

CONTRACT MANUFACTURING AGREEMENT

THIS AGREEMENT is effective as of #month-date, year# (the “Effective Date”) **BY AND BETWEEN:**

PARTY A,

a company incorporated under the laws of Germany, and having its head office at Germany, (hereinafter referred to as “**PARTY A**”)

- and -

PARTY B

a company incorporated under the laws of the Italy and having its office at Italy (hereinafter referred to as “**PARTY B**”)

WHEREAS:

PARTY A is active in the production and sale of industrial equipment;

PARTY B is active in the production of industrial equipment and has production facilities in Italy;

PARTY A has appointed **PARTY B** as contract manufacturer;

PARTY A and **PARTY B** have been working in line with the provisions of this agreement for many years. To this extent the contract ratifies the actual conduct of doing business. Both parties want to formalize this in the current agreement;

PARTY A and **PARTY B** have agreed to lay down the terms and conditions of their contract manufacturing agreement as follows:

ARTICLE I – DEFINITIONS

1.1 Whenever used in this Agreement, the following terms shall have the following meanings respectively, unless otherwise specified:

- (a) “**Affiliate**” of a party means any Person which directly or indirectly controls, is controlled by, or is under common control with, such party; as used herein, the term “control” or “controls” means possession of the power to direct, or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract, law or otherwise, and the term “controlled” shall have the meaning correlative to the foregoing.
- (b) “**Agreement**” means this contract manufacturing agreement, the recitals set forth in the preamble herein, and all schedules attached hereto, as well as all amendments,

additions, restatements or modifications made hereto and thereto and all other documents incorporated herein or therein by reference, all of which are hereby made an integral part of and will be read as if included within the text of this contract manufacturing agreement;

- (c) **"Business Day"** means each of Monday, Tuesday, Wednesday, Thursday and Friday, except when any such day occurs on a statutory holiday observed in the Territory;
- (d) **"Effective Date"** means #month-date, year#;
- (e) **"Intellectual Property"** means creations of the intellect for which a monopoly is assigned to the designated owner by law. More specific: production technology;
- (f) **"Person"** means any person, individual, firm, association, syndicate, partnership, joint venture, trustee, trust, corporation, division of a corporation, unincorporated organization or other entity or a government agency or political subdivision thereof;
- (g) **"Goods"** means the (semi-)finished goods manufactured sold by **PARTY B** as set forth more specifically in Schedule "A" attached hereto as the same may be supplemented by **PARTY B**, in its sole discretion, from time to time;
- (h) **"Term"** means the term of this Agreement as set forth in Article III comprising the Initial Term and any Renewal Term; and

1.2 The following schedules are incorporated into this Agreement by reference and form an integral part hereof:

- (a) Schedule "A" List of the Goods to be manufactured

ARTICLE II – MANUFACTURE AND SUPPLY OF THE GOODS

- 2.1 Subject to the terms agreed in this contract, **PARTY B** shall manufacture and supply the Good(s) to **PARTY A** (hereinafter: "the Good" or "the Goods") as listed in Schedule "A".
- 2.2 **PARTY B** shall manufacture the products under close supervision of and directions by **PARTY A**. **PARTY A** shall therefore provide **PARTY B** instructions as regards to the manufacturing process, the technical details as well as the amount to be produced.
- 2.3 As soon as practicable after the execution of this contract the **PARTY A** shall at its own cost and free of charge disclose to **PARTY B** such of its technology as is necessary to enable **PARTY B** to manufacture the Goods in accordance with the specifications as provided by **PARTY A**.
 - (a) Any such disclosure of technology shall be subject to the confidentiality provisions of Article 9, but nothing in this contract shall require **PARTY A** specially to prepare any technology or to engage in any research or development on **PARTY B**'s behalf.
 - (b) **PARTY B** shall not supply the Goods produced through the use of the technology of **PARTY A** to any person other than **PARTY A**.

