

# CHECKLIST: MANUFACTURING AGREEMENT

<p><b>1. Parties</b></p>	<ul style="list-style-type: none"> <li>• Who are the parties to this agreement? (individual, company or trust)</li> <li>• Contact details</li> </ul>
<p><b>2. Product</b></p>	<ul style="list-style-type: none"> <li>• What is the product being manufactured?</li> <li>• What are the specifications?</li> <li>• Who designed the product?</li> </ul>
<p><b>3. Prototyping</b></p>	<ul style="list-style-type: none"> <li>• If prototypes are to be produced prior to commercial manufacture -             <ul style="list-style-type: none"> <li>- When will it be produced;</li> <li>- Who will test it;</li> <li>- Who pays the costs of the prototype?</li> </ul> </li> <li>• Is there a limit on the number of revisions?</li> <li>• Has a non-disclosure agreement been executed with the manufacturer?</li> </ul>
<p><b>4. Intellectual Property</b></p>	<ul style="list-style-type: none"> <li>• What intellectual property rights exist in the product?</li> <li>• Who owns intellectual property created during prototyping (if any)?</li> <li>• Who owns the intellectual property in the finished product?</li> <li>• Who owns the moral rights?</li> <li>• Is there a patent or design application in progress?</li> </ul>
<p><b>5. Manufacturer's warranties / Quality Control</b></p>	<ul style="list-style-type: none"> <li>• What quality control matter should the manufacturer adhere to?</li> <li>• Are there any legislative requirements that must be complied with, for example, health standards?</li> <li>• Manufacturer to warrant that product is of merchantable quality and fit for purpose?</li> <li>• Can the manufacturer's rights/obligations be assigned?</li> </ul>

<b>6. Confidentiality</b>	<ul style="list-style-type: none"> <li>• Will confidential information be disclosed?</li> <li>• What degree of confidentiality is required (for example: if there is a design application pending, disclosure of the design may be considered as publishing which would invalidate the application)</li> <li>• Have non-disclosure agreements been executed?</li> <li>• What happens to the confidential information if the manufacturing agreement is terminated?</li> </ul>
<b>7. Indemnity</b>	<ul style="list-style-type: none"> <li>• What indemnities are to be provided by the parties? For example injury resulting from use of the product.</li> </ul>
<b>8. Payment Terms</b>	<ul style="list-style-type: none"> <li>• What are the payment terms for the product?</li> <li>• Is set-off and deduction available?</li> </ul>
<b>9. Order Procedure</b>	<ul style="list-style-type: none"> <li>• How will orders be placed for the product?</li> <li>• Is there any minimum quantity requirements?</li> <li>• Will the manufacturer deliver the finished product to a specific location?</li> <li>• Who is responsible for labeling, packaging, freight and delivery?</li> <li>• For what period is pricing “locked in”?</li> <li>• What notice periods are required if raw material costs increase?</li> </ul>
<b>10. Ownership / Title and Risk</b>	<ul style="list-style-type: none"> <li>• When does title/risk pass to the distributor?</li> <li>• Does the supplier retain ownership of the goods until sold by the distributor allowing for recovery in cases of default by the distributor?</li> <li>• Is the distributor suitably insured for loss or damage?</li> </ul>
<b>11. Option for renewal</b>	<ul style="list-style-type: none"> <li>• Do the parties want an option for renewal?</li> <li>• What criteria must be present before an option</li> </ul>

	can be exercised?
<b>12. Disputes</b>	<ul style="list-style-type: none"> <li>• How are disputes to be handled?</li> <li>- Is an arbitrator to be appointed?</li> <li>- Who is to appoint the arbitrator?</li> <li>• What jurisdiction (country/state) are disputes to be heard in?</li> </ul>
<b>13. Termination</b>	<ul style="list-style-type: none"> <li>• How will the manufacturing agreement end?</li> <li>• Can a party terminate without giving a reason?</li> <li>• What happens if there is breach by either party? Will the parties be given an opportunity to remedy a breach?</li> <li>• What happens to stock, work in progress, moulds, templates etc?</li> </ul>

*Disclaimer: This checklist contains general information only. It is not an exhaustive checklist and is proposed as a guide only. It is not intended to be given as advice and should not be relied upon as such. Surry Partners Lawyers recommends that parties to a Manufacturing Agreement obtain specific advice from an experienced lawyer.*