

MANUFACTURING AGREEMENT

This Agreement is made and entered into as of _____ between:

1. [____], a company incorporated under the laws of The Netherlands, having its corporate seat and its business offices at [____], hereinafter referred to as: "**FF**", duly represented by Mr. _____;

and

2. [____], a company incorporated under the laws of [____], having its corporate seat and business offices at (____), _____, hereinafter referred to as: "**Manufacturer**", duly represented by Mr. _____;

[_AA_] and Manufacturer may be referred to in this Agreement individually as: a "**Party**" and collectively as: the "**Parties**".

Whereas:

- [_AA_] specializes in the development, design, marketing and sale of bicycles and additional products, hereinafter also: "**[_AA_]-products**";
- [_AA_] is looking for a manufacturer who actually manufactures the frames and other parts for the bicycles at the request of [_AA_];
- Manufacturer specializes in the fabrication of products such as the [_AA_]-products;
- Now, therefore, Manufacturer agrees to manufacture for and sell to [_AA_], and [_AA_] agrees to purchase from Manufacturer, the [_AA_]-products defined hereinafter, under the terms and conditions of this Agreement.

Hereinafter agree as follows:

1. Subject

Subject to the terms and conditions of this Agreement, [_AA_] gives an assignment to Manufacturer, which is hereby accepted by Manufacturer to fabricate the [_AA_]-products which will be ordered and purchased by [_AA_] in such manner, at such prices and upon such terms, as agreed upon. Manufacturer is and shall act as an independent contractor and nothing in the Agreement shall create or be deemed to

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create a partnership or relationship of principal/agent (distributor), employer/employee or joint-venture between the Parties. Manufacturer is not authorized to assume or create any obligation or responsibility, including, but not limited to, obligations based on warranties or guarantees or other contractual obligations, on behalf or in the name of [_AA_], other than agreed upon herein.

2. **Products**

- 2.1 Manufacturer shall fabricate the Products listed in Annex 1 to this Agreement (the "Products"), according to, and in conformity with, the models and drawings, the specifications and the technical requirements specified therein (hereinafter the "Specifications"). The [_AA_]-products will only be manufactured after the written orders of [_AA_] stating the type, amount and characteristics of the bicycles to be sold, have been received by Manufacturer, and confirmed with 48 hours by Manufacturer.
- 2.2 Manufacturer will after having received the orders as referred to in Clause 2.1, provide an indication of the time of delivery of the [_AA_]-products which will not exceed [____] weeks.
- 2.3 Manufacturer shall test and validate the Products according to the quality standards applicable and the procedures described in Annex 2 to this Agreement. If [_AA_] requests to do so, tests will be done in [_AA_]’s presence.
- 2.4 Manufacturer shall complete the fabrication and the validation of the Products within the schedule specified in Annex 2 to this Agreement (the 'Schedule'), and inform [_AA_] at least seven (7) days in advance of the date on which the Products will be available for delivery (such date – the "**Delivery Date**").
- 2.5 Manufacturer therefore undertakes to deliver the [_AA_]-products as early as possible, and in no event later than requested and agreed upon.

3. **GRANT OF LICENSE**

- 3.1 [_AA_] hereby grants to Manufacturer as from the Effective Date, except as otherwise provided in this Agreement, a non-transferable, non-exclusive license to use the [_AA_]’- model and trademark related to the [_AA_]-products only for its own internal (fabrication-) purposes as agreed herein and only in *<location of use>* provided that:

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- a. Manufacturer does not provide or otherwise make available the Intellectual Property rights and related know-how or any part, copies or any related documentation thereof in any form to any Third party;
 - b. Manufacturer shall not transfer or assign the License to any Third party without the prior written consent of [_AA_], such consent not to be unreasonably withheld.
- 3.2 Except as expressly provided otherwise in this Agreement, Manufacturer hereby undertakes, as a condition of the License, not to (i) copy, perform, adapt, vary, modify, distribute, recreate the Intellectual Property and related know how or any part thereof; (ii) sublicense, lease, rent, or loan the Intellectual Property to any third party; or (iii) otherwise use the Intellectual Property, with the exception of a reasonable number of copies for backup or archival purposes.
- 3.3 Manufacturer acknowledges that the Intellectual Property and related know how constitutes valuable trade secrets of [_AA_]. [_AA_] retains and reserves exclusive ownership of all Intellectual Property Rights and know-how related to the [_AA_]-products, including any derivative works or modifications.