- 2.4 Either party may at any time request that the Goods be adapted/amended in order to comply with any applicable safety or other statutory requirements. If the changes induced by such adaptation/amendment materially affect the nature or quality of the Goods, the Parties shall renegotiate in good faith the relevant parameters of this contract and any relevant schedule.

ARTICLE III – TERM

- 3.1 The initial term of this Agreement shall come into effect on the Effective Date and, unless terminated earlier in accordance with the terms of this Agreement, shall continue in full force and effect for a period of # (#) years (the “Initial Term”).
- 3.2 Provided **PARTY B** shall have complied with all the terms and conditions hereof, this Agreement shall be automatically renewed at the end of the Initial Term or any Renewal Term, as the case may be, on the same terms and conditions as set forth herein for successive periods of # (##) year(s) (in each case a “Renewal Term”), unless either party shall have provided written notice to the other party that it does not intend to renew this Agreement at least ## (##) days prior to the expiration of the Initial Term, or any Renewal Term, as the case may be.

ARTICLE IV – COOPERATION OF THE PARTIES FOR IMPROVEMENTS AND MODIFICATIONS

- 4.1 **PARTY A** and **PARTY B** shall meet periodically to review any matters likely to be relevant in relation to the manufacture, sale, use or development of the Goods.
- 4.2 Without limiting the general scope of Article 4.1:
- (a) **PARTY A** shall provide **PARTY B** with details of any improvement belonging to **PARTY A** which it wishes to be incorporated into the Goods or any other modification which it wishes to be made to the Goods from time to time; and
 - (b) **PARTY B** shall provide **PARTY A** with details of any improvement which is made, developed or acquired by **PARTY B** from time to time.
- 4.3 An improvement as referred to in this section means any development, enhancement or derivative of the Good, or its design or manufacturing process, which would make The Good cheaper, more effective, more useful or more valuable, or would in any other way render the Good preferable in commerce.
- 4.4 The title to and all intellectual property rights in respect of any improvement made, developed or acquired by either party shall belong to **PARTY A**. **PARTY A** and **PARTY B** may use any improvement which are made, developed or acquired by either party, and any applicable intellectual property of either party, for their own purposes by way of an exclusive, royalty-free licence without limit of time.
- 4.5 **PARTY B** shall not unreasonably withhold its consent to the incorporation into the Goods of any improvement belonging to **PARTY A** or any other modification to the Goods referred to in Article 4.2.a, or of any improvement belonging to the Manufacturer referred to in Articles 4.2.b and 4.4.

- 4.6 To the extent necessary, the incorporation of any improvement or any other modification to the Goods, which is agreed between **PARTY A** and **PARTY B**, shall be recorded in writing in Schedule A as an amendment to the contractually agreed specification of the Goods.

ARTICLE V – PRODUCT PRICING AND PAYMENT

- 5.1 Subject to and in accordance with the terms and conditions hereof, **PARTY B** agrees to sell to **PARTY A**, and **PARTY A** agrees to buy from **PARTY B**, the Goods set forth in Schedule “A” hereto.
- 5.2 As a compensation for its manufacturing activities, **PARTY B** shall be entitled to a fee calculated as operating expenses (OPEX) and costs of goods sold (COGS) (inclusive of costs for third party (casting) companies) plus an arm’s length mark-up applying the interquartile range or other percentage as may be determined under OECD transfer pricing principles from time to time. The mark-up is analyzed and determined on a yearly basis via contemporaneous transfer pricing documentation.
- 5.3 **PARTY B** calculates the prices for the manufactured goods, based on budgeted operating expenses and costs of goods sold plus mark-up. This mark-up is within the interquartile range of the transfer pricing analysis. At the end of the year the actual costs are quantified and the final prices of the goods are based on these actual costs plus a mark-up that is within the interquartile range of the most recent transfer pricing analysis. The correcting invoice at the end of the year is based on the difference between the final price and the price charged by **PARTY B** charged to **PARTY A** based on the budgeted costs plus mark-up during the year.
- 5.4 Payment shall be made by **PARTY A** within ## (##) days from the invoice date. After # days from the invoice date **PARTY A** will pay interest on overdue accounts at a rate of # percent (#%). Furthermore, all bank charges and/or discounts charged by the bank in association with the payment will be the responsibility of the **PARTY A**.

