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MANUFACTURING & SUPPLY

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**THIS AGREEMENT** is made the

**BETWEEN:**

- (1) <<Name of Company>> Limited, a company incorporated in <<Country of Registration>> under number <<Company's Registered Office Number>> whose registered office is at <<Company's Registered Office Address>> (hereinafter known as the "Company") and
- (2) <<Name of Agent>> Limited, a company incorporated in <<Country of Registration>> under number <<Contractor's Registration Number>> whose registered office is at <<Contractor's Registered Office Address>> (hereinafter known as the "Contractor")

**WHEREAS:**

- (1) The Company manufactures the Product
- (2) The parties have agreed that the Contractor shall manufacture, bottle and store the Product on behalf of the Company in accordance with the terms of this Agreement upon the following terms.

**IT IS AGREED** as follows:

**1. Definitions and Interpretation**

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions have the meanings set out below:

**"Confidential Information"**

the Product Specification as is secret and any other information disclosed in confidence by the Company to the Contractor in relation to the Product;

**"Delivery"**

delivery in accordance with clause 13.3 and construed accordingly;

**"Equipment"**

all equipment of the Contractor used in the manufacture, bottling and packaging of the Product;

**"Financial Year"**

the financial year ending twelve months from << >> to << >>;

**"Margin"**

the margin over the Cost as defined in the Product Specification and as agreed in clause 13.3;

**"Packaging Materials"**

all materials, fixtures, labels and stamps of all kinds, including attachments, cartons, cases, boxes, labels, pallets] and other items required for the manufacture, bottling and packaging of the Product by the Contractor and its supply to the Contractor;

**"Packaging Specification"**

the specification for the Packaging Materials set out in the Product Specification;

**"Product"**

the Product as defined in the Product Specification;

**"Purchase Order"**

an order issued by the Company pursuant to which the Contractor is to supply the Product;

## **“Product Specification”**

## **“Specification”**

## **“Warehouse”**

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in Part XXV  
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## **2. Grant of Licence**

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such change.

2.3 If the Contractor o  
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the Contractor).

## **3. Manufacture of Product**

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<sup>1</sup> This template assumes that all aspects of the  
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know-how, secret formulae,  
confidential information relating to  
bottling/packaging of the Product  
set out in schedule 1;

Specification and the Packaging

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warehouse in the United Kingdom  
the Company may agree.

which are contained or referred to  
shall be construed as having the

shall be construed as references to  
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any other agreement or document  
in this agreement or such other  
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set out herein.

for a non-exclusive licence to use  
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any improvement of the Product  
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licence to use such improvement  
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l and blend] the Product for  
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the Specification, the  
clause 7 and any other  
from time to time.

ced by the Company pursuant to  
instructions issued by the Company

3.2 The Contractor shall  
bottling the Product  
without prejudice to

facilities<sup>2</sup> for manufacturing and  
Company's instructions including  
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s, piping and other Equipment  
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Contractor shall be  
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Product (whether bottled or bulk)  
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the Specification. [The Contractor  
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for the time being in force relating  
storage of the Product and all  
appertaining thereto;

<sup>2</sup> This template assumes that all aspects of the  
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3.5.3 not deliver <sup>3</sup> except in accordance with the Company's v

#### 4. Indemnity

The Contractor shall promptly indemnify and keep the Company indemnified against all losses or charges incurred or suffered by it as a result of any claim (defined below).

#### 5. Liability

- 5.1 For the purposes of
- 5.1.1 "Product Liability" arising out of death, personal injury or loss of or caused by Defective Product; and
- 5.1.2 "Defective Product" means any Product produced and supplied by the Contractor in compliance with clause 3.4 or is defective within the meaning of the Consumer Protection Act 1987, save that a defect arises by reason of a change of the Specification.
- 5.2 Subject and in addition to the Contractor's liability under clause 4, the Contractor shall be liable to replace any Defective Product and will not otherwise be liable to the Company for:
- 5.2.1 any act or omission in breach of its obligations under clause 3;
- 5.2.2 any breach of its obligations under clause 3;
- 5.2.3 any liability or amount/s of damages or compensation arising by reason of the Contractor's negligence that liability for any of the above omissions exceeds the limit of the Contractor's liability.

