

# Merchandise Agreement

THIS AGREEMENT is made this \_\_\_\_\_, by and between \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_ (the "Licensor"), and \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_ (the "Licensee").

WHEREAS, the Licensor is the owner of certain rights in the property described and/or illustrated in Schedule A (the "Property") including, but not limited to, the Trademark(s) listed in

Schedule B (the "Trademarks");

WHEREAS, the Licensee desires to use the Property and/or the Trademarks on or in connection with the products identified in Schedule C (the "Licensed Products") and in the countries identified in Schedule D (the "Licensed Territory"); and

WHEREAS, the Licensor is willing to grant the Licensee the right to use the Property and/or the Trademarks on such Licensed Products.

Now, THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, it is hereby agreed as follows.

## 1. Grant of License

The Licensor is the sole and exclusive owner of all rights in and to the Property and/or the Trademarks and, with the exception of the rights being licensed hereunder, all other rights relating thereto are expressly reserved by the Licensor.

The Licensor hereby grants to the Licensee an exclusive, non-transferable, non-assignable license, without the right to grant sublicenses, to use the Property and/or the Trademarks solely on or in connection with the manufacture, sale, offering for sale, advertising, promotion and distribution of the Licensed Products and solely within the Licensed Territory and, for this purpose only, to affix the Trademarks on or to packaging, advertising and promotional materials sold, used or distributed in connection with the Licensed Products (the "Promotional and Packaging Material").

## 2. Term and Options

(a) This Agreement shall begin and be effective upon execution of this Agreement by both parties (the "Effective Date") and shall run for a "First Term" of \_\_\_\_ months thereafter, unless terminated sooner pursuant to a provision of this Agreement.

(b) If the Licensee is in full compliance with all terms and conditions hereof during the then in effect Term and the Licensee's sales during the then in-effect Term will have resulted in actual royalty payments to the Licensor of at least **Ten Thousand Rupees(Rs.10,000)**, the Licensor agrees to grant to the Licensee two separate options (the "Option") to extend the then in effect Term for additional one-year periods ("Extended Terms") provided that the Licensee gives the Licensor at least sixty (60) days notice of its intention to exercise each such option.

### 3. Royalty Provisions

(a) Licensee agrees to pay the Licensor a Royalty of \_\_\_\_\_ Percent (\_\_\_%) based on Net Sales of the Licensed Products by either the Licensee or any of its related companies.

(b) For each Term of this Agreement, the Licensee agrees to pay the Licensor a Guaranteed Minimum Royalty in the amount of \_\_\_\_\_ Rupees (Rs.\_\_\_\_\_) of which \_\_\_\_\_ Rupees (Rs.\_\_\_\_\_) is payable upon execution of this Agreement (or exercise of each Option) as a non-refundable Advance against Royalties ("Advance"). If upon termination of this Agreement the total Royalties payable by the Licensee, including the Advance, is less than the Guaranteed Minimum Royalty, the Licensee shall immediately pay such difference to the Licensor.

(c) "Net Sales" shall mean gross sales less quantity discounts and returns actually credited. No deduction shall be made for cash or other discounts, commissions or uncollectible accounts nor for any costs incurred in the manufacture, sale, distribution or exploitation of the Licensed Products. A Royalty shall also be paid by the Licensee based on Licensee's usual Net Sales price:

(i) on all unbilled Licensed Products distributed by the Licensee or any of its affiliated companies; or (ii) where the billed price for Licensed Products is less than the usual Net Sales price and the Licensee receives other compensation attributable to the distribution of the Licensed Products separate from the price which appears on the respective invoice

### 4. Statements

(a) The Licensee shall provide the Licensor, within thirty (30) days after the end of each calendar quarter (the "Royalty Period"), a complete and accurate statement of its Net Sales of Licensed Products for that quarter, said statement to be certified as accurate by the Licensee. Such statements, which shall be in conformance with the requirements of Schedule E, must be submitted whether or not any Licensed Products have been shipped or Royalties have been earned during the Royalty Period.

(b) Acceptance by the Licensor of any statement furnished or Royalty paid shall not preclude the Licensor from questioning its correctness and, in the event that any inconsistencies or mistakes are discovered, they shall immediately be rectified.

(c) All payments made hereunder shall be in Indian currency drawn on an Indian bank.

(d) Time is of the essence with respect to all payments to be made and interest at a rate of one and one-half percent (1 1/2%) per month shall accrue on any amount due the Licensor calculated from the date on which payment was due.

### 5. Records

(a) The Licensee shall keep accurate books of account at its principal place of business covering all transactions relating to the License Agreement and the Licensor and/or its duly authorized representative shall have the right, at reasonable hours of the day and upon reasonable notice, to examine such books and all other documents and material in Licensee's possession or control with respect to this Agreement and to make copies and summaries thereof. In the event that such an Audit reveals an underpayment by the Licensee, the Licensee shall immediately remit payment to the Licensor in the amount of the underpayment plus interest calculated at the rate of 1 1/2% per month calculated from the

date such payment(s) were actually due. In the event that such underpayment is greater than **Rs.500** for any Royalty Period, the Licensee shall reimburse the Licensor for the costs and expenses of such audit.

(b) All books of account and records of the Licensee relating to the License Agreement shall be retained for at least two (2) years after termination of this Agreement.

#### 6. Quality, Notices, Approvals and Samples

(a) The quality and style of the Licensed Products and all Promotional and Packaging Material relating to the Licensed Products shall be at least as high as the best quality of similar goods presently sold or distributed by the Licensee in the Licensed Territory.

(b) All Promotional and Packaging Material and all Licensed Products on which the Property and/or the Trademarks are used shall contain the following legal notices:

© \_\_\_\_\_, 20\_\_\_\_

© and ® Designate Trademarks of \_\_\_\_\_ and are used, under license, by

\_\_\_\_\_

(c) Before commencing the design of the Licensed Products or Promotional and Packaging Material which have not been previously approved in writing by the Licensor, the Licensee shall submit, for Licensor's approval, copies of all preliminary artwork regarding the proposed Licensed Products and Promotional and Packaging Material.

(d) Prior to the use of any Promotional and Packaging Material and/or the sale and distribution of the Licensed Products, Licensee shall submit at its own cost but for Licensor's approval, one complete set of samples of all Licensed Products intended to be sold and distributed and one complete set of samples of all Promotional and Packaging Material intended to be used. The Licensee may not use any such Promotional and Packaging Material nor sell or distribute any such Licensed Product until receipt of written approval of said set of samples from the Licensor.

(e) Upon commencement of distribution and sale of the Licensed Products, the Licensee shall submit, at its own cost, an additional six (6) sets of the aforementioned samples to the Licensor.

(f) During the Term of this Agreement, the Licensor may require that the Licensee submit at its own cost, up to twelve (12) additional sets of samples of Licensed Products and Promotional and Packaging Material for subsequent approval.

(g) The Licensee agrees to permit the Licensor or its representative to inspect the facilities where the Licensed Products are being manufactured and packaged.

(h) In the event that the above-stated quality standards are not met or maintained throughout the Term of this Agreement, the Licensor has the right to require that the Licensee immediately discontinue manufacturing, selling and distributing Licensed Products which do not meet such quality standards.

#### 7. Artwork

(a) The form and content of all artwork relating to the Property and/or the Trademarks must be approved by the Licensor prior to use by the Licensee. The Licensor will, at the request of

the Licensee and at the Licensee's own expense, provide the Licensee with whatever artwork which the Licensee requires relating to the Property.

(b) All artwork relating to the Property and/or Trademarks, notwithstanding their invention, shall be deemed to be the property of the Licensor.

#### 8. Goodwill

(a) The Licensee recognizes the value of the goodwill associated with the Property and/or the Trademarks and acknowledges that the Property and/or the Trademarks have acquired secondary meaning. The Licensee agrees, during the Term of this Agreement or thereafter, never to attack the rights of the Licensor in such Property and/or Trademarks or the validity of the License being granted herein.

(b) The Licensee agrees that its use of the Property and/or the Trademarks inures to the benefit of the Licensor and that the Licensee shall not acquire any rights in the Property and/or the Trademarks.

#### 9. Trademark and Copyright Protection and Infringements

(a) The Licensor may obtain, at its own cost and in its own name, appropriate copyright and trademark protection for the Property and/or the Trademarks and the Licensee agrees to cooperate with the Licensor in protecting such Property and/or Trademarks.

(b) The Licensee agrees that it shall not at any time apply for any registration of any copyright, trademark or other designation which would affect the ownership of the Property and/or the Trademarks nor file any document with any governmental authority to take any action which would affect the ownership of the Property and/or Trademarks.

(c) The Licensee agrees that it shall, at no time, use or authorize the use of any trademark, trade name or other designation identical with or confusingly similar to the Trademarks.

(d) The Licensee agrees to assist the Licensor in the enforcement of the Licensor's rights in the Property and/or the Trademarks. With respect to any such claims and suits, the Licensor shall employ counsel of its own choice to direct the handling of the litigation and any settlement thereof. The Licensor shall be entitled to receive and retain all amounts awarded as damages, profits or otherwise in connection with such suits.

#### 10. Indemnification

The Licensee hereby agrees to defend, indemnify, and hold the Licensor harmless against any claims, demands, causes of action and judgments arising out of the Licensee's manufacture, sale, offering for sale, distribution, promotion and/or advertising of Licensed Products under this Agreement.

#### 11. Insurance

The Licensee shall, throughout the Term of this Agreement, obtain and maintain at its own cost and expense, from a qualified insurance company, standard Product Liability Insurance, the form of which must be acceptable to the Licensor, naming the Licensor as an additional named insured. Such policy shall provide protection against any and all claims, demands and causes of action arising out of any defects or failure to perform, alleged or otherwise, of the Licensed Products or any use thereof. The amount of coverage shall be a minimum of \_\_\_\_\_ Rupees (Rs. \_\_\_\_\_) combined single limit with no deductible amount

for each single occurrence for bodily injury and/or for property damage. The policy shall provide for ten (10) days notice to the Licensor from the insurer by Registered or Certified Mail, return receipt requested, in the event of any modification, cancellation or termination. The Licensee agrees to furnish the Licensor a certificate of insurance evidencing same within thirty (30) days after execution of this Agreement and, in no event, shall the Licensee manufacture, distribute or sell the Licensed Products prior to receipt by the Licensor of such evidence of insurance.

#### 12. Exploitation by the Licensee

(a) The Licensee shall commence manufacture, distribution, and sale of the Licensed Products in commercially reasonable quantities within six (6) months after the Effective Date of this Agreement and, thereafter, shall continue to distribute and sell all of the Licensed Products in all countries in the Licensed Territory.

(b) The Licensed Products shall be sold by Licensee at a competitive price not more than at the price customarily charged by the Licensee.

#### 13. Premiums/Promotional and Seconds

(a) The Licensor shall have the sole right to license third parties to utilize any of the Licensed Products in connection with premium, giveaway or promotional arrangements.

(b) The Licensee shall not sell, distribute or use or permit any third party to sell, distribute or use

any Licensed Products which are damaged, defective, seconds or otherwise fail to meet the specifications and/or quality control or notice requirements of this Agreement.

#### 14. Termination

This Agreement may be terminated by either party providing 30 days written notice to the other

party. This Agreement shall terminate automatically on \_\_\_\_\_.

Upon expiration of the term of this Agreement, \_\_\_\_\_ shall have the right, pursuant

to the provisions herein, to dispose of all Licensed Products, theretofore manufactured at the time

of the expiration of the License granted hereunder, for a period of 90 days after the date of such

expiration to the condition that \_\_\_\_\_ pays to \_\_\_\_\_ all compensation

accrued to such time and delivers to \_\_\_\_\_ a report to such time. Notwithstanding

anything to contrary contained herein, \_\_\_\_\_ shall not sell or dispose of any

Licensed Products if this Agreement was terminated for any material default or breach of this

Agreement.

\_\_\_\_\_ acknowledges that \_\_\_\_\_ has not adequate remedy at

law for any such failure referred to or referenced to in this Clause and in the event of any such

failure, \_\_\_\_\_ shall be entitled to equitable relief by way of temporary and permanent injunctions, in addition to such other further relief as any court of competent jurisdiction may deem just and proper.

#### 15. Warranties

The following are in addition to the termination rights provided elsewhere in this Agreement:

(a) Immediate Right of Termination. The Licensor shall have the right to immediately terminate

this Agreement on written notice should the Licensee:

(i) Make, sell, offer for sale, use or distribute any Licensed Product or Promotional or Packaging

Material without having the prior written approval of the Licensor or continues to make, sell, offer for sale, use or distribute any Licensed Product or Promotional or Packaging Material after

receipt of notice from the Licensor withdrawing approval of same;

(ii) Fail, after receipt of written notice from the Licensor, to immediately discontinue the distribution or sale of Licensed Products or the use of any Promotional or Packaging Material which does not contain the appropriate legal legend;

(iii) Subject to any voluntary or involuntary order of any government agency involving the recall

of any of the Licensed Products because of safety, health or other hazards or risks to the public;

(iv) Licensee and/or any of its controlling shareholders, officers, directors or employees take any

actions in connection with the manufacture, sale, distribution or advertising of the Licensed Products or the Promotional and Packaging Material which damages or reflects adversely upon

the Licensor, the Property and/or the Trademarks;

(v) Breach any of the provisions of this Agreement relating to the unauthorized assertion of rights in the Property and/or the Trademarks;

(vi) Fail to make timely payment of Royalties when due or fail to make timely submission of royalty statements when due two or more times during a twelve-month period.

(vii) Breach any provision of this Agreement prohibiting the Licensee from directly or indirectly

assigning, transferring, sublicensing or other encumbering this Agreement or any of its rights or

obligations thereunder.