4. Purchase Price and Payment Terms

- 4.1 The purchase price of the Products and payment terms thereof are specified in Annex 3 to this agreement (the 'Purchase Price').
- 4.2 The Purchase price is inclusive of all services rendered, and documents provided to [_AA_] by Manufacturer in connection with the fabrication of the [_AA_]-products, including without limitation, tests, validation, post production adjustments, modifications or reproduction, casing and packaging.
- 4.3 Payment by [_AA_] for the [_AA_]-products delivered will be thirty (30) days net following the date of invoice.
- 4.4 Prices can only be increased if Parties reach Agreement in relation thereto, an those changes take place to ancillary materials, wages, salaries, cargo or public taxes or levies or cost-increasing government measures.

5. Delivery

- 5.1 Manufacturer shall deliver [_AA_] the Products Ex Works/FOB/DDP _____, packed and suitable for transport by either sea or air, and made of such packing materials that are recognized and approved by the relevant authorities in the country to which the Products are destined to be imported.
- 5.2 [____[_AA_] /Manufacturer____] shall arrange for and furnish at the cost for the transportation of [_AA_]-products.
- 5.3 The risk shall pass to [_AA_] or the end consumer at the point that the goods leave the factory of or when, at the contractually agreed upon time, [_AA_] is informed that the goods are ready for collection.

6. Act of God

When Manufacturer's ability to manufacture or deliver [_AA_]-products or to otherwise perform under this Agreement is impeded or restricted (A) by any cause such as, but not limited to, (i) fire, explosion, flood, storm, earthquake, tidal wave, war, military operation, national emergency, civil commotion, or other event of the type of the foregoing, (ii) strike or other difference with workers or unions (without regard to the reasonableness of acceding to the demands of such workers or unions), (iii) governmental actions or legislation or (iv) shortage in supplies or transportation, or distribution attributable to (a) mechanical or other breakdown or failure, or (b) the inability of Manufacturer to obtain, on terms deemed to be practicable, any feedstock or other raw material (including energy) or (B) by any cause beyond such party's control, whether similar or dissimilar to any aforementioned cause, then the party whose ability is so impeded or restricted shall have the right in its sole discretion, by notice to the other party, to reduce, in part or in full, deliveries or receipt of the [_AA_]-product hereunder; and any deliveries so reduced shall first be suspended and when delivery is for a period of 4 (four) weeks not possible, be permanently canceled. [_AA_] is free then to order similar products at other production facilities.

7. Warranties and damages

- 7.1 Manufacturer warrants that the material used and the [_AA_]-product(s) as such delivered hereunder shall meet the specifications shown in Annex 2, and can be used for the purposes the [_AA_]-products are manufactured for. Manufacturer checked the

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design and the [_AA_]-product. Its parts can meet the requirements and Manufacturer has all the resources to deliver the [_AA_]-products according to Annex [__].

- 7.2 Manufacturer shall sell the [_AA_]-products ready for the use for which they are intended for, conforming to the Specifications and free of defects whatsoever, including latent defects. Latent defect shall mean any instance where any [_AA_]-product supplied by Manufacturer fails to materially conform to the Specifications, and such failure would not be discoverable upon reasonable physical inspection or standard testing with procedures consistent with those in the industry.
- 7.3 Manufacturer shall be liable to repair the defect or make the necessary modifications and adjustments at its own costs as well as reimburse [_AA_] for any expenses made in connection therewith within 2 years of Delivery Date.
- 7.4 Notwithstanding anything to the contrary, [_AA_] and Manufacturer agree that Manufacturer shall not be liable for defects resulted from:
- i) Normal Wear and Tear;
 - ii) Misuse of the Products;
 - iii) No Maintenance.
- 7.5 Except for the warranties in this Clause, NEITHER MANUFACTURER NOR OWNER MAKES ANY OTHER EXPRESS OR IMPLIED WARRANTY, STATUTORY OR OTHERWISE, CONCERNING PRODUCT OR MATERIAL, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY AS TO QUALITY OR CORRESPONDENCE WITH A DESCRIPTION OR SAMPLE, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY OF MERCHANTABILITY
- 7.6 Manufacturer shall insure the Products against all risks and maintain such insurance until the Products are delivered to [_AA_], as per the delivery terms of this Agreement.