#### 6. Quality Control

- 6.1 The Contractor shall permit the Company to enter its premises at all times during normal working hours by prior arrangement with the Contractor for the purpose of inspecting the Equipment, the Product, the Packaging Material and the manufacture and bottling of the Product and taking samples of the Product and taking samples of the Product in accordance with the regulations laid down by H.M. Revenue and Customs.
- 6.2 During the filling of the Product by the Contractor hereunder the Contractor shall supply the Company samples of every batch [rotation] and shall make available to the Company samples to be released for the same. The Company shall be free to dispatch the samples. Any samples so supplied to the Company shall be in accordance with the applicable regulations and the Company shall be free to dispatch the samples.

<sup>3</sup> This template assumes that all aspects of the contract are governed by the law of the UK, so any address for delivery etc should only be a UK address

## 7. Placing of Orders and Forecasting

- 7.1 The Company shall give the Contractor a written forecast of the volume of the Product it will require the Contractor to manufacture, bottle, package and store during each of the months to which the Purchase Order relates. The one month estimate and the two-month estimate shall specify the amount of Product (in units, weight or capacity etc.) of each size of bottle (as shown in schedule 2) required to be produced during the month. The Contractor shall not be obliged to produce more than <<?%>> of the volume of Product specified in the most recent forecast.
- 7.2 Not less than <<?%>> of the annual volume of Product specified in the forecast, the Company shall give the Contractor a written forecast of the volume of the Product it estimates it will require the Contractor to manufacture, bottle, package and store during each of the months to which the Purchase Order relates, subject to the relevant Purchase Orders, to supply the Company with <<?%>> of the annual volume of Product specified in the forecast. The Contractor shall not be obliged to supply more than <<?%>> of the annual volume of Product specified in the forecast.
- 7.3 During each Financial Year the Company shall procure from the Contractor all its requirements for Product (in bottled form) up to a total volume equivalent to the volume of Product specified in the forecast. In respect of its requirements for Product (in bottled form) in excess of the volume of Product specified in the forecast, the Contractor and the Company shall agree a quotation for the supply of Product. The Contractor shall ensure that its quotation is in all the respects as competitive as possible. The Company shall have no obligation to accept the quotation and if it does not do so, it shall be at liberty to procure the Product from any other source. The Contractor shall be at liberty to supply the Product in any form, including bulk or packaged form, and to package the Product in any way, including in bulk or packaged form.
- 7.4 All Product ordered by the Company in accordance with clause 7.1 shall be delivered to the Company in the form and quantity specified in the Purchase Order. Time shall be of the essence for the purposes of this clause.
- 7.5 If the Company places an order for Product in addition to the monthly order referred to in clause 7.1, the Contractor shall deliver that Product<sup>5</sup> [into bond] taking into account all relevant production requirements.
- 7.6 The Company acknowledges that its remedy in respect of any breach of clause 7.1 (in the event of persistent breaches) shall be limited to damages only.]

<sup>4</sup> This template assumes that all aspects of the Product are to be supplied to the UK address

<sup>5</sup> See footnote 4

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from time to time with such quantities reasonably require for the purpose of any's Purchase Orders in sufficient quantity under this Agreement punctually. Company free of charge save that cost of Packaging Materials not in excess of <<?%>> of the quantity of the quantity of Product bottled and Contractor at cost price.

