

Manufacturing agreement

DATE

[Date]

PARTIES

1. [[INDIVIDUAL NAME] of [address]] OR [[COMPANY NAME], a company incorporated in England and Wales (registration number [registration number]) having its registered office at [address]] OR [[PARTNERSHIP NAME], a partnership established under the laws of England and Wales having its principal place of business at [address]] (the "**Manufacturer**"); and
2. [[INDIVIDUAL NAME] of [address]] OR [[COMPANY NAME], a company incorporated in England and Wales (registration number [registration number]) having its registered office at [address]] OR [[PARTNERSHIP NAME], a partnership established under the laws of England and Wales having its principal place of business at [address]] (the "**Customer**").

BACKGROUND

1. *[Explain background from the Manufacturer's perspective.]*
2. *[Explain background from the Customer's perspective.]*
3. The Manufacturer and the Customer therefore wish to enter into a contract in accordance with the provisions of this Agreement.

AGREEMENT

1. Definitions

- 1.1 In this Agreement, except to the extent expressly provided otherwise:

"**Agreement**" means this agreement including the Schedules and each Order, and any amendments to this Agreement from time to time;

"**Anti-Slavery Laws**" means all applicable anti-slavery and anti-human trafficking laws (including the Modern Slavery Act 2015);

"**Business Day**" means any weekday other than a bank or public holiday in [England] OR [[jurisdiction]];

"**Business Hours**" means the hours of 09:00 to 17:00 [GMT/BST] OR [[time zone]] on a Business Day;

"**Charges**" means the amounts payable in respect of the Products, as set out in Schedule 1 (Manufacturing particulars), subject to any variations agreed in writing by the parties or made in accordance with this Agreement;

"**Competing Products**" means products that compete with the Products, or constitute a reasonably efficacious substitute for the Products, in any market in which the Products are sold or supplied;

"Confidential Information" means the Manufacturer Confidential Information and the Customer Confidential Information;

"Customer Confidential Information" means:

- (a) any information disclosed by or on behalf of the Customer to the Manufacturer [during the Term] OR [at any time before the termination of this Agreement] (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked or described as "confidential" or should have been understood by the Manufacturer (acting reasonably) to be confidential; and
- (b) the financial terms of this Agreement;

"Customer Indemnity Event" has the meaning given to it in Clause 16.3;

"Effective Date" means the date of execution of this Agreement;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, epidemics, pandemics, explosions, fires, floods, riots, terrorist attacks and wars);

"Forecast" means a forecast in respect of future Product orders delivered by the Customer to the Manufacturer in accordance with Clause 8;

"Forecast Date" means the 1st day of each calendar month during the Term and before the issue of a notice of termination of this Agreement;

"Forecast Period" means the period of 6 calendar months beginning at the end of the calendar month in which the relevant Forecast is issued;

"Identical Products" means products that are substantially identical in both design and materials to the Products;

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Manufacturer Confidential Information" means:

- (a) any information disclosed by or on behalf of the Manufacturer to the Customer [during the Term] OR [at any time before the termination of this Agreement] (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked or described as "confidential" or

should have been understood by the Customer (acting reasonably) to be confidential; and

(b) the financial terms of this Agreement;

"Manufacturer Indemnity Event" has the meaning given to it in Clause 16.1;

"Manufacturing Offer" means the Manufacturer's written offer to manufacture and supply Products issued in accordance with Clause 4.3;

"Manufacturing Request" means the Customer's written request for Products issued in accordance with Clause 4.2;

"Minimum Quantity" means the minimum amount or amounts of Products that the Customer must order and the Manufacturer must supply under this Agreement, such amount or amounts being set out in Schedule 1 (Manufacturing particulars);

"Minimum Term" means, in respect of this Agreement, the period of 12 months beginning on the Effective Date;

"Order" means a binding order between the parties for the manufacture and supply of Products, made under this Agreement, incorporating the terms of a Manufacturing Offer, and agreed between the parties in accordance with Clause 4;

"Product Specification" means the specification for the Products set out in Paragraph 1 of Schedule 1 (Manufacturing particulars);

"Products" means *[[identify products]]* OR [any products that the Manufacturer supplies or agrees in writing to supply to the Customer from time to time] OR [those products identified in Paragraph 1 of Schedule 1 (Manufacturing particulars)];

"Schedule" means any schedule attached to the main body of this Agreement;

"Term" means the term of this Agreement, commencing in accordance with Clause 3.1 and ending in accordance with Clause 3.2; and

"Territory" means *[identify territory]*.

3. Term

3.1 This Agreement shall come into force upon the Effective Date.

3.2 This Agreement shall continue in force [indefinitely] OR [until *[date]*, at the beginning of which this Agreement shall terminate automatically] OR [until *[event]*, upon which this Agreement shall terminate automatically], subject to termination in accordance with Clause 19 or any other provision of this Agreement.

4. Order procedure

- 4.1 Before the agreement of an Order, the parties may discuss and negotiate the terms of the proposed Order, but no contractual obligations to manufacture or supply the Products shall come into force until the procedure set out in this Clause 4 has been completed.
- 4.2 If the Customer proposes to order Products from the Manufacturer, the Customer must send a Manufacturing Request to the Manufacturer. Each Manufacturing Request must be in writing and must include the following information in respect of the Products requested in the Manufacturing Request:
- (a) the identifier for the Products requested;
 - (b) the Product Specification and any variations to the Product Specification;
 - (c) the quantity of the Products requested (or an estimate of quantity with a commitment to purchase a minimum number of Products);
 - (d) a list of preferred suppliers and suppliers' parts numbers;
 - (e) the delivery schedule (or an estimated delivery schedule);
 - (f) details of any components or equipment to be supplied by the Customer (with dates for delivery to the Manufacturer);
 - (g) whether the Customer proposes to arrange packaging for the Products, and details of any packaging specification and requirements; and
 - (h) whether the Customer proposes to arrange delivery of the Products and insurance for the Products while in transit, and details of any delivery and insurance instructions.
- 4.3 At any time following receipt of a Manufacturing Request, the Manufacturer may issue a Manufacturing Offer, which will incorporate (by reference or otherwise) the Manufacturing Request, together with a list of deviations from and additions to the Manufacturing Request. The additions shall include:
- (a) the unit price and total price of the Products; and
 - (b) if the Manufacturer agrees to arrange the packaging, packing, loading, transport, unloading and/or insuring of the Products, the applicable charges.
- 4.4 Each Manufacturing Offer issued by the Manufacturer shall be deemed to be an offer to manufacture and supply the Products, subject to the terms of this Agreement, and:
- (a) if the Manufacturer receives a written acceptance of the Manufacturing Offer from the Customer on or before the close of business on the 5th Business Day following the date of issue of the Manufacturing Offer, then an Order shall come into force immediately in relation to the Products covered by that Manufacturing Offer; and

- (b) if the Manufacturer receives a written acceptance of the Manufacturing Offer after that time, then an Order shall only come into force if and when the Manufacturer issues to the Customer a further confirmation that it agrees to manufacture and supply the Products covered by the Manufacturing Offer.

4.5 Without prejudice to the Manufacturer's express obligations under this Agreement, the Manufacturer shall not be obliged to give the Customer priority over any other customer of the Manufacturer with regard to accepting the terms of any Manufacturing Request and making any Manufacturing Offer.

5. Manufacturing

5.1 The Manufacturer shall manufacture the Products, and shall supply the manufactured Products to the Customer, in accordance with the requirements of each Order, subject to all the provisions of this Agreement.

6. Product Specification

6.1 If [the provisions of an Order so require] OR [an Order does not include a Product Specification] OR [*specify circumstances*], the Customer shall supply to the Manufacturer a Product Specification for the Products to be manufactured under that Order, together with all other documents, cooperation and information reasonably requested by the Manufacturer to enable the Manufacturer to fulfil its obligations under this Agreement. The Customer must fulfil its obligations under this Clause 6.1 promptly following the agreement of that Order, unless the parties have agreed otherwise in writing.

6.2 The Customer warrants to the Manufacturer that:

- (a) each Product Specification will be prepared with reasonable skill and care;
- (b) each Product Specification will contain all the information reasonably necessary to enable a competent manufacturer with expertise in the relevant field to manufacture the relevant Products; and
- (c) all information provided by the Customer to the Manufacturer under or in connection with this Agreement will be accurate in all material respects.

6.3 The Customer warrants to the Manufacturer that neither the Product Specifications nor the designs for the Products supplied by the Customer to the Manufacturer will infringe any third party's Intellectual Property Rights or other legal rights (in any jurisdiction and under any applicable law).

7. Minimum Quantity

7.1 During [the Term] OR [*period*]:

- (a) the Manufacturer shall supply the Minimum Quantity of Products to the Customer; and

- (b) the Customer shall purchase the Minimum Quantity of Products from the Manufacturer,

under 1 or more Orders to be agreed by the parties acting reasonably.

8. Forecasting

- 8.1 On or before each Forecast Date, the Customer shall deliver to the Manufacturer a Forecast for the purchase of Products during the Forecast Period.
- 8.2 The Customer shall ensure that each Forecast specifies the Product types and quantities that the Customer [must] OR [plans to] purchase from the Manufacturer during each month of the Forecast Period and *[anything else]*.
- 8.3 The parties acknowledge that Forecasts are not binding in any way upon either the Customer or the Manufacturer.

OR

- 8.3 During each Forecast Period:
 - (a) the Manufacturer shall supply the quantities of Products specified in the relevant Forecast to the Customer; and
 - (b) the Customer shall purchase the quantities of Products specified in the relevant Forecast from the Manufacturer,under 1 or more Orders to be agreed by the parties acting reasonably.
- 8.4 Unless the parties have expressly agreed otherwise in writing, the amount of the Minimum Quantity and amounts of the Products that the parties must supply and purchase as a consequence of a Forecast shall not be cumulative.

9. Terms and conditions of supply

- 9.1 The supply of all Products by the Manufacturer to the Customer under or relating to this Agreement shall be subject to Schedule 2 (Terms and conditions of supply).

10. Intellectual Property Rights

- 10.1 Except to the extent expressly provided otherwise in this Agreement, nothing in this Agreement shall operate to assign, transfer or license any Intellectual Property Rights from the Manufacturer to the Customer, or from the Customer to the Manufacturer.
- 10.2 All Intellectual Property Rights in the Product Specifications and the designs for the Products that are supplied or made available by the Customer to the Manufacturer shall vest in and are reserved to the Customer.
- 10.3 The Customer grants to the Manufacturer a non-exclusive, royalty-free, worldwide licence to use the Product Specifications and designs for the Products solely for the purposes of manufacturing the Products and fulfilling the Manufacturer's other obligations under this Agreement.

- 10.4 Each party shall promptly give notice in writing to the other in the event that it becomes aware of:
- (a) any infringement or suspected infringement of the Intellectual Property Rights in any Product or Product design; or
 - (b) any claim that any Product or Product design, or the manufacture, use, marketing, sale or disposal of any Product, infringes the Intellectual Property Rights of any third party.

