**License Agreement for design rights**

**PARTIES**

This License Agreement (hereinafter the ”**Agreement**”), dated [date] is made between



|  |  |
| --- | --- |
| Licensee: | Designer: |
| [Name]\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | [Name] \_\_\_\_\_\_\_\_\_\_\_\_\_ |
| with business ID,[Business ID]\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | with business ID,[Business ID]\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| with its principal place of business at[Address]\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter the “Licensee”). | with its principal place of business at[Address]\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter the “Designer”). |
| Contact person[Name]\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Contact information[Email, phone number]\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Contact person[Name]\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Contact information[Email, phone number]\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Billing address[Address]\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |

where both parties shall be referred to separately as a “**Party**”, and collectively as “**Parties**”.

# 1. THE PURPOSE AND SCOPE OF THE AGREEMENT

1.1 Whereas, Designer owns certain rights, title and interest in, or has the right to sublicense, and/or is the author of the design(s) as specified in Appendix 1 to this Agreement (hereinafter the ”**Design**”).

1.2 Whereas, Licensee desires to obtain a license from Designer.

1.3 Whereas, Designer is willing to grant Licensee a license in accordance with and as further provided in this Agreement.

# 2. GRANT OF LICENSE

2.1 License related to the Design:

Designer hereby grants Licensee, in consideration of the agreed licensing fees in section 3 (Fees) to this Agreement,

( ) a non-exclusive | or | ( ) an exclusive[[1]](#footnote-1),

( ) non-transferable | or | ( ) transferable

( ) non-sublicensable | or | ( ) sublicensable (provided that Licensee guarantees Designer at least the same level rights, including audit rights of the sub-licensee, as provided in this Agreement)

and revocable license to

( ) manufacture

( ) bring to the market

( ) market

( ) promote

( ) sell

( ) offer for sale

( ) import

( ) export

( ) [other]

products incorporating the Design,

in the territory of [country/countries] (the ”**Territory**”),

( ) for a fixed period of [period] | or | ( ) for the term of this Agreement,

(hereinafter the ”**License**”).

The License granted shall be restricted

( ) to the following applications/media: [applications, material used, media]

( ) in connection with the purpose for which the instruction has been furnished as follows:
[purpose and instructions].

2.2 Other licenses

Designer grants Licensee, for the term of this Agreement, a non-transferable, non-sublicensable, and non-exclusive right to use Designer’s trade name, trademarks, service marks, logos and other markings of Designer, whether registered or not, and as specified in Appendix 2 to this Agreement (hereinafter the “**Marks**”), for the sole purpose of identifying, marketing and distributing the products incorporating the Design. Designer shall have the right to update and change Marks periodically.

Any grant of rights under this Agreement is contingent upon receipt of full payment from the Customer to Designer.

# 3. FEES

License Fees:

3.1 Licensee shall pay Designer the following fees:

( ) a one time fee of [amount], invoiced at [time];

[and/or]

( ) a signing fee of [amount], invoiced at [time];

[and/or]

( ) a royalty fee of [percentage] % per product sold, calculated on the sale price, whereas sale price shall mean the consumer or end user sale price, exclusive of VAT and shipping and packaging costs. Licensee shall pay a minimum payment of [amount] annually irrespective of the sales of the products incorporating the Design. The minimum payment is nonrefundable and non-cancelable.

3.2 All prices are exclusive of VAT. All payments are due within fourteen (14) days from the date of the invoice. Travelling and accommodation expenses and per diem allowances (in Finland and abroad) shall be paid in accordance with the regulations issued by the Finnish tax administration. Payment shall be made on presentation of receipts for expenses.

3.3 All payments shall be made in EUR. Customer shall use the average annual exchange rate as shown by the London Inter-Bank Offered Rate and as published on Reuters, to convert payments from local currency to EUR.Taxes are not included in the fees, royalty or other payments. Customer is solely responsible for paying all applicable sales, customs, duty, use, property, withholding, value-added, excise and any other taxes or duties imposed under the authority of any foreign, federal, state or local taxing jurisdiction, except for Designer’s income. Customer shall reimburse Designer for taxes and any other expenses incurred for any license required for any possible clearance at the port of entry and destination. Designer shall be entitled to require tax clearances and/or tax certificates from Customer evidencing that any and all collected and deducted taxes at source, including but not limited to withholding taxes, are paid by Customer to the competent tax authorities.

3.4 Any invoices not timely paid by Customer or as to which Customer shall wrongfully withhold payment, shall be subject to late payment charges at the rate of twelve percent (12%) per annum. In case a payment is outstanding 30 days after the date of the invoice, Designer has the right to suspend and/or terminate the Agreement in accordance with section 9 (Term and Termination) of this Agreement.

3.4 Any grant of rights under this Agreement is contingent upon receipt of full payment from Customer to Designer.

# 4. CHANGES TO DESIGN AND COMENCEMENT OF MANUFACTURING

4.1 Licensee shall not have the right to make any alterations or changes to the Design without the prior written approval of Designer. In case both parties agree to make changes to the Design, Designer shall make all alterations and changes to the Design and Designer shall have the right to invoice Licensee based on Designer’s standard hourly rate.

4.1 In case the License is granted for manufacturing rights, Licensee shall, prior to commence of the manufacturing or production of the products incorporating the Design, submit a prototype or sample of each type of product incorporating the Design to Designer. Designer shall have 10 business days from the receipt of said prototype or sample to give his/her approval for the commencement of manufacturing or production, or instructions to revise the prototype or sample.

# 5. INTELLECTUAL PROPERTY RIGHTS

# 5.1 Intellectual Property shall include, inter alia, any patent, copyright, design rights, trade or service mark or other industrial or intellectual property right of Designer or its affiliates or licensors, and all names and trademarks used in relation to the Design and any applications for the registration or protection of any of the foregoing (hereinafter “Intellectual Property Right(s)” or “IPR(s)”).

# 5.2 Any and all Intellectual Property Rights in or relating to the Design and any associated documentation and any future modifications and/or enhancement thereto are, shall be, and shall at all times remain the sole property of Designer.

5.3 Nothing in this Agreement shall be construed as transferring and assigning the ownership or possession of any Intellectual Property or Confidential Information or other information from Designer to Licensee.

5.4 Unregistered Intellectual Property may be registered by Licensee or Designer under Designer’s name and listing Designer as the sole applicant for the registration application, as and if agreed between the Parties. The registration fees shall be distributed as follows: [registration fee distribution].

# 6. MARKETING AND PROMOTIONS

6.1 Licensee shall use its best endeavors to build the image of Designer’s brand in relation to all products incorporating the Design, manufactured, sold, marketed, promoted and/or supplied by Licensee or its providers or customers in the Territory, by making sure that all products incorporating the Design shall always have appropriate Marks of Designer duly visible and on display whenever the products incorporating the Design are showcased, marketed, sold or promoted to potential customers.

6.2 Licensee shall send copies of all advertisements of the products incorporating the Design in the Territory to Designer for information purposes.

6.3 In case Designer supplies to the Licensor marketing information of the Design produced by itself, Licensee shall have the right to use such information for advertising purposes within the Territory, during the term of this Agreement.

# 7. REPORTING AND PAYMENT TERMS

7.1 The Parties agree that the reporting period shall be [period]. Within 30 days following the last day of each reporting period during the term of this Agreement, Licensee shall provide Designer with a complete and accurate statement and report of all sales related to the products incorporating the Design, and as further instructed by Designer. Each report shall include at least the number of units manufactured, sold and/or distributed of each of the products incorporating the Design, the style and EAN number, description of the products and the applicable selling price.

7.2 Licensee shall not have the right to give out free samples of giveaways of products incorporating the Design, without paying Designer royalty based on the average selling price of the products incorporating the Design.

7.3 Based on the report sent by Licensee, Designer shall invoice Licensee.

# 8. AUDITS

8.1 Licensee shall establish and maintain, during the term of this Agreement and for 5 years after the term of the Agreement, a reasonable accounting system that enables Designer to readily identify Licensee’s assets, expenses, costs of goods, and payments received for the sale of the Design. Upon notice from Designer, Designer and/or its authorized representatives shall have the right to audit, examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Agreement kept by or under the control of Licensee, including, but not limited to those kept by Licensee, its employees, agents, assigns, successors, and subcontractor.

8.2 Upon notice from Designer, Licensee shall provide Designer or its representative with access to such financial records and supporting documentation as reasonable requested to determine if fees have been invoiced in accordance with this Agreement. Licensee shall promptly reimburse Designer for any overcharge revealed by such an audit. If an overcharge exceeds 5 % of the correct charge, Licensee shall also reimburse Designer for the cost of such audit.

# 9. INFRINGEMENT OF DESIGNER’S RIGHTS

9.1 In case the other party has found that Designer’s Intellectual Property Rights are disputed or infringed by a third party, or in case of intended or threatened infringement or wrongful use of the Intellectual Property Rights and of any instance of the passing off of other goods as and for the goods of Designer, the Party shall immediately notify the other Party in writing of any instance within the Territory or elsewhere as shall come to its notice.

9.2 All Intellectual Property Rights related claims and disputes arising from or in connection with the Design shall be handled according to Designer’s written instructions in case Designer chooses to give instructions.

# 10. WARRANTIES AND REPRESENTATION

10.1 Each Party warrants that to the best of its knowledge and belief

1. it has the power to execute and deliver this Agreements and to perform its obligations under it and has taken all actions necessary to authorize such execution and delivery and the performance of such obligations, and
2. this Agreement constitutes legal, valid and binding obligations of that Party in accordance with its terms and conditions.

10.2 EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, DESIGNER MAKES NO REPRESENTATIONS OR WARRANTIES AND EXPLICITLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, WRITTEN ORAL OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES OTHERWISE ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

# 11. LIMITATION OF LIABILITY

In no event, shall Designer’s accrued liability under this Agreement exceed the amount received under this Agreement. In no event, shall Designer be liable for any indirect, special, incidental, consequential damages nor damages, including but not limited to loss of profit or revenue, loss of interest, or loss of use of equipment, loss of production, or damage to reputation, even if Designer has been advised of the possibility of such claims, whether arising in tort, contract or any other legal theory.

For the sake of clarity, Designer shall not be liable for any product injury claims that may be addressed to Licensee.

# 12. CONFIDENTIALITY

Both Parties acknowledge that during the term of this Agreement, they may have access to the other Party’s confidential information. Confidential information shall mean confidential or other proprietary information that is disclosed by the disclosing Party to the receiving Party under this Agreement, including without limitation, designs, sketches, drawings, specification and documentation, business and product plans, and other confidential information, which is either marked as confidential or should be understood as confidential. Confidential information shall not include 1) information which is or becomes public without any action by, or involvement of the receiving Party, 2) information which is disclosed by the receiving Party with the prior written approval of the disclosing Party, 3) is subsequently and independently developed by the receiving Party, or 4) information which is disclosed pursuant to any judicial or governmental order, provided that the receiving Party gives the disclosing Party sufficient prior notice to contest such order.

Both Parties agree not to disclose or permit any third party or entity access to the Confidential Information or any portion thereof without the prior written permission of the disclosing Party, not to use Confidential Information to damage or harm the disclosing Party, or not to use the Confidential Information for the benefit of the receiving Party.

This section 12 (Confidentiality) of this Agreement shall survive termination or expiry of this Agreement.

# 13. TERM, SUSPENSION AND TERMINATION

13.1 The License shall be valid

( ) for a fixed term of [period], (and thereafter for an additional term of [period] unless the Agreement is terminated by either party by giving to the other Party a written notice not less than one (1) month prior to the commencement of the additional term).

 | or |

( ) until either Party terminates this Agreement by notifying the other Party in writing three (3) months prior to termination.

13.2 In case Licensee does not fulfil an obligation under this Agreement, including a payment obligation, all rights granted under this Agreement by Designer shall be suspended until said obligations have been fulfilled in full.

13.3 This Agreement and the License thereunder, may be terminated in whole or in part with 14 days notice by Designer’s in case

1. Licensee breaches an obligation under this Agreement, and in case the breach is remediable, Licensee does not remedy the breached obligation within 30 days of being notified of such breach,
2. the products incorporating the Design have not been brought to production within 9 months of signing this Agreement, or
3. Licensee has not used or utilized the Design, or the products incorporating the Design have not been part of Licensee assortment, for a period of 12 consecutive months.

13.4 Either party may terminate this Agreement with immediate effect if:

1. an order is made or a resolution is passed for the winding up of the other Party, or an order is made for the appointment of an administrator to manage the affairs, business and property of the other Party;
2. if the other Party is declared insolvent, bankrupt or has requested a suspension of payment or files for bankruptcy.

13.5 For the sake of clarity, in case this Agreement is terminated, all rights granted by Designer to Licensee under this Agreement shall be terminated and discontinued when the termination of this Agreement enters into effect.

# 14. EXPORT CONTROL

14.1 Licensee agrees that it will not directly or indirectly sell, deliver or export the products incorporating the Design outside of the Territory without the prior written consent of Designer and the appropriate license related thereto. In exporting and importing the products incorporating the Design among countries within the Territory or outside the Territory when permitted by Designer, Licensee agrees to comply with all export and import laws, rules, policies, procedures, restrictions and regulations of the local legislation and authority, and not to export or import or allow the export or import of any goods in violation of any such restrictions, laws or regulations. Licensee shall obtain all licenses permits and approvals required by any government, provided that in doing so Licensee shall at all times fully protect the confidential information and proprietary rights of Designer and its suppliers and Licensee shall not bind Designer or its suppliers to any action or inaction unless agreed to in writing by Designer.

# 15. MISCELLANEOUS

## 15.1 Assignment and modifications

Neither Party may, without the written consent of the other Party, assign this Agreement or otherwise transfer its rights or obligations under this Agreement, provided that Designer may assign or transfer its rights and obligations under this Agreement to its affiliates, including any successor of its business without the consent of Licensee.

All amendments, modifications, additions and additional provisions to this Agreement must be made in writing and signed by the duly authorized representatives of both Parties.

## 15.2 Notices

All notices, requests, consents, approvals, agreements, authorizations, acknowledgements, waivers and other communications required under this Agreement shall be in writing and will be deemed given when delivered to the physical or electronic address specified in the beginning of this Agreement.

## 15.3 Relationship of the parties

Both Parties to this Agreement are independent contractors and nothing in this Agreement shall be construed to make the Parties partners, joint venture, principals, agents or employees of each other.

## 15.4 Severability

If any provision of this Agreement, other than a term or provision relating to any payment obligation, is held by a court of competent jurisdiction to be contrary to law, the remaining provision of this Agreement or the application of such provisions to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each such provision of this Agreement shall be valid and enforceable to the extent granted by law.

## 15.5 No Waiver

No waiver, alteration, variation or addition to this Agreement shall be effective unless made in writing by the authorized representatives of both Parties.

## 15.6 Force majeure

Neither Party shall be liable for delays or failure to meet its obligations pursuant to this Agreement due to causes beyond the Party’s reasonable control, to the extent that such causes affect the Party, provided the non-performing Party promptly notifies the other Party of the non-performance and takes all reasonable steps to recommence performance promptly.

## 15.7 Governing law

This Agreement shall be governed by and construed in accordance with the laws of Finland excluding its choice of law provisions.

## 15.8 Dispute resolution

Disputes between Designer and Licensee are primarily intended to be resolved amicably by negotiation. Where no agreement is reached, any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof, shall be settled in the Market Court in Helsinki, Finland.

| or |

Disputes between Designer and Licensee are primarily intended to be resolved amicably by negotiation. Where no agreement is reached, any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Finland Arbitrations Institute, in Helsinki in English language.

Without prejudice to the foregoing in relation to Licensee, nothing in this section shall prevent or restrict Designer from electing to bring proceedings in relation to design rights or other intellectual property right infringement or from applying for injunctive relief in any court outside Finland.

# 16. COUNTERPARTS AND SIGNATURES

This Agreement has been duly executed in two (2) original copies, one (1) for each Party.

In [place], on [date] of [month], [year].

Designer: Licensee:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name] [Name]

[Title] [Title]

APPENDICES

Appendix 1 The Design

Appendix 2 Designer’s Marks

1. Designer shall, however, have the right to use the Design for his/her own promotional purposes. [↑](#footnote-ref-1)