DEZAN SHIRA & ASSOCIATES

OEM MANUFACTURING CONTRACT

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THIS CONTRACT is made the day of _____.

BETWEEN:

● _____ (a company incorporated in and existing under the laws of _____whose registered office is at _____; the "Company");

and

● _____(a company incorporated in and existing under the laws of the People's Republic of China whose registered office is at _____; the "Contractor").

WHEREAS

The Company manufactures and sells _____.

The parties have agreed that the Contractor will manufacture _____ on behalf of the Company for the duration of this Contract upon the following terms.

NOW IT IS HEREBY AGREED as follows:

1. INTERPRETATION

1.1 Definitions

In this Contract, unless the context otherwise requires:

"**Confidential Information**" means all data and information whether in written, machine readable or other tangible form, or obtained by recipient through observation or examination of such information and material or disclosed orally, that is of value to the disclosing Party, is not generally known to competitors of the disclosing Party, and which is indicated as such when communicated to the receiving Party. Confidential Information includes, but is not limited to, all information or materials prepared in connection with this or any related subsequent

contract and includes, without limitation, all of the following: designs, software, programs, drawings, specifications, techniques, models, data, source code, object code, documentation, diagrams, flow charts, research, development, processes, procedures, ideas, data, "know-how", new product or new technology information, product prototypes, product copies, manufacturing, development or marketing techniques and materials, development timetables, strategies and development plans, including trade names, trademarks, customer, the Contractor or personal names and other information related to customers, the Contractor or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets or non-public business information. Each party acknowledges and agrees that the Confidential Information has been and is being developed by the disclosing Party through the expenditure of substantial time, effort and money and is a valuable proprietary asset of the disclosing party. Each Party represents and warrants that it has the legal right to disclose to the receiving Party any and all information related to the Contract and any additional disclosure of data pursuant to this Contract or any written extensions thereof.

"**Delivery**" means delivery of the Products to the destinations specified in each Purchase Order or Ex (place) as defined in the terms, issued by the International Chamber of Commerce, within the lead times indicated in the Purchase Order and "**Delivered**" shall be construed accordingly;

"**Defective Product**" means Product manufactured and supplied by the Contractor which either is not in compliance with sub-clause 3.4 or does not comply with the general safety requirement for consumer goods save to the extent that any such non-compliance arises by reason of a change of either of the Specifications by the Company.

"**Equipment**" means all equipment of the Contractor used in the manufacture of the Product;

"**Packaging Materials**" means all items appropriate to the packaging of the Product by the Contractor and its supply to the Company;

"**Packaging Specification**" means the specification for the Packaging Materials set out in Schedule 3;

"**PRC**" means the People's Republic of China;

"**Product**" means any _____.

"**Product Liability**" means a liability arising out of death, personal injury or loss of, or damage to, property caused by Defective Product; and

"**Product Specification**" means the detailed list of specifications, know-how, secret formulae relating to the manufacture and performance requirements of the Product, full details of which are set out in Schedule 1;

"**Purchase Order**" means an order placed by the Company with the Contractor for the supply of the Product;

"**Specifications**" means the Product Specification and the Packaging Specification as amended by the Company from time to time; and

1.2 Headings

The headings and sub-headings are inserted for convenience only and shall not affect the construction of this Contract.

1.3 Schedules

Each of the Schedules shall have effect as if set out herein.

2. GRANT OF LICENCE

2.1 The Contractor shall make no changes to the Product and shall produce the Product as set out in Specifications as amended from time to time by the Company. The Company may make reasonable changes and modifications to the Specifications after taking into consideration the cost of implementing the same as well as considering the known capabilities of the Contractor provided that reasonable prior notice shall be given to the Contractor of any such change.

3. MANUFACTURE OF PRODUCT

3.1 The Contractor shall manufacture and package the Product strictly in accordance with the Specifications, the Purchase Orders placed by the Company and any other reasonable written instructions or amendments to the Specifications issued by the Company from time to time.

3.2 The Contractor shall provide all necessary plant and facilities for manufacturing the Product in accordance with the Company's instructions including, without prejudice to the generality of the foregoing:

(a) the provision of clean and safe storage facilities with suitable precautions against theft and fire, satisfactory to the insurers referred to in Clause 10;

(b) sufficient labour force for manufacturing the Product in accordance with the specifications and the forecasts supplied by the Company; and

(c) sufficient Equipment in good working order necessary for the implementation of its obligations hereunder.

3.3 The Contractor shall promptly report to the Company any defect, breakdown or other matter or event likely to interfere with any performance of its obligations hereunder.

3.4 The Contractor shall use all reasonable care and skill in manufacturing the Product and shall ensure that all Product supplied by it to the Company hereunder is of satisfactory quality, fit for its purpose and accords in all respects with the Specifications.

3.5 The Contractor shall be liable to replace any Defective Product at its own expense as set out in Clause 4.3.

3.6 The Contractor shall:

(a) keep full, true and accurate records of:

(i) quantities of Product manufactured;

(ii) quantities of Packaging Materials received and in storage;

(iii) quantities of Packaging Materials used; and

(iv) quantities of Product delivered or despatched

and permit the Company to inspect such records at all reasonable times and shall submit such records within 3 working days to the Company whenever so required in writing by the Company;

(b) comply with all laws and regulations for the time being in force relating to the manufacture of the Product and the sale of such product to the Company including but not limited to any laws and regulations governing the manufacture of goods in the PRC, environmental protection employment and labour as well as [customs and excise and tax]; and

(c) not deliver or despatch the Product except in accordance with the Company's written instructions.

4. QUALITY CONTROL

4.1 The Contractor shall upon reasonable prior written notice permit the Company's representatives to enter its premises at all times during normal working hours and at other times by prior arrangement with the Contractor for the purpose of inspecting the Equipment, the Product, the Packaging Materials and all aspects of the manufacture of the Product.

4.2 During the manufacture of the Product by the Contractor hereunder, the Contractor shall at the Company's request supply to the Company samples of such batch and shall not permit the Products represented by the sample or samples to be released for despatch until the Company has approved the same.

4.3 The Company shall have the right to reject all or any of the Products which do not meet the Specifications requirements provided that such claim shall be submitted to the Contractor with the supporting evidence. In case of such rejection, the Contractor shall, at the Company's discretion, replace such Products within ____ days from the Company's notice of rejection, or issue a credit note for the related invoice amount and additional related costs, if any.

4.4 The Company and the Contractor shall decide in joint consultation which corrections can be made by the Company against the reimbursement by the Contractor for expenses for labour and material incurred by the Company in correcting and repairing such defective Products.

5. RESTRICTIONS ON THE CONTRACTOR

5.1 Covenants

The Contractor undertakes to the Company that, subject as herein provided, it shall not during the continuance of this Contract and for a period of _____ years after its termination, either on its own account or in conjunction with or on behalf of any other person, firm or company, be engaged, concerned or interested (directly or indirectly) in manufacturing for sale in competition with the Company.

Any other than Product pursuant to this Contract, except where it first demonstrates to the Company's reasonable satisfaction that the design, components, specifications used in its manufacture is materially different from that used for the time being in the manufacture of the Product.

6. TITLE AND RISK

6.1 Title in the Product shall pass to the Company upon completion of manufacture by the Contractor.

6.2 Risk in the Product shall pass to the Company upon Delivery.

6.3 The Packaging Materials and completed Product shall at all times remain the property of the Company and, for so long as this Contract remains in force, the Contractor undertakes:

(a) to keep all Product and Packaging Materials in its own possession and under its own control (except as provided in this Contract);

(b) not to sell, offer for sale, assign, pledge, mortgage, charge or transfer any Product or Packaging Materials nor part with the possession custody or control of the same (except as provided in this Contract) nor do or suffer anything to be done whereby the same shall or may be seized, taken in execution, attached, destroyed or damaged; and

(c) to use all Product and Packaging Materials only for the purposes of this Contract and not to allow any other person or party to use the same except with the prior written consent of the Company.

6.4 The Contractor shall take all reasonable precautions against theft, fire, pilferage, contamination and other damage to the manufactured Product and Packaging Materials whilst in its possession or control.

7. PAYMENT OF EXPORT TAX DUTIES

7.1 The Contractor shall indemnify the Company and keep the Company indemnified against any damage claim made and any action or other proceedings brought against the Company arising out of or in connection with any liability for the payment of any government tax, excise duty or duties, sales tax or other government fees in respect of the Product or any damage to or loss of the Product (for whatever reason the same may occur) whilst in the possession or under the control of the Contractor prior to delivery.

8. INSURANCE

8.1 The Contractor shall maintain insurance in its own name to the reasonable satisfaction of the Company with such insurer as the Company may approve by written notice to the Contractor:

(a) against fire and theft and other agreed additional perils in respect of the Product and Packaging Materials to their full value and against theft on a "first loss" basis; and

(b) in respect of any liability of the Contractor to the Company under sub-clauses **3.4 and 3.5** of this Contract to a value which shall not be less than _____.

8.2 The Contractor shall supply the Company with a copy of the policy or policies of insurance.

8.3 The Contractor will not vary or agree to vary the terms of such policy or policies without the prior written consent of the Company.

8.4 Without prejudice to any of its other obligations under this Contract, the Contractor shall use its best endeavours to ensure that any such policy is not vitiated by reason of any act or omission of its employees or agents or others for whom it may be responsible.