11. Exclusivity

- 11.1 The Manufacturer must not supply any Products to any person other than the Customer.
- 11.2 The Manufacturer must not, during the Term and the period of 12 months following the end of the Term without the prior written consent of the Customer:
- (a) supply any Identical Products to any person in the Territory;
 - (b) supply any Identical Products to any person for resale, save where that person is contractually restricted from actively supplying those Identical Products in the Territory during the Term and the period of 12 months following the end of the Term; or
 - (c) manufacture any Identical Products.
- 11.3 The Manufacturer must not, during the Term and the period of 12 months following the end of the Term without the prior written consent of the Customer:
- (a) supply any Competing Products to any person in the Territory;
 - (b) supply any Competing Products to any person for resale, save where that person is contractually restricted from actively supplying those Competing Products in the Territory during the Term and the period of 12 months following the end of the Term; or
 - (c) manufacture any Competing Products.

OR

11. No exclusivity

- 11.1 Subject to any Intellectual Property Rights in the Products:
- (a) the Manufacturer acknowledges that the Customer may appoint other manufacturers to produce and supply Identical Products and/or Competing Products; and
 - (b) the Customer acknowledges that the Manufacturer may produce Identical Products and/or Competing Products for other customers.

12. Charges

- 12.1 The Customer shall pay the Charges to the Manufacturer in accordance with this Agreement.
- 12.2 All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated [inclusive of any applicable value added taxes] OR [exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Manufacturer].
- 12.3 If there is a material increase in the cost to the Manufacturer of obtaining or supplying the Products, the Manufacturer may increase the Charges by giving to the Customer written notice of the increase at any time before supply of the Products, providing that:
- (a) the Manufacturer must give that notice as soon as reasonably practicable;
 - (b) the Customer shall have the right upon receipt of that notice to terminate this Agreement; and
 - (c) any increase under this Clause 12.3 must not exceed the increase in cost to the Manufacturer.

13. Payments

- 13.1 The Manufacturer shall issue an invoice for the Charges to the Customer [promptly] OR [at any time] following [the supply of the Products] OR [the agreement of an Order in respect of the Products] OR [*specify date*].
- 13.2 The Customer must pay the Charges to the Manufacturer within the period of 30 days following [the issue of an invoice in accordance with this Clause 13] OR [the receipt of an invoice issued in accordance with this Clause 13].
- 13.3 The Customer must pay the Charges by debit card, credit card, direct debit, bank transfer or cheque (using such payment details as are notified by the Manufacturer to the Customer from time to time).
- 13.4 If the Customer does not pay any amount properly due to the Manufacturer under this Agreement, the Manufacturer may:
- (a) charge the Customer interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or
 - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

14. Confidentiality obligations

- 14.1 The Manufacturer must:
- (a) keep the Customer Confidential Information strictly confidential;

- (b) not disclose the Customer Confidential Information to any person without the Customer's prior written consent, and then only under conditions of confidentiality [approved in writing by the Customer] OR [no less onerous than those contained in this Agreement];
- (c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Manufacturer uses to protect the Manufacturer's own confidential information of a similar nature, being at least a reasonable degree of care;
- (d) act in good faith at all times in relation to the Customer Confidential Information; and
- (e) not use any of the Customer Confidential Information for any purpose other than *[specify purposes]*.

14.2 The Customer must:

- (a) keep the Manufacturer Confidential Information strictly confidential;
- (b) not disclose the Manufacturer Confidential Information to any person without the Manufacturer's prior written consent, and then only under conditions of confidentiality [approved in writing by the Manufacturer] OR [no less onerous than those contained in this Agreement];
- (c) use the same degree of care to protect the confidentiality of the Manufacturer Confidential Information as the Customer uses to protect the Customer's own confidential information of a similar nature, being at least a reasonable degree of care;
- (d) act in good faith at all times in relation to the Manufacturer Confidential Information; and
- (e) not use any of the Manufacturer Confidential Information for any purpose other than *[specify purposes]*.

14.3 Notwithstanding Clauses 14.1 and 14.2, a party's Confidential Information may be disclosed by the other party to that other party's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Confidential Information that is disclosed for the performance of their work with respect to this Agreement and who are bound by a written agreement or professional obligation to protect the confidentiality of the Confidential Information that is disclosed.

14.4 No obligations are imposed by this Clause 14 with respect to a party's Confidential Information if that Confidential Information:

- (a) is known to the other party before disclosure under this Agreement and is not subject to any other obligation of confidentiality;
- (b) is or becomes publicly known through no act or default of the other party; or

- (c) is obtained by the other party from a third party in circumstances where the other party has no reason to believe that there has been a breach of an obligation of confidentiality.

14.5 The restrictions in this Clause 14 do not apply to the extent that any Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of either party on any recognised stock exchange.

14.6 Upon the termination of this Agreement, each party must immediately cease to use the other party's Confidential Information.

14.7 [Following the date of effective termination of this Agreement, and within 5 Business Days following the date of receipt of a written request from the other party] OR [Within 5 Business Days following the date of effective termination of this Agreement], the relevant party must:

- (a) irreversibly delete from its media and computer systems all copies of the other party's Confidential Information (and ensure that the other party's Confidential Information is irreversibly deleted from the media and computer systems of all persons to whom the relevant party has directly or indirectly disclosed that Confidential Information);
- (b) ensure that no other copies of the other party's Confidential Information remain in the relevant party's possession or control (or the possession or control of any person to whom the relevant party has directly or indirectly disclosed the other party's Confidential Information);
- (c) certify in writing to the other party that it has complied with the requirements of this Clause 14.7,

subject in each case to any obligations that the relevant party has under this Agreement to supply or make available to the other party any data or information, and providing that the relevant party shall have no obligation under this Clause 14.7 to delete or to cease to possess or control any of the other party's Confidential Information to the extent that the relevant party is required by applicable law to retain that Confidential Information, or to the extent that the Confidential Information is contained in *[define excluded document types]*.