ARTICLE VI – QUALITY AND CHANGES IN PRODUCT

- 6.1 **PARTY B** guarantees that the quality of Goods supplied under this Agreement shall meet, at the time of delivery to **PARTY A** a quality required by the contract and free from defects in design, workmanship or materials. Thereafter, **PARTY A** shall be responsible for any diminishment in the quality of the Goods in its possession, whether caused by improper transport or storage of such Product or for any other reason whatsoever.
- 6.2 **PARTY A** shall, promptly following receipt of the Goods, examine these Goods and satisfy itself that it meets its requirements. If **PARTY B** agrees with **PARTY A** that any rejected Good is defective, **PARTY B** will replace such defective Good with replacement Good free of defect and this replacement Good shall constitute the sole and exclusive liability of **PARTY B** in respect to the defective Good.
- 6.3 Notwithstanding anything to the contrary in this contract, **PARTY B** shall not, except in respect of death or personal injury caused by the negligence of **PARTY B**, be liable to **PARTY A** for any loss of profit or any indirect, special or consequential loss or damage, costs, expenses or other claims (whether occasioned by the negligence of **PARTY B** or its employees or agents or

otherwise) arising out of or in connection with the manufacture or supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with this contract or at all), their use or resale by **PARTY A** or their use by any customer of **PARTY A**, and the total liability of **PARTY B** for any other loss, damage, costs, expenses or other claims which so arise shall not exceed the price of the Goods in question.

ARTICLE VII – ADDITIONAL OBLIGATIONS OF PARTY B

7.1 During the currency of this Agreement, in addition to any other obligations set forth herein, **PARTY B** shall:

- (a) use its best efforts in the performance of its obligations under this Agreement, including without limitation, in respect to the manufacturing of the Goods;
- (b) commit and adhere to the highest standards of operation, including those standards that may be prescribed by **PARTY A** from time to time; and
- (c) comply with and cause any sub-contractors or other Persons appointed by it to comply with all applicable laws, rules, regulations and/or guidelines relating to the manufacturing, use, storage, handling, transportation, distribution, sale, transfer and/or disposal of the Goods, as well as with the terms and conditions of this Agreement.

ARTICLE VIII – REPRESENTATIONS AND WARRANTIES OF PARTY B

8.1 **PARTY B** represents and warrants to **PARTY A**, acknowledging that **PARTY A** is relying upon such representations and warranties in connection with its entering into this Agreement, as follows:

- (a) **PARTY B** is a valid subsisting corporation incorporated pursuant to the laws of Italy;
- (b) **PARTY B** has all requisite power and authority to execute and deliver this Agreement and has all necessary power and authority to perform the obligations of **PARTY B** as set out herein;
- (c) the entering into of this Agreement will not result in the violation of any of the terms and provisions of any agreement, written or oral, to which **PARTY B** may be a party;
- (d) the execution and delivery of this Agreement has been duly authorized by all necessary action on the part of **PARTY B** and this Agreement, when duly executed and delivered by **PARTY B**, will constitute a legal and binding obligation of **PARTY B** enforceable in accordance with its terms; and
- (e) the performance by **PARTY B** of all its obligations hereunder will be conducted in compliance with all applicable laws.
- (f)