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### 13. Storage

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### 14. Insurance

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and to secure from the Landlord a  
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pursuant to clause 7 are the  
freely removed at any time by the  
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and bottled Product or Packaging  
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Agreement or with the Company's

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trils in respect of the Product and  
against theft on a "first loss" basis;

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- 14.2 in respect of any liability to the Company under clauses 3.4 and 5 of this Agreement shall not be less than <insert figure>> pounds sterling.

PROVIDED THAT:

- 14.3 the Contractor shall ensure that all House and Equipment conform to all reasonable requirements of the insurers and shall at all times conform with the terms of the policies of insurance and inform the Company immediately of any or proposed alteration to the Warehouse or Equipment of its business which in any way may affect the insurance. Not such alterations relate to the Product or Packaging.

- 14.4 the Contractor shall provide the Company with a copy of the policy or policies;

- 14.5 the Contractor will not vary the terms of the policy or policies without the prior consent of the Company.

- 14.6 without prejudice to the above, the Contractor shall ensure that any policy referred to in this clause 14 is not a result of any act or omission of its respective servants or agents from whom it may be responsible.

## 15. Pricing

- 15.1 The price (exclusive of VAT) for the supply of the Product manufactured by the Contractor pursuant to the terms of this Agreement shall be the Cost defined in clause 15.4 plus << >> per cent per <<unit>>.

- 15.2 The parties agree that in respect of all Product delivered prior to the expiry of the Agreement, after the date of this Agreement, namely <<relevant date>> specified in schedule 3. Not later than [insert appropriate date] hereafter the parties shall meet to review the increase specified in schedule 3 since the date the price was last reviewed and to agree Cost for the purposes of clause 15.3 on the basis of the increase in those items over the period since that date. The Contractor shall provide the Company with full and adequate information of the Cost increases. In the absence of agreement, the parties shall appoint an independent person to be appointed (in default of nomination by the parties) by the President of the Institute of Chartered Accountants in England and Wales who shall act as an expert and not as an arbitrator. His decision shall be final and binding and his costs shall be paid by the parties in equal shares. He shall afford full co-operation and assistance to the independent person and allow him reasonable access to its premises for the purpose of examining its accounts and other records of the Contractor as he considers necessary for the performance of his duties hereunder.

- 15.3 Following the review in clause 15.2 the price payable in respect of Product delivered in the next month period << >> to << >> shall be Cost (as agreed in the review) plus the increase in the items of Cost specified in the review. The increase shall be the same proportion as the increase in the items of Cost specified in clause 15.4 since the date of the previous review.

- 15.4 For the purposes of this clause, the following shall mean:

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15.4.1 the actual cost of the materials as used in the manufacture of the Product shall be reasonably determined in the event shall the Contractor

manufacturing or procuring such materials for the manufacture and bottling of the Product. The Contractor procures materials on long term and provided that in no event shall the Contractor

15.4.2 the Contractor shall be responsible for the cost of the labour employed and power used in the manufacture of the Product; and

the Contractor shall be responsible for the cost of the labour employed and power used in the manufacture of the Product; and

15.4.3 such proportion of the production overheads (including production overheads and fixed overheads) attributable to the manufacture and bottling of the Product shall be calculated on the basis of the overheads which belong to the Contractor for third party in any event the Contractor shall be responsible for the overhead and

variable overhead costs (including production overheads and fixed overheads) attributable to the manufacture and bottling of the Product shall be calculated on the basis of the overheads which belong to the Contractor for third party in any event the Contractor shall be responsible for the overhead and

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## 16. Payment

The Contractor shall be entitled to payment of the invoice for the delivery of the Product to the Company no later than the date of the invoice was rendered. Payment shall be made without prejudice to any rights the Contractor may have in respect of the liability of the Contractor or otherwise affected by reason of the Contractor's

to the Company not earlier than the date of the invoice. Invoices shall be payable by the Company following the month in which the invoice was rendered by the Company are without prejudice to any rights the Contractor may have for any reason whatever and any agreement shall not be terminated or

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## 17. Intellectual Property