8. Project Management and Progress Update

- 8.1 Manufacturer shall prepare and make available to [_AA_] a program detailing the Schedule, including manufacturing times, approximate factory testing schedules and delivery dates. Manufacturer shall update the program and report to [_AA_] every 14 days on the progress status.

- 8.2 [_AA_] or [_AA_]’s appointed representative shall have the right to inspect periodically, at Seller’s location, the status of the Products and the Schedule.

9. Confidentiality

[_AA_] and Manufacturer shall treat all information obtained under this Agreement as confidential. Confidential information may not be disclosed to third parties unless such discloser is required for the maintenance, the repair or the operation of the [_AA_]-products. The extent of the disclosed information shall be restricted to the minimum necessary, and the disclosing Party shall impose this confidentiality obligation on the third-party to whom such information is disclosed.

10. Termination

- 10.1 Each Party shall be entitled to terminate this Agreement without any liability to the other party upon the occurrence of the following Events: (i) The other party commits a breach of any provision of this Agreement, and if it is a breach that can be remedied, fails to remedy that breach within 14 days after receipt of a written notice from the terminating party requiring it to do so; or (ii) The other party enters into liquidation, dissolution or bankruptcy whether compulsorily or voluntarily; (iii) Manufacturer will produce comparative products (of equal design and material) for other resellers, distributors, agents, owners.
- 10.2 If notice of termination is given, the Company and the Distributor shall each have, during the applicable notice period, the same rights, obligations and privileges under this Agreement in the same manner and to the same extent as in case such notice had not been given.
- 10.3 After the termination of the Agreement the Manufacturer shall refrain from any use of the Intellectual Property rights and related know how of [_AA_] and similar names, trade marks and trade names, and shall return all samples, documents in relation thereto to [_AA_].

11. Liquidated Damages

- 11.1 Manufacturer agrees to pay [_AA_] liquidated damages in the amount of 1% of Purchase Price, for each week of delay in the Schedule, or the proportional thereof.

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Payment will be made within 7 days of the Delivery Date or the termination of this Agreement.

- 11.2 Such damages do not constitute a waiver of any kind or nature, on [_AA_]’s rights to seek additional damages, injunctions or relieves in connection with or as a result of Seller’s breach of this agreement.

12. Waivers

It is agreed that failure of either Party at any time to enforce any provision of this Agreement shall in no way affect the right to require performance of such provision thereafter. The waiver of breach of any provision of this Agreement shall not mean a waiver of any succeeding breach of such provision or waiver of the provision itself.

13. Information

The Manufacturer will advise [_AA_] in writing about any changes in such law or regulations that might affect this Agreement.

14. Miscellaneous

- 14.1 In case one item or article of this Agreement should be or become invalid, this does not affect the applicability and validity of the other provisions. Parties agree, however, to replace such items or articles soonest by new ones being valid, covering as far as possible the original intentions of the Parties as to the legal and economical contents.
- 14.2 No failure by a Party to insist upon strict compliance by the other Party with any of the terms, provisions or conditions of this Agreement, in any instance, shall be construed as a waiver or relinquishment by a Party of the other Parties rights to insist upon strict compliance in the future.
- 14.3 The terms and conditions contained in this Agreement and the attached Annexes shall take precedence over any standard terms and conditions which appear on any documents subsequently issued by Parties under or with reference to this Agreement, unless such document is signed by Parties and explicitly states that it is a modification of this Agreement.

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- 14.4 The Provisions set forth with respect to confidentiality, shall automatically apply to any further agreements between the Parties pertaining to the subject matter hereof.
- 14.5 Those provisions of this Agreement, which are meant to survive its termination, will survive and the Parties hereto will act in conformity with the rights and obligations laid down therein
- 14.6 The Agreement and all agreements resulting there from shall be governed exclusively by the laws of the Netherlands, to the exclusion, however, of the United Nations Convention on Contracts for the International Sale of Goods of 1980 (CISG).
- 14.7 Any and all disputes arising from or in connection with the Agreement or further Agreements resulting there from, shall be brought exclusively before the competent court of Amsterdam, the Netherlands.

Duly signed in twofold _____ at _____ on _____, 20[___],

[company]

[_____]

[NAME] date
director

[NAME] date
director

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EXHIBIT A
Products