14.8 The provisions of this Clause 14 shall continue in force [indefinitely following the termination of this Agreement] OR [for a period of 5 years following the termination of this Agreement, at the end of which period they will cease to have effect].

15. Warranties

15.1 The Manufacturer warrants to the Customer that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.

15.2 The Customer warrants to the Manufacturer that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.

15.3 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

16. Indemnities

16.1 The Manufacturer shall indemnify and shall keep indemnified the Customer against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Customer and arising directly or indirectly as a result of any breach by the Manufacturer of [this Agreement] OR *[[specify provisions]]* (a "**Manufacturer Indemnity Event**").

16.2 The Customer must:

- (a) upon becoming aware of an actual or potential Manufacturer Indemnity Event, notify the Manufacturer;
- (b) provide to the Manufacturer all such assistance as may be reasonably requested by the Manufacturer in relation to the Manufacturer Indemnity Event;
- (c) allow the Manufacturer the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Manufacturer Indemnity Event; and
- (d) not admit liability to any third party in connection with the Manufacturer Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Manufacturer Indemnity Event without the prior written consent of the Manufacturer,

[without prejudice to the Manufacturer's obligations under Clause 16.1] OR [and the Manufacturer's obligation to indemnify the Customer under Clause 16.1 shall not apply unless the Customer complies with the requirements of this Clause 16.2].

16.3 The Customer shall indemnify and shall keep indemnified the Manufacturer against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Manufacturer and arising directly or indirectly as a result of any breach by the Customer of [this Agreement] OR *[[specify provisions]]* (a "**Customer Indemnity Event**").

16.4 The Manufacturer must:

- (a) upon becoming aware of an actual or potential Customer Indemnity Event, notify the Customer;

- (b) provide to the Customer all such assistance as may be reasonably requested by the Customer in relation to the Customer Indemnity Event;
- (c) allow the Customer the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Customer Indemnity Event; and
- (d) not admit liability to any third party in connection with the Customer Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Customer Indemnity Event without the prior written consent of the Customer,

[without prejudice to the Customer's obligations under Clause 16.3] OR [and the Customer's obligation to indemnify the Manufacturer under Clause 16.3 shall not apply unless the Manufacturer complies with the requirements of this Clause 16.4].

16.5 The indemnity protection set out in this Clause 16 [shall] OR [shall not] be subject to the limitations and exclusions of liability set out in this Agreement, except [*exceptions*].

17. Limitations and exclusions of liability

17.1 Nothing in this Agreement will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law.

17.2 The limitations and exclusions of liability set out in this Clause 17 and elsewhere in this Agreement:

- (a) are subject to Clause 17.1; and
- (b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.

17.3 [Neither party shall be liable to the other party] OR [The Manufacturer shall not be liable to the Customer] OR [The Customer shall not be liable to the Manufacturer] in respect of any losses arising out of a Force Majeure Event.

17.4 [Neither party shall be liable to the other party] OR [The Manufacturer shall not be liable to the Customer] OR [The Customer shall not be liable to the Manufacturer] in respect of any loss of profits or anticipated savings.

- 17.5 [Neither party shall be liable to the other party] OR [The Manufacturer shall not be liable to the Customer] OR [The Customer shall not be liable to the Manufacturer] in respect of any loss of revenue or income.
- 17.6 [Neither party shall be liable to the other party] OR [The Manufacturer shall not be liable to the Customer] OR [The Customer shall not be liable to the Manufacturer] in respect of any loss of use or production.
- 17.7 [Neither party shall be liable to the other party] OR [The Manufacturer shall not be liable to the Customer] OR [The Customer shall not be liable to the Manufacturer] in respect of any loss of business, contracts or opportunities.
- 17.8 [Neither party shall be liable to the other party] OR [The Manufacturer shall not be liable to the Customer] OR [The Customer shall not be liable to the Manufacturer] in respect of any loss or corruption of any data, database or software.
- 17.9 [Neither party shall be liable to the other party] OR [The Manufacturer shall not be liable to the Customer] OR [The Customer shall not be liable to the Manufacturer] in respect of any special, indirect or consequential loss or damage.
- 17.10 The liability of [each party to the other party] OR [the Manufacturer to the Customer] OR [the Customer to the Manufacturer] under an Order shall not exceed the greater of:
- (a) *[amount]*; and
 - (b) the total amount paid and payable by the Customer to the Manufacturer under that Order.
- 17.11 The aggregate liability of [each party to the other party] OR [the Manufacturer to the Customer] OR [the Customer to the Manufacturer] under this Agreement shall not exceed the greater of:
- (a) *[amount]*; and
 - (b) the total amount paid and payable by the Customer to the Manufacturer under this Agreement.

18. Force Majeure Event

- 18.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.
- 18.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:
- (a) promptly notify the other; and

- (b) inform the other of the period for which it is estimated that such failure or delay will continue.

18.3 A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

19. Termination

19.1 The Manufacturer may terminate this Agreement by giving to the Customer not less than 30 days' written notice of termination, expiring [at the end of any calendar month] OR [after the end of the Minimum Term]. The Customer may terminate this Agreement by giving to the Manufacturer not less than 30 days' written notice of termination, expiring [at the end of any calendar month] OR [after the end of the Minimum Term].