All trade marks, trade names, designs in relation to the Product shall be and shall remain the property of the Company and the Contractor shall not at any time claim or register in any part of the world a trade mark, design or similar to or a colourable imitation of which is the property of the Company

all intellectual property rights and materials supplied by or on behalf of the Company, and the Contractor shall not at any time claim or register in any part of the world a trade mark, design or similar to or a colourable imitation of which is the property of the Company

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## 18. Confidentiality

18.1 The Contractor shall keep confidential and shall not use or disclose directly or indirectly to any third party the Confidential Information available to the Contractor under the terms of this Agreement and the Contractor shall be obliged to keep such Confidential Information confidential to any information available to the Contractor

information confidential and secret and shall not use or disclose directly or indirectly to any third party the Confidential Information available to the Contractor under the terms of this Agreement and the Contractor shall be obliged to keep such Confidential Information confidential to any information available to the Contractor

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18.1.1 at the time of the delivery of the Product to the Company

the public domain; or

18.1.2 at a later date than the date of the delivery of the Product to the Contractor.

the public domain through no fault of the Contractor.

18.2 The Contractor hereby agrees that all Confidential Information shall be and shall remain at all times the sole and exclusive property of the Company;

es:

18.2.1 that all Confidential Information shall be and shall remain at all times the sole and exclusive property of the Company;

shall be and shall remain at all times the sole and exclusive property of the Company;

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18.2.2 that its right of termination shall wholly cease upon the termination of this Agreement

18.2.3 to return to the Contractor all material embodying the Agreement (including information stored electronically) and all copies thereof.

## 19. Term and Termination

19.1 This Agreement shall continue in force for a period of <<number of months etc.>> from that date and thereafter unless or until the other party giving to the other not less than <<notice period>> or at any time.

19.2 Either party may terminate the Agreement forthwith by giving written notice to the other in any of the following circumstances:

19.2.1 if the other party is in breach of any of the terms and conditions of the Agreement (if capable of remedy) without the written notice from the other party giving full particulars of the breach; or

19.2.2 if the other party is in liquidation whether compulsory or voluntary (or of bona fide reconstruction or amalgamation of the other party), or compounds with its creditors or makes a general assignment to its creditors, or if it has a receiver, administrator appointed over the whole or substantial part of its undertaking or assets, or if it ceases or threatens to cease or materially changes its business, or makes any material change in its management or if it suffers any analogous process

19.3 The Company may terminate the Agreement forthwith by giving written notice to the Contractor in any of the following circumstances:

19.3.1 if there is a change of control of the Contractor (and for this purpose "change of control" shall be defined by reference to Section 840 of the Companies Act 1985); or

19.3.2 if the Contractor is engaged in any conduct which the Company considers to be prejudicial to its business or the interests of its customers generally.

## 20. Consequences of Termination

Upon termination of this Agreement, the Contractor shall deliver to the Company whatever:

20.1 the Contractor shall deliver to the Company all Product already in process and all stocks of Product in the Contractor's possession and delivered to the Contractor for the purpose of the Agreement shall be paid by the Company;

20.2 the Contractor shall deliver to the Company all Packaging Materials in the Contractor's possession at the time of termination in accordance with the Company's instructions and at the Contractor's expense (save for any required for the completion of any order placed by the Contractor in clause 20.1);

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20.3 all the rights and obligations under this Agreement shall terminate, except for those to which any of the parties may be entitled or be subject to (which shall remain in full force and effect) and except as provided in this clause 20;

20.4 termination shall not affect the right to damages or other remedy in respect of the event giving rise to the termination or any other remedy which any party may have in respect of this Agreement which existed at or before the date of termination;

20.5 Clauses 1, 14, and

## 21 Force Majeure

21.1 For the purposes of this Agreement, "Force Majeure" means, in relation to either party, any circumstance which is beyond the reasonable control of that party (including, without limitation, war, terrorism, strike, lock-out or other form of industrial action).