9. PRICING AND DELIVERY

9.1 The price payable by the Company for the Product to the Contractor pursuant to the terms of this Contract shall be set out in Schedule 3, as amended by the parties from time to time.

9.2 Delivery shall be performed as set out in the Purchase Order. In case the relevant lead times are not met, the Contractor shall pay the Company liquidated damages at a rate of _____.

10. PAYMENT

The Contractor shall be entitled to render pro-forma invoices to the Company after the date of Delivery. Invoices shall be payable by the

Company no later than _____ working days from the date of receipt of such invoice by the Company. Payments for Product made by the Company are without prejudice to any rights the Company may have for any reason whatever and any liability of the Contractor for breach of this Contract shall not be affected by reason of such payment.

11. INTELLECTUAL PROPERTY

11.1 The Company shall choose the model and design of the Product and provide the Specification and special function requirements for the product to the Contractor. The Contractor shall develop and manufacture the Product independently according to the Company's requirements.

11.2 Each Party shall retain exclusive ownership and control of its background Intellectual Property Rights ("IPRs"), which existed before the execution of this Contract. No licence or any other right, related to any Intellectual Property Right of the Company shall be deemed granted when the Company provides the Specifications, special function requirements for the Product, and design and model of the products to the Contractor. Such Specifications and function requirements provided by the Company shall only be used by the Contractor for the purpose of this Contract and no other purpose.

11.3 The entire foreground Intellectual Property Rights created, conceived or generated under this Contract by the Contractor in fulfilling the Contractor's obligation under this Contract shall be jointly owned by the Company. The Contractor shall not use the foreground IPRs and the Company technical specifications, special function requirements and background IPRs for any purpose other than manufacture and supply of the Products to the Company, nor shall the Contractor authorize or knowingly permit them to be used by anyone else for, or in connection with, any purpose other than the manufacture and supply of the Products. With respect to filing of patent application for the above mentioned, foreground IPRs, the right to apply for a patent shall be owned by the Company and all the foreground IPRs created will be owned by the Company. The Company shall have the full right to independently file a patent application and such independently filed patents shall be solely owned by the Company and the Contractor

shall have no right to interest in the independently owned Company patents.

11.4 Without the Company's written authorization, the Contractor shall not use the Products, or have them used, manufactured or marketed directly or as components in any other products.

11.5 The Company grants to the Contractor a non-exclusive and indivisible right not capable of being transferred or encumbered, either voluntarily or by law, to use and supply the trademarks of "the Company", on the Company assigned Packaging Materials or the Products. The use of the trademarks of the Company shall be allowed only in a form previously approved by the Company in writing.

11.6 The Contractor shall always strictly comply with the instructions, directions and specifications which the Company or its representatives may give from time to time with regard to the quality, manufacture, and packing in respect to the appearance and way of use of the Company trademarks on the Products and the Packaging Materials thereof. The Contractor shall not use the Company's trademarks in combination with and/or simultaneously with any other trademark(s) whatsoever.

12. INDEMINITY

12.1 The Contractor is solely responsible for any action, claim, demand, fines, losses, damages, costs and expenses whether direct or indirect and whether incurred by the Contractor arising from any actual or alleged infringement of any patent, patent application or other industrial or intellectual property rights of any third party as a result of the production of the Products by the Contractor.

12.2 The Contractor shall indemnify and hold the Company harmless against all claims, fines, losses, damages, costs and expenses whether direct or indirect, in connection with product liability or non-compliance with environmental laws and/or regulations related to Production of the Products.

13. CONFIDENTIALITY

The Contractor shall keep the Confidential Information confidential and secret and shall not use or disclose or make the Confidential Information available, directly or indirectly, to any person other than its officers and employees who need the Confidential Information to enable the Contractor to perform its obligations under this Contract and provided that such officers and employees are also obliged to keep such Confidential Information confidential and secret.

13.1 The Contractor hereby agrees and undertakes:

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

(b) that its right to use Confidential Information shall wholly cease upon the termination of this Contract; and

(c) to return to the Company on termination of this Contract all material embodying Confidential Information (including, without limitation, information stored on computer disks) or any part thereof and all copies thereof.

14. TERM AND TERMINATION

14.1 This Contract shall come into force on date of jointly signature.

14.2 The Company may terminate this Contract forthwith by giving written notice to the Contractor in any of the following events:

(a) if there is any change in the control of the Contractor; or

(b) if the Contractor engages in any conduct which the Company reasonably believes may be prejudicial to its business or the manufacture or sale of Products generally.

15. CONSEQUENCES OF TERMINATION

15.1 Upon termination of this Contract for any reason whatever:

(a) all the rights and obligations of the parties under this Contract shall terminate, except for any rights or obligations to which any of the parties may be entitled to or be subject to before its termination (which shall remain in full force and effect) and except as otherwise provided in this Clause 16;

(b) termination shall not affect or prejudice any right to damages or other remedies which the terminating party may have in respect of the event giving rise to the termination or any other right to damages or other remedies which any party may have in respect of any breach of this Contract which existed at or before the date of termination; and

(c) Clauses 1 (Interpretation), 14 (Confidentiality) and 19 (Law and Jurisdiction) shall remain in effect despite the termination of this Contract.

16. FORCE MAJEURE

16.1 For the purpose of this Contract "force majeure" means any circumstances not foreseeable at the date of this Contract and not within the reasonable control of the party in question including, without prejudice to the generality of the foregoing, strikes, lockouts, shortages of labour or raw materials, civil commotion, riot, invasion, war, threat of or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural physical disaster.

16.2 If and to the extent that either party is prevented or delayed by force majeure from performing any of its obligations under this Contract and promptly so notifies the other party, specifying the matters constituting force majeure together with such evidence in verification thereof as it can reasonably give and specifying the period for which it is estimated that the prevention or delay will continue, then provided the reasons for the force majeure are reasonable , both parties shall be relieved of liability to the other for failure to perform or for the delay in performing such obligations (as the case may be), but shall nevertheless use its best endeavours to resume full performance thereof,

17. MISCELLANEOUS

17.1 Assignment

The Contractor may not, without the previous written consent of the Company, assign, sub-contract, license or in any way dispose of any of its rights or transfer, or purport to transfer, any of its obligations under this Contract.

17.2 Entire contract

(a) This Contract, together with any documents referred to herein including the Purchase Orders, constitutes the whole contract between the parties relating to its subject matter and supersedes and extinguishes any prior drafts, contracts, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.

(b) The Contractor acknowledges that it has not been induced to enter into this Contract by any representation or warranty other than those contained in this Contract and, having negotiated and freely entered into this Contract, agrees that it shall have no remedy in respect of any other such representation or warranty except in the case of fraud. The Contractor acknowledges that its legal advisers have explained to it the effect of this sub-clause.

(c) No variation of this Contract shall be effective unless made in writing.

17.3 Costs

Subject to any express provisions to the contrary, each party to this Contract shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of this Contract.

17.4 Invalidity

If any provision of this Contract shall be held to be illegal, void, invalid or unenforceable under the laws of any jurisdiction, the legality, validity

and enforceability of the remainder of this Contract in that jurisdiction shall not be affected, and the legality, validity and enforceability of the whole of this Contract shall not be affected in any other jurisdiction.

17.5 Notices

Any notice (which term shall in this clause include any other communication) required or permitted to be given under this Contract or in connection with the matters contemplated hereunder shall, except where otherwise specifically provided, be in writing in the English language.

Any such notice shall be addressed as provided below:

The addresses and other details of the parties are:

Name（representative of the Company:
Address:
Facsimile number:
Name (representative of the Contractor):
Facsimile number:

Either party to this Contract may notify the other of any change to the address or any of the other contact details.

17.6 Relationship of the parties

(a) Nothing in this Contract shall constitute, or be deemed to constitute, a partnership between the parties, nor, except as expressly provided, shall it constitute, or be deemed to constitute, either party the agent of the other for any purpose.

(b) Subject to any express provisions to the contrary in this Contract, the Contractor shall have no right or authority to, and shall not, do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of the Company or bind the Company in any way.

17.7 Set-off

(a) The Contractor shall not be entitled to withhold payment of any sums after they become due by reason of any right of set-off or counterclaim which the Contractor may have or allege to have or for any other reason whatsoever.

18. LAW AND JURISDICTION

18.1 This Contract shall be governed, and construed in accordance with, the laws of the Region of the People's Republic of China.

18.2 The Parties shall exercise their best efforts to resolve by negotiation any and all disputes, controversies or differences between them arising out of or relating to this Contract. All disputes, controversies or differences between the parties that are not settled by negotiation shall be submitted to the China International Economic and Trade Arbitration Commission (CIETAC) for arbitration. The arbitration shall be conducted in accordance with CIETAC arbitration rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon to both parties.

SIGNED by:
●
for and on behalf of [name of Company]
Position:
Date:

SIGNED by:
●
for and on behalf of [name of Contractor]
Position:
Date:

SCHEDULE 1: PURCHASE ORDER

SCHEDULE 2: MOULD PURCHASE CONTRACT

SCHEDULE 3: PRODUCT DRAWING

DISCLAIMER:
THE OEM TEMPLATE CONTRACT IS FOR INFORMATIONAL PURPOSES ONLY. DEZAN SHIRA & ASSOCIATES WILL BEAR NO LEGAL LIABILITY IN RELATION TO THE COMPLIANCE OF THE CONTENTS OF THIS OEM TEMPLATE CONTRACT.