OR

19.1 Either party may terminate this Agreement by giving to the other party not less than 30 days' written notice of termination, expiring [at the end of any calendar month] OR [after the end of the Minimum Term].

19.2 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

- (a) the other party commits any [breach] OR [material breach] of this Agreement, and the breach is not remediable;
- (b) the other party commits a [breach] OR [material breach] of this Agreement, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied;
or
- (c) the other party persistently breaches this Agreement (irrespective of whether such breaches collectively constitute a material breach).

19.3 Subject to applicable law, either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

- (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;

- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement); or
- (d) if that other party is an individual:
 - (i) that other party dies;
 - (ii) as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or
 - (iii) that other party is the subject of a bankruptcy petition or order.

19.4 The Manufacturer may terminate this Agreement immediately by giving written notice to the Customer if:

- (a) any amount due to be paid by the Customer to the Manufacturer under this Agreement is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and
- (b) the Manufacturer has given to the Customer at least 30 days' written notice, following the failure to pay, of its intention to terminate this Agreement in accordance with this Clause 19.4.

19.5 [The rights of termination set out in this Agreement shall not exclude any rights of termination available at law.] OR [This Agreement may only be terminated in accordance with its express provisions.]

20. Effects of termination

20.1 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 10.4, 11, 13.2, 13.4, 14, 16, 17, 20, 21.1, 21.5, 23 and 24 and Paragraphs 1, 2 and 4 of Schedule 2 (Terms and conditions of supply).

20.2 Except to the extent expressly provided otherwise in this Agreement, the termination of this Agreement shall not affect the accrued rights of either party.

21. Anti-slavery

21.1 Each party warrants and undertakes to the other that it has complied and will continue to comply with the Anti-Slavery Laws.

21.2 The Manufacturer shall ensure that all persons that provide services or supply products to the Manufacturer, where such services or products are used in the performance of the obligations of the Manufacturer under this Agreement, will

comply with the Anti-Slavery Laws; and the Manufacturer shall maintain written contracts with all such persons, and shall ensure that each of those contracts includes express requirements on the provider of services or supplier of goods to comply with the Anti-Slavery Laws.

- 21.3 The Manufacturer must comply with the supply chain anti-slavery and anti-human trafficking policy of the Customer supplied or made available by the Customer to the Manufacturer before the Effective Date, as it may be updated by the Customer acting reasonably from time to time.
- 21.4 The Manufacturer warrants that it has in place its own policies and procedures designed to ensure the compliance of the Manufacturer with the Anti-Slavery Laws; and the Manufacturer undertakes to:
- (a) acting reasonably, maintain and enforce those policies and procedures during the Term;
 - (b) promptly following receipt of a written request for the same from the Customer, provide copies of the documentation embodying those policies and procedures to the Customer.
- 21.5 Any breach of this Clause 21 shall be deemed to constitute a material breach of this Agreement.

22. Notices

- 22.1 Any notice from one party to the other party under this Agreement must be given by one of the following methods (using the relevant contact details set out in Clause 22.2):
- (a) delivered personally or sent by courier, in which case the notice shall be deemed to be received upon delivery; or
 - (b) sent by recorded signed-for post, in which case the notice shall be deemed to be received 2 Business Days following posting,
- providing that, if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.
- 22.2 The parties' contact details for notices under this Clause 22 are as follows:
- (a) in the case of notices sent by the Customer to the Manufacturer, *[contact details]*; and
 - (b) in the case of notices sent by the Manufacturer to the Customer, *[contact details]*.
- 22.3 The addressee and contact details set out in Clause 22.2 may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 22.

23. General

- 23.1 No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.
- 23.2 If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 23.3 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 23.4 Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.
- 23.5 This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.
- 23.6 Subject to Clause 17.1, this Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 23.7 This Agreement shall be governed by and construed in accordance with English law.
- 23.8 The courts of England shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

24. Interpretation

- 24.1 In this Agreement, a reference to a statute or statutory provision includes a reference to:
- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
 - (b) any subordinate legislation made under that statute or statutory provision.
- 24.2 The Clause headings do not affect the interpretation of this Agreement.
- 24.3 References in this Agreement to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.

24.4 In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

EXECUTION

The parties have indicated their acceptance of this Agreement by executing it below.

SIGNED BY *[[individual name]* on, the Manufacturer] OR *[[individual name]* on, duly authorised for and on behalf of the Manufacturer]:

.....

SIGNED BY *[[individual name]* on, the Customer] OR *[[individual name]* on, duly authorised for and on behalf of the Customer]:

.....

SCHEDULE 1 (MANUFACTURING PARTICULARS)

1. Specification of Products

[Specify Products]

2. Timetable

[Insert timetable]

3. Customer Components

[Specify Customer Components]

4. Customer Equipment

[Specify Customer Equipment]

5. Financial provisions

[Insert financial provisions]

SCHEDULE 2 (TERMS AND CONDITIONS OF SUPPLY)

Please read this Agreement carefully. All contracts that the Manufacturer may enter into from time to time for the supply of products shall be governed by this Agreement, and the Manufacturer will ask the Customer for the Customer's express written acceptance of this Agreement before supplying any products.

1. Supply

1.1 Unless the parties agree otherwise in writing:

- (a) the Products must be delivered by the Manufacturer or a person acting on behalf of the Manufacturer to the premises of the Customer within *[period]*;
- (b) the Manufacturer shall be responsible for arranging loading, transport, unloading and transit insurance in respect of the Products;
- (c) the Manufacturer shall be responsible for paying all costs relating to such loading, transport, unloading and transit insurance; and
- (d) risk in the Products shall pass from the Manufacturer to the Customer upon the delivery of the Products by the Manufacturer.