ARTICLE IX – INTELLECTUAL PROPERTY

- 9.1 **PARTY A** authorizes **PARTY B**, for the purposes of exercising its rights and performing its obligations under this contract to use the technology disclosed under Article 2.3 and any Intellectual Property of **PARTY A** in respect of the technology.
- 9.2 Subject to Article 9.1, **PARTY B** shall have no rights in respect of any of the technology disclosed under Article 2.3, any Intellectual Property of **PARTY A** in respect of it, and **PARTY B** shall not use any of that technology or Intellectual Property except for the purposes specified in Article 9.1 and otherwise in accordance with this Agreement.
- 9.3 **PARTY B** shall at the request and expense of **PARTY A** take all such steps as **PARTY A** may reasonably require to assist **PARTY A** in maintaining the validity and enforceability of any Intellectual property referred to in Article 9.2, and shall enter into such formal licences as **PARTY A** may reasonably request for this purpose. **PARTY B** shall not represent that it has any title in or right of ownership to any of the Intellectual Property or do or suffer to be done any act or thing which may in any way impair the rights of **PARTY A** in any of the Intellectual Property or bring into question the validity of its registration.
- 9.4 **PARTY B** shall promptly and fully notify **PARTY A** of any actual or threatened infringement of any of the Intellectual Property referred to in Article 9.2 which comes to notice to **PARTY B**, or which **PARTY B** suspects has taken or may take place.
- 9.5 If any claim is made against **PARTY B** that the manufacture of the Goods infringes the Intellectual Property or other rights of any third party, **PARTY A** shall, except to the extent that the claim is due to the default of **PARTY B**, indemnify **PARTY B** against all damages or other compensation awarded against **PARTY B** in connection with the claim or paid or agreed to be paid by **PARTY B** in settlement of the claim and all legal or other expenses incurred by **PARTY B** in or about the defense or settlement of the claim. **PARTY B** shall notify **PARTY A** forthwith after becoming aware of the claim, and take all action reasonably requested by **PARTY A** to avoid, compromise or defend the claim and any proceedings in respect of the claim, subject to **PARTY B** being indemnified and secured to its reasonable satisfaction against all costs and expenses which may be incurred in so doing.

ARTICLE X – TERMINATION

- 10.1 Notwithstanding any other provision herein, the parties hereto agree that this Agreement shall automatically terminate without requirement of notice to the defaulting party or an opportunity to cure, upon the occurrence of the following events:
- (a) if a decree or order of a court having competent jurisdiction is entered adjudging a party bankrupt or approving as properly filed a petition seeking or winding up of such party, including, without limitation, the appointment of a receiver in respect thereto, or ordering for the winding up or liquidation of its affairs, and any such decree or order continues unstayed and in effect for a period of # (#) days;
 - (b) if a party admits in writing its inability to pay its debts as they become due, makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors;

- (c) if a governmental regulatory order or final judgment or decree in any jurisdiction which materially and adversely affects the ability of a party to fulfill its obligations to the other party under this Agreement shall have been made, issued obtained or entered against such party and such order, judgment or decree shall not have been vacated, discharged or stayed pending appeal within the applicable time period; or
- (d) **PARTY B** assigns or attempts to assign this Agreement or any of the rights or obligations hereunder without the prior written consent of **PARTY A** being given.

10.2 **PARTY A** may, without prejudice to any other rights, immediately terminate this Agreement by notice to **PARTY B** if any change occurs in the constitution, management or control or the financial or other circumstances of **PARTY B** which, in the sole opinion of **PARTY A**, is materially detrimental to the interests of **PARTY A** including, without limitation, as a result of any interest in **PARTY B** being acquired by any Person engaged in a business that is competitive with the business of **PARTY A**.

10.3 Furthermore this Agreement may also be terminated by either party at any time in the event that the other party commits a material breach of any provision of this Agreement and such other party fails to remedy such breach within # (#) days after receipt of written notice specifying the breach from the non-defaulting party.

10.4 Early termination pursuant the above paragraphs shall not relieve either party of any obligation arising hereunder prior to such termination.

10.5 Upon termination of this Agreement for any reason whatsoever:

- (a) **PARTY B** shall promptly return to **PARTY A** all confidential information, access to Intellectual Property rights and any other materials and documents given to **PARTY B** and relating to this Agreement or otherwise to the business of **PARTY A**;
- (b) **PARTY B** shall cease use of **PARTY A**'s Intellectual Property and shall thereafter refrain from holding itself out as a contract manufacturer of **PARTY A**;
- (c) **PARTY A** shall have the obligation to purchase from **PARTY B** any of the Goods in **PARTY B**'s inventory;
- (d) **PARTY A** shall not be liable to **PARTY B** by reason of the proper termination of this Agreement for any damages, whether direct, consequential or incidental, on account of the loss of prospective profits on anticipated sales or on account of expenditures, investments, leases or commitments in connection with the business, arising from such termination of this Agreement; and

ARTICLE XI – LIMITATION OF LIABILITY AND INDEMNITIES

11.1 **PARTY B** hereby agrees to defend, indemnify and hold harmless **PARTY A** against any liability, losses, damages or costs (including any legal costs) incurred or suffered by **PARTY A** as a result of any breach, negligent act or omission or wilful default on the part of **PARTY B**, or its Representatives arising either directly or indirectly from the performance (or non-

performance) by **PARTY B** or any of its Representatives of any obligations under this Agreement.

- 11.2 **PARTY A** shall not be liable to the **PARTY B** for any special, indirect, consequential, punitive or exemplary damages, including for greater certainty any damages on account of the loss of prospective profits on anticipated sales or on account of expenditures, investments, leases or commitments in connection with the business.

ARTICLE XII – FORCE MAJEURE

- 12.1 No failure or omission by **PARTY A** or **PARTY B** in the performance of any obligation under this Agreement shall be deemed a breach of this Agreement or create any liability if the same arises on account of force majeure, which term shall include any event or cause beyond the control of **PARTY A** or **PARTY B**, as the case may be, including but not restricted to acts of God, acts or omissions of any government, or agency thereof, rebellion, insurrection, riot, sabotage, invasion, quarantine, restrictions, strike, lock out and transportation embargoes, provided that the party relying on this Section shall forthwith after any such event give written notice to the other party of its inability to perform such obligation and the reasons therefore. If force majeure continues for a period of more than # (#) months, without the parties hereto being able to develop an alternative satisfactory arrangement, then either party has the option of immediately terminating this Agreement.

ARTICLE XIII – MISCELLANEOUS

- 13.1 Any notice, request, demand, consent or other communication required or permitted under this Agreement shall be in writing and shall be given by personal delivery (including courier) by prepaid registered or certified mail or by fax (confirmed by mail) addressed to the party for which it is intended at the address below and shall be deemed to be given on the day of delivery or transmission if during normal business hours, or, if after business hours, on the next following Business Day, or if mailed by registered or certified mail, on the day which is seven (7) Business Days after such notice is mailed during normal postal conditions. In the event of a postal disruption, any notice mailed will be deemed received on the seventh (7th) Business Day following resumption of regular postal service:

- (a) if to **PARTY A**:

Party A.
Germany
Tel.:
Fax:
Email:

- (b) if to **PARTY B**:

Party B
Italy
Tel:
Email:

- 13.2 Either party may change its address for notices and other communications upon notice to the other party in the manner aforesaid.
- 13.3 Except as otherwise provided herein, this Agreement may not be amended or otherwise modified except in writing signed by both parties.
- 13.4 This Agreement, including all schedules attached hereto, constitutes the entire agreement and understanding between the parties with respect to all matters herein and supersedes all prior oral or written agreements and understandings between the parties with respect to the subject matter of this Agreement.
- 13.5 The words “hereof”, “herein”, “hereunder” and similar expressions used in any section of this Agreement relate to the whole of this Agreement (including any schedules attached hereto) and not to that section only, unless otherwise expressly provided for or the context clearly indicates to the contrary. Words importing the singular number only will include the plural and vice versa and words importing the masculine gender will include the feminine and neuter genders and vice versa. The word “including” will mean “including without limitation”.
- 13.6 **PARTY A** may sell, transfer and assign any or all of its rights and obligations arising from this Agreement to any Person, upon notice to **PARTY B**, provided that the assignee shall agree in writing to be bound by the covenants and agreements contained herein and so assigned by **PARTY A**. Upon such assignment and assumption, **PARTY A** shall be under no further obligation hereunder with respect to any of the rights and obligations so assigned. **PARTY B** shall not assign or transfer its rights or obligations under this Agreement or any document relating to this Agreement to any Person without the prior written consent of **PARTY A**. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns. Any attempted assignment in violation of this Section 15.6 shall be void and of not effect.
- 13.7 The failure by either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect its right to require performance at any time thereafter, and no term or provision of this Agreement is deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party to have so waived or consented. Any consent by any party to, or waiver of, a breach by the other party, whether expressed or implied, does not constitute a consent to, waiver of, or excuse for, any other different or subsequent breach by such other party of the same or any other provision.
- 13.8 Time shall be of the essence of this Agreement.
- 13.9 If any provision of this Agreement shall, to any extent, be held to be invalid or unenforceable, it shall be deemed to be separate and severable from the remaining provisions of this Agreement, which shall remain in full force and effect and be binding as though the invalid or unenforceable provision had not been included.
- 13.10 Each of the parties hereto covenant and agree to execute and deliver such further and other agreements, assurances, undertakings or documents, cause such meetings to be held, resolutions passed and by-laws enacted, exercise their votes and influence and do and

perform and cause to be done and performed any further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement.

13.11 Unless otherwise specifically provided for herein, all monetary amounts referred to herein shall be in lawful #currency#.

13.12 The division of this Agreement into articles and sections is for convenience of reference only and shall not affect the interpretation or construction of this Agreement.

13.13 The language of all communications between the parties pursuant to this Agreement, including notices and reports, will be the English or German language.

13.14 This Agreement may be executed in identical duplicate counterparts, each of which shall be deemed an original, and both of which together shall constitute one and the same instrument. The delivery by facsimile transmission of an executed counterpart will be deemed to be valid execution and delivery of this Agreement and each party hereto undertakes to provide each other party hereto with a copy of the Agreement bearing original signatures as soon as possible after delivery of the facsimile copy.

ARTICLE XIV – GOVERNING LAW AND ARBITRATION

14.1 The parties agree that the validity, operation and performance of this Agreement shall be governed by and interpreted in accordance with the laws of Germany, and the parties do expressly and irrevocably attorn to the jurisdiction of courts of Germany with respect to any matter or claim, suit, action or proceeding arising under or related to this Agreement.

14.2 Any dispute concerning the subject matter of this Agreement, or the breach, termination or validity thereof (a “Dispute”) will be settled exclusively in accordance with the procedures set forth herein. The party seeking resolution of a Dispute will first give notice in writing of the Dispute to the other party, setting forth the nature of the Dispute and a concise statement of the issues to be resolved. If the Dispute has not been resolved through good faith efforts and negotiations of senior officers or representatives of the parties within ## (#) days of receipt by the relevant party of the notice of Dispute, such notice will be deemed to be a notice of arbitration and the parties agree to submit the Dispute to a single arbitrator mutually agreeable to both parties. In the event that the parties cannot agree on a sole arbitrator, the arbitrator will be appointed by a judge on application by either party to the Dispute. All arbitration, proceedings and hearings will be conducted in the English language in accordance with the Model Law on International Commercial Arbitration as set out in the Schedule to the *International Commercial Arbitration Act*, R.S.O., 1990, Chap. 19 and the UNCITRAL arbitration rules then in force. All decisions and awards rendered by the arbitrator will be final and binding upon the parties for all questions submitted to such arbitrator and the costs associated with such submission shall be shared equally by the parties involved in the Dispute unless the arbitrator decides otherwise. The parties waive all rights of appeal therefore to any court or tribunal, and agree that the only recourse by any party to any court will be for the purpose of enforcing an arbitration award.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first written above.

PARTY A

Per: _____

PARTY B

Per: _____

SCHEDULE A

(To the Contract Manufacturing Agreement effective as of # month - date, year#)