21.2 If any Force Majeure event occurs which affects or may affect the performance of any obligations under this Agreement, it shall forthwith notify the other party of the nature and extent of the circumstances in question.

21.3 Neither party shall be liable for any delay in performance, or non-performance, of any obligations under this Agreement, to the extent that the delay or non-performance is due to any Force Majeure of which it has notified the other party in writing. The period of non-performance shall be extended accordingly.

21.4 If the performance of any obligations under this Agreement is prevented for a continuous period in excess of six months, the parties shall enter into bona fide discussions with a view to alleviating the situation. If no agreement is reached, the party affected may terminate this Agreement after giving the other party written notice to the party so affected.

## 22 Assignment

The Contractor may not, without the written consent of the Company, assign, sub-contract, license or otherwise transfer any of its rights or obligations under this Agreement.

## 23 Entire agreement

23.1 This Agreement, together with any schedules, forms, drafts, agreements, undertakings, representations, warranties, conditions, terms, notices, correspondence, writing or oral, relating to it, constitutes the whole agreement between the parties in relation to its subject matter and supersedes and replaces all previous agreements, drafts, agreements, undertakings, representations, warranties, conditions, terms, notices, correspondence, writing or oral, relating to it.

23.2 No variation of this Agreement shall be valid unless made in writing.

## 24 Rights etc cumulative and

24.1 The rights, powers, remedies and are not exclusive and are cumulative with any other rights, powers, remedies or remedies provided by law or otherwise.

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27.4 Either party to this Agreement shall notify the other party of any change to the address or any of the details specified in clause 27.3, provided that such notification shall be made no later than five days after the date specified in such notice of change is later.

**28. Relationship of the parties**

28.1 Nothing in this Agreement shall constitute, or be deemed to constitute, a partnership between the Contractor and the Client for any purpose.

28.2 Subject to any express provision to the contrary in this Agreement, the Contractor shall have no authority to enter into any contract, incur any liability, assume any obligation or act on behalf of the Client in any way.

**29. Set off**

The Contractor shall not be entitled to set off or counterclaim against the Client any sums after they become due by reason of the Contractor's obligations under this Agreement or may have or allege to have against the Client.

**30. Law and Jurisdiction**

30.1 This Agreement shall be governed by, and construed in accordance with, English law.

30.2 In relation to any dispute or claim arising out of or in connection with this Agreement, the parties irrevocably and exclusively submit to the jurisdiction of the English courts and waives any objection to venue or on the grounds of inconvenience forum.

**IN WITNESS** whereof each of the parties has signed and affixed its seal upon it the day and year first above written.

the other party of any change to the details specified in clause 27.3, provided that such notification shall be made no later than five days after the date specified in such notice of change is later.

, or be deemed to constitute, a partnership between the Contractor and the Client as expressly provided, shall it not constitute the Contractor the agent of the other party for any purpose.

Subject to any express provision to the contrary in this Agreement, the Contractor shall have no authority to enter into any contract, incur any liability, assume any obligation or act on behalf of the Client in any way.

The Contractor shall not be entitled to set off or counterclaim against the Client any sums after they become due by reason of the Contractor's obligations under this Agreement or may have or allege to have against the Client.

This Agreement shall be governed by, and construed in accordance with, English law.

In relation to any dispute or claim arising out of or in connection with this Agreement, the parties irrevocably and exclusively submit to the jurisdiction of the English courts and waives any objection to venue or on the grounds of inconvenience forum.

whereof each of the parties has signed and affixed its seal upon it the day and year first above written.

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SCHEDULE 4B SPECIFICATION

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SIGNED by

<<Name and Title of person signing  
for and on behalf of <<Company Name>>

In the presence of

<<Name & Address of Witness>>

SIGNED by

<<Name and Title of person signing  
for and on behalf of <<Contractor's Name>>

In the presence of

<<Name & Address of Witness>>

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