OR

1.1 Unless the parties agree otherwise in writing:

- (a) the Products must be collected by the Customer or a person acting on behalf of the Customer from the premises of the Manufacturer within the period of 5 Business Days following the receipt by the Customer of a written notice from the Manufacturer stating that the Products are ready for collection;
- (b) the Customer shall be responsible for arranging loading, transport, unloading and transit insurance in respect of the Products;
- (c) the Customer shall be responsible for paying all costs relating to such loading, transport, unloading and transit insurance; and
- (d) risk in the Products shall pass from the Manufacturer to the Customer upon the collection of the Products by the Customer.

1.2 If the parties agree that the Products shall be supplied by instalments, each instalment shall constitute part of this Agreement, and shall not be subject to a separate contract.

1.3 Any date or dates for the supply of the Products agreed by the parties under this Agreement shall not be of the essence of this Agreement.

1.4 The Manufacturer shall use reasonable endeavours to comply with reasonable requests by the Customer to postpone the delivery of the Products, providing that such postponements must not exceed 30 days.

2. Title

- 2.1 Legal and equitable title to the Products will pass from the Manufacturer to the Customer upon the later of:
- (a) [delivery] OR [collection] OR [delivery or collection] of the Products; and
 - (b) receipt by the Manufacturer of all amounts due from the Customer under this Agreement or any other contract between the parties.
- 2.2 Until title to the Products has passed to the Customer, the Customer shall hold the Products as the fiduciary agent and bailee of the Manufacturer.
- 2.3 Until title to the Products has passed to the Customer, the Customer must:
- (a) store the Products in a secure, safe, dry and clean environment separately from other products and goods;
 - (b) ensure that the Products are easily identifiable as belonging to the Manufacturer;
 - (c) not deface, destroy, alter or obscure any identifying mark on the Products or their packaging;
 - (d) ensure that no charge, lien or other encumbrance is created over the Products;
 - (e) deliver up the Products to the Manufacturer upon demand;
 - (f) insure the Products on the Manufacturer's behalf for their full price against all risks to the reasonable satisfaction of the Manufacturer (and on request produce to the Manufacturer such policy of insurance and a receipt for the then-current premium); and
 - (g) hold all proceeds of the insurance referred to above on trust for the Manufacturer and not mix them with any other monies or pay the proceeds into any overdrawn bank account.
- 2.4 The Manufacturer shall be entitled without further notice to inspect and/or recover possession of any Products to which it retains title; and the Customer grants to the Manufacturer and its employees and agents an irrevocable licence to enter at any time any premises where the Products are or may be situated for the purpose of inspecting or removing any Products the title to which has remained with the Manufacturer.
- 2.5 The Manufacturer may bring an action for the Charges and any other amounts due under this Agreement, notwithstanding that title to the Products has not passed to the Customer.

3. Warranties

- 3.1 The Manufacturer warrants to the Customer that:

- (a) the Manufacturer has (or will have at the relevant time) the right to sell the Products;
- (b) the Products are free from any charge or encumbrance, subject to the express provisions of this Agreement and to any charge or encumbrance disclosed or known to the Customer before the parties entered into this Agreement;
- (c) the Customer shall enjoy quiet possession of the Products, subject to the express provisions of this Agreement;
- (d) the Products correspond to any description of the Products supplied by the Manufacturer to the Customer;
- (e) the Products are of satisfactory quality;
- (f) the Products are fit for any purpose expressly [or impliedly] OR [(but not merely impliedly)] made known by the Customer to the Manufacturer before the parties entered into this Agreement;
- (g) the Products correspond to any sample of the Products supplied by the Manufacturer to the Customer, and will be free from any defect making their quality unsatisfactory, but which would not be apparent on reasonable examination of the sample; and
- (h) the Products will comply with all laws, rules and regulations applicable to the marketing and sale of the Products in the United Kingdom and all standards agreed between the parties, and the Products will bear all mandatory marks and signs associated with such laws, rules, regulations and standards.

3.2 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

4. Breach of warranty

4.1 If any Products do not comply with any warranty given by the Manufacturer under this Agreement, the Customer may with the prior agreement of the Manufacturer return those Products to the Manufacturer for (at the option of [the Manufacturer] OR [the Customer]):

- (a) a full credit of the Charges paid to the Manufacturer for such Products;
- (b) replacement Products; or
- (c) a credit note in respect of the Charges paid to the Manufacturer for such Products, to be offset against future purchases from the Manufacturer,

providing that the original delivery costs for such Products, return costs, re-delivery costs and related costs shall be met by [the Manufacturer] OR [the Customer].

- 4.2 Products returned under Paragraph 4.1 must be properly packed and returned to the premises of the Manufacturer within 30 Business Days following receipt of the Products by the Customer; and any Products returned in contravention of this Paragraph 4.2 will not be the subject of any refunds, credits or replacements and the Customer will continue to be liable for payment of any unpaid Charges in respect of such Products.

Free manufacturing agreement: drafting notes

This is a manufacturing agreement, under which the manufacturer is obligated to produce and supply products that are specified by the customer.

Typically, a detailed product specification will be provided, and this may be incorporated into the agreement or supplied as and when required by the customer.

In addition to the core manufacturing provisions, this agreement includes a schedule setting out the legal basis upon which the products are supplied. This schedule covers delivery (or collection) of the products, title to the products, risks in transit and so on.

This document is identical to our standard manufacturing agreement, except that it includes text attributing the document to us. If you want to use the document without that text, you should purchase the standard agreement.

BACKGROUND

Do you wish to include in the document a description of the background to the document?

AGREEMENT

Clause 2: Credit

Clause: Free documents licensing warning

Optional element. Although you need to retain the credit, you should remove the inline copyright warning from this document before use.

Clause 4: Order procedure

Clause 4.5

Optional element.

Clause 7: Minimum Quantity

Optional element.

Clause 8: Forecasting

Optional element.

Clause 8.4

Optional element.

Clause 10: Intellectual Property Rights

Optional element.

Clause 10.1

Optional element.

Clause 10.4

Optional element.

Clause 11: Exclusivity

Exclusivity provisions such as those set out here can be void and even illegal under UK and/or EU competition law. Whether a particular provision is unlawful will depend upon all the circumstances, including the market power of the parties. Before entering into a manufacturing agreement with any kind of exclusivity provisions, you should always consider taking specialist competition law advice.

NB These provisions have NOT been drafted to take account of the safe harbour defined by Commission Regulation (EU) No 330/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices - better known as the Vertical Agreements Block Exemption.

Clause 12: Charges

Clause 12.2

Optional element.

Clause 12.3

Optional element.

Clause 13: Payments

Clause 13.3

Optional element.

Clause 13.4

Optional element.

- *Late Payment of Commercial Debts (Interest) Act 1998* - <https://www.legislation.gov.uk/ukpga/1998/20>

Clause 14: Confidentiality obligations

Optional element.

Clause 14.3

Optional element.

Clause 14.6

Optional element. Should the parties be prohibited from making any further use of confidential information following termination?

Clause 14.7

Optional element. Should the document include an express requirement that the parties delete confidential information upon termination?

Clause 15: Warranties

Optional element.

Clause 15.1

Optional element.

Clause 15.2

Optional element.

Clause 16: Indemnities

Should the document include indemnities?

Clause 16.1

Optional element.

If this provision is included, losses suffered by the second party as a result of a breach of the contract by the first party will be assessed on an indemnity basis, rather than a standard basis.

Clause 16.2

Optional element.

Clause 16.3

Optional element.

If this provision is included, losses suffered by the first party as a result of a breach of the contract by the second party will be assessed on an indemnity basis, rather than a standard basis.

Clause 16.4

Optional element.

Clause 16.5

Optional element.

Clause 17: Limitations and exclusions of liability

Contractual limitations and exclusions of liability are regulated and controlled by law, and the courts may rule that particular limitations and exclusions of liability in contracts are unenforceable.

The courts are particularly likely to intervene where a party is seeking to rely on a limitation or exclusion of liability in its standard terms and conditions, but will also

sometimes intervene where a term has been individually negotiated. The courts may be more likely to rule that provisions excluding liability, as opposed to those merely limiting liability, are unenforceable. If there is a risk that any particular limitation or exclusion of liability will be found to be unenforceable by the courts, that provision should be drafted as an independent term, and be numbered separately from the other provisions. It may improve the chances of a limitation or exclusion of liability being found to be enforceable if the party seeking to rely upon it specifically drew it to the attention of the other party before the contract was entered into.

Exclusions and limitations of liability in UK B2B contracts are primarily regulated by the Unfair Contract Terms Act 1977 ("UCTA"). Contracts regulated by UCTA cannot exclude or restrict a party's liability: (i) for death or personal injury resulting from negligence (Section 2(1), UCTA); or (ii) for breach of the obligations arising from Section 12 of the Sale of Goods Act 1979 or Section 8 of the Supply of Goods (Implied Terms) Act 1973 (Section 6(1), UCTA). Furthermore, except insofar as the relevant term satisfies the requirements of reasonableness, such contracts cannot exclude or restrict liability: (i) for negligence (which includes a breach of an express or implied contractual obligation to take reasonable care or exercise reasonable skill) (Section 2(2), UCTA); or (ii) for breach of the obligations arising from Section 13, 14 or 15 of the Sale of Goods Act 1979 or Section 9, 10 or 11 of the Supply of Goods (Implied Terms) Act 1973 (Section 6(3), UCTA); or (iii) for misrepresentation (Section 3, Misrepresentation Act 1967).

In addition, if a contract is regulated by UCTA, and one of the parties is dealing on the other's written standard terms of business, then except insofar as the relevant contractual term satisfies the requirements of reasonableness the other party cannot: (i) exclude or restrict its liability in respect of a breach of contract; or (ii) claim to be entitled to render a contractual performance substantially different from that which was reasonably expected of him; or (iii) claim to be entitled, in respect of the whole or any part of its contractual obligation, to render no contractual performance at all (Section 3, UCTA).

Where the possession or ownership of goods passes under or in pursuance of a contract not governed by the law on the sale of goods or hire purchase, additional provisions apply. For example, liability under such a contract in respect of goods' correspondence with their description or samples, or their quality or fitness for any particular purpose, cannot be excluded or restricted except insofar as the term satisfies the requirement of reasonableness (Section 7(3), UCTA), and liability for breach of Section 2 of the Supply of Goods and Services Act 1982 (which implies certain warranties concerning title and quiet possession) cannot be excluded at all (Section 7(3A), UCTA). See Section 7, UCTA for more details.

These guidance notes provide a very incomplete and basic overview of a complex subject. Accordingly, you should take legal advice if you may wish to rely upon a limitation or exclusion of liability.

- *Unfair Contract Terms Act 1977* - <https://www.legislation.gov.uk/ukpga/1977/50>

Clause 17.1

Do not delete this provision (except upon legal advice). Without this provision, the specific limitations and exclusions of liability in the document are more likely to be unenforceable.

Clause 17.4

Optional element.

Clause 17.5

Optional element.

Clause 17.6

Optional element.

Clause 17.7

Optional element.

Clause 17.8

Optional element.

Clause 17.9

Optional element.

Clause 17.10

Optional element. Do you want to include a per-order liability cap in this document?

Liability caps may be unenforceable in practice.

Clause 17.11

Optional element. Do you want to include an aggregate liability cap in this document?

Liability caps may be unenforceable in practice.

Clause 18: Force Majeure Event

Optional element.

Clause 18.2

Optional element.

Clause 18.3

Optional element.

Clause 19: Termination

Clause 19.3

Depending upon the status of the parties, the circumstances of the termination and the applicable law, some of the rights to terminate set out here may be unenforceable.

Clause 19.4

Optional element.

Clause 19.5

Optional element.

Clause 21: Anti-slavery

Optional element.

- *Modern Slavery Act 2015 - <http://www.legislation.gov.uk/ukpga/2015/30>*

Clause 21.2

Optional element.

Clause 21.3

Optional element.

Clause 21.4

Optional element.

Clause 21.5

Optional element.

Clause 22: Notices

Optional element.

Clause 23: General

Clause 23.1

Optional element.

Clause 23.2

Optional element.

Clause 23.3

Optional element.

This is intended to prevent, for example, one party wrongfully claiming that a term of the contract was changed in a telephone call.

Clause 23.4

Optional element.

Clause 23.5

Optional element.

This provision is designed to exclude any rights a third party may have under the Contracts (Rights of Third Parties) Act 1999.

- *Contracts (Rights of Third Parties) Act 1999* - <https://www.legislation.gov.uk/ukpga/1999/31>

Clause 23.6

Optional element.

Clause 23.7

This template has been drafted to work in the English law context. If you plan to change the governing law, you should have the document reviewed by someone with expertise in the law of the relevant jurisdiction.

Clause 23.8

Optional element.

As a practical matter, it makes sense for the courts with expertise in the relevant law to have the right to adjudicate disputes. Where one of the parties is outside England (or at least the UK), you may want to grant the courts of their home jurisdiction the right to adjudicate disputes, as this could ease enforcement in some circumstances.

Clause 24: Interpretation

Should provisions concerning the interpretation of the document be included?

Clause 24.1

Optional element.

Clause 24.2

Optional element.

Clause 24.3

Optional element.

Clause 24.4

Optional element.

This provision is designed to exclude the application of a rule of interpretation known as the ejusdem generis rule. That rule may affect the interpretation of contractual clauses that list particular examples or instances of some more general

idea, by limiting the scope of the general idea by reference to those particular examples or instances.

SCHEDULE 1 (MANUFACTURING PARTICULARS)

Optional element.

Paragraph 1: Specification of Products

Optional element.

Paragraph 2: Timetable

Optional element.

Paragraph 3: Customer Components

Optional element.

Paragraph 4: Customer Equipment

Optional element.

Paragraph 5: Financial provisions

Optional element.

SCHEDULE 2 (TERMS AND CONDITIONS OF SUPPLY)

Paragraph 1: Supply

Paragraph 1.2

Optional element.

Paragraph 1.3

Optional element.

Paragraph 1.4

Optional element.

Paragraph 3: Warranties

Paragraph 3.1

Optional element.

The warranties in UK supply agreements are heavily regulated by statute, as detailed in this note.

Except where there appears from a contract, or can be inferred from its circumstances, an intention that the supplier will only transfer to the customer a limited title, then a warranty that the supplier has a right to sell will be implied by law (Section 12(1), Sale of Goods Act 1979) and cannot be restricted or excluded

(Section 6(1), Unfair Contract Terms Act 1977). Although it is referred to here as a warranty, the implied term is to be treated as a condition under the Sale of Goods Act 1979, and a breach of this warranty will therefore be a material breach.

A warranty that goods are sold free from encumbrances is implied by Section 12(2) of the Sale of Goods Act 1979, and generally speaking may not be excluded or restricted. A warranty of quiet possession is implied by Section 12(3) of the Sale of Goods Act 1979, and generally speaking may not be excluded or restricted.

A warranty of conformity to description is implied by Section 13 of the Sale of Goods Act 1979 where there is a "sale by description", and may only be excluded or restricted if the exclusion or restriction is reasonable.

A warranty of satisfactory quality is implied by Section 14(2) of the Sale of Goods Act 1979, and may only be excluded or restricted if the exclusion or restriction is reasonable. However, the warranty will not be implied where the matter making the quality of the products unsatisfactory: (i) is specifically drawn to the customer's attention before the contract is made; (ii) ought to have been revealed by the pre-contract examination of the products that was performed by the customer; or (iii) in the case of a "sale by sample", would have been apparent upon a reasonable examination of the sample.

A warranty of fitness for purpose is implied by Section 14(3) of the Sale of Goods Act 1979, and may only be excluded or restricted if the exclusion or restriction is reasonable.

A warranty of conformity to sample is implied by Section 15 of the Sale of Goods Act 1979 where there is a "sale by sample", and may only be excluded or restricted if the exclusion or restriction is reasonable.

- *Sale of Goods Act 1979* - <http://www.legislation.gov.uk/ukpga/1979/54>

Paragraph 4: Breach of warranty

Optional element.

Because these provisions contain procedural and remedial limitations upon the liability of the supplier, they could be subject to close judicial scrutiny.