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

14.

bears the risks for bringing the goods to their final \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare

,
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 ,
CPT - Carriage Paid To
The seller pays for the carriage and delivers the goods to the buyer by handing them
CIP – Carriage and Insurance Paid to
The seller pays for carriage and insurance to the named destination point,
DAP – Delivered at Place
DAP – Delivered at Place The seller pays for carriage to the named place, except for costs related to import clearance,
The seller pays for carriage to the named place, except for costs related to

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

•••.
DDP – Delivered Duty Paid
The seller is responsible for delivering the goods to the named place. The seller must pay all costs in bringing the goods
Rules for Sea and Inland Waterway Transport
The four rules defined by Incoterms 2020 for international • • • • • • • • • • • • • • • • • • •
FAS – Free Alongside Ship
The seller is responsible for delivering goods to the buyer by placing the goods alongside the ship at the named port.
FOB – Free on Board
The seller is responsible for loading the goods on board the vessel nominated by the buyer. The seller must
CFR – Cost and Freight
The seller must deliver the goods to the buyer and pay the costs and freight to bring the goods to the port of destination . ■ ■ ■ , ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■
CIF – Cost, Insurance and Freight
CIF is exactly the same as CFR except that the seller must pay for the insurance cover against
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, ■ ■ ■ ■ ■ ■ ■ ■ ■ ■

15.

16.	Visitors
	A framework of practical business provisions. You can set this paragraph to apply to any category who might have
17.	On site audits
	If you are paying on some calculated basis and not a fixed sum, you need to be able to control the process on which costs are based. We
18.	Limitation of liability
	This is powerful protection for the manufacturer. It is usual to have some limit in an agreement of this nature, but whether you do, and if so, how ■ ■ ■ ■ , ■
19.	Use of sub-contractors
	A framework of practical business provisions. Edit as you require. This
20.	Confidential Information
	We have given you a very full
21.	"Work made for hire"
	We have provided the
	In most Western countries, the originator of any "work" has a packet of rights. If he does not sell those rights, they remain his, usually for a limited number of

years. This can be very unfair to a person who has paid the creator to \blacksquare \blacksquare \blacksquare

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Depending the	value and	extent of th	ne IP ■ ■ ■	 	■,■■
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23. New IP

This is another area on which much litigation is based. At the start, both	
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24. Protection of intellectual property

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

Third party infringement 25.

26.	Duration and termination
	The problem in a contract of this nature is that the work done is of little value to the customer until complete.
	Leave the insolvency provisions. As soon as there is any involvement of a court
	,
27.	Change of Control
	This draconian provision helps you to avoid the transfer of
28.	Publicity / Announcements
	We advise that publicity ••••••••••••••••••••••••••••••••••••
29.	Assignment
	Give careful thought to this. Consider the circumstances on both sides which may
30.	Indemnities

Who sues? You need to be

	These indemnities tavour you,
31.	Damages not adequate
	In a contract dispute, the Court will usually look for a
32.	Uncontrollable events
	Often referred to as "force majeure". We advise that you
33.	Miscellaneous matters
	A number of special points. We have identified each of these as important to
	These are just as valid in law
	Rights of Third Parties Act
	Dispute resolution
	There are many ways to settle a dispute. But an action in court is the least
	desirable because it takes a long

Schedule 1 Detailed specification and phases
The schedules may be "typed in" or be contained in some document attached
Schedule 2Standards
These could be international engineering standards, or specification • • • •
 ().
Schedule 3List of setup tools and equipment
This should

Schedule 4Press release

We have no comment.

Ends of notes