(b) Right to Terminate on Notice. A party may terminate this agreement on thirty (30) days written notice to the other party, under any of the following circumstances, provided that during

the thirty (30) day period, the defaulting party fails to cure the breach:

(i) Should the Licensee fail to commence sale and distribution of the Licensed Products in all countries in accordance with the terms of this Agreement;

(ii) Should the Licensee, after commencing to sell and distribute Licensed Products, fail to continue to sell and distribute the Licensed Products in commercially acceptable quantities in all

countries in the Licensed Territory for two consecutive Royalty Periods;

(iii) Should the Licensee violate any of its obligations under this Agreement including its payment obligations;

(iv) Should the Licensee file a petition in bankruptcy or be adjudicated a bankrupt or insolvent,

or make an assignment for the benefit of creditors, or an arrangement pursuant to any bankruptcy

law, or if the Licensee discontinues its business or if a receiver is appointed for the Licensee or

the Licensee's business who is not discharged within thirty (30) days;

(v) In the event that a party commits a material breach of any other provision of this Agreement

which is not cured within thirty (30) days after receipt of notice from the non-breaching party.

#### 16. Effect of Termination

(a) If this Agreement is terminated under paragraph 15a, no Licensed Products may be sold or

distributed or any Promotional or Packaging Material used without the prior express approval of

the Licensor.

(b) Upon termination of this Agreement, notwithstanding anything to the contrary herein, all Royalties on shipments theretofore made shall become immediately due and payable and no Advance shall be repaid.

(c) If this Agreement is terminated under a provision other than paragraph 15(a), Licensed Products which are on hand or in process at the time the notice of termination is received or at

the time of the expiration of the Agreement, as the case may be, may continue to be sold or distributed for a sixty (60) day period, provided that all Royalties with respect to that period are

paid and that the Licensor may itself use or license the use of the Property and/or the Trademarks

in any manner.

(d) After termination of this Agreement, all rights granted herein shall revert to the Licensor who

may license others to use the Property and/or the Trademarks in any way whatsoever. The Licensee shall, thereafter, refrain from all further use of the Property and/or the Trademarks and

turn over to the Licensor all molds and other materials which reproduce the Licensed Products or

shall give the Licensor satisfactory evidence of their destruction. The Licensee shall be responsible for any damages caused by the unauthorized use of such molds or reproduction materials which are not turned over or destroyed.

(e) The Licensee acknowledges that its failure to cease the manufacture, sale or distribution of

the Licensed Products or any class or category thereof at the termination or expiration of this

Agreement will result in immediate and irreparable damage to the Licensor and to the rights of

any subsequent licensee of the Licensor. The Licensee acknowledges and admits that there is no

adequate remedy at law for failure to cease the manufacture, sale or distribution and the Licensee

agrees that in the event of such failure, the Licensor shall be entitled to equitable relief by way of

injunctive relief and such other relief as any court with jurisdiction may deem just and proper.

(f) Within thirty (30) days after termination or expiration of this Agreement, the Licensee shall

provide the Licensor with a statement indicating the number and description of the Licensed Products which it had on hand or in the process of manufacturing as of the expiration or termination. The Licensor shall have the option of conducting a physical inventory in order to ascertain or verify such inventory and/or statement. In the event that the Licensee refuses to

permit the Licensor to conduct such physical inventory, the Licensee shall forfeit its rights hereunder to dispose of such inventory.

#### 17. Notices

All notices or payments required to be sent to either party shall be in writing at the above addresses and sent by hand delivery or by Certified Mail, postage prepaid, return receipt requested.

#### 18. Relationship of the Parties

This Agreement does not create a partnership or joint venture between the parties and the Licensee shall have no power to obligate or bind the Licensor in any manner whatsoever.

#### 19. Applicable Law and Disputes

This Agreement shall be governed by the law of the State of \_\_\_\_\_.

#### 20. Waiver

No waiver by either party of a breach or a default hereunder shall be deemed a waiver by such

party of a subsequent breach or default of a like or similar nature.

#### 21. Severability

In the event that any term or provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other term or provision and this agreement shall be interpreted and construed

as if such term or provision, to the extent the same shall have been held to be invalid, illegal or

unenforceable, had never been contained herein.

#### 22. Integration

This Agreement represents the entire understanding between the parties hereto with respect to

the subject matter hereof and this Agreement supersedes all previous representations, understandings or agreements, oral or written, between the parties with respect to the subject

matter hereof and cannot be modified except by a written instrument signed by the parties hereto.

By their execution below, the parties hereto have agreed to all of the terms and conditions of this

Agreement.

\_\_\_\_\_  
By: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Schedule A

Description of the Property

Schedule B

List of Trademarks

Schedule C

List of Licensed Products

Schedule D

Licensed Territory

Schedule E

Acceptable Form of Royalty Statement Required of Licensee