

MANUFACTURING AGREEMENT

DATED THE ___ DAY OF ___ 20___

BETWEEN

Crazy Hats Pty Ltd ACN 154 168 920 (the "Company")

AND

Hat Manufacturer Ltd (the "Manufacturer")

MANUFACTURING AGREEMENT

DATED: _____ **20** _____

BETWEEN: Crazy Hats Pty Ltd ACN 154 168 920 of 20 Andross Street Trandwood NSW Australia (the **“Company”**);

AND Hat Manufacturer Ltd of 15 Bango Street Philipberg India (the **“Manufacture”**).

RECITALS

- A. The Company has created conceptual designs and informal specifications (**“the Conceptual Designs and Specifications”**) for the manufacture of the (**“Incredible Hats”**).
- B. The Company is the exclusive owner of all Intellectual Property in the Conceptual Designs and Specifications.
- C. The Company has agreed to engage the Manufacturer to firstly create detailed Plans for the manufacture of Prototypes of the Incredible Hats, secondly, to make Prototypes and thirdly, subject to the approval of the design of the Prototypes by the Company, and the successful testing of those Prototypes, to manufacture the Incredible Hats to the order of the Company.
- D. The Company intends, subject to the tests of the Incredible Hats being successful to market, distribute and sell the Incredible Hats.
- E. The Parties have entered into this Agreement to set out their respective rights and obligations.

THE PARTIES THEREFORE BY THIS AGREEMENT AGREE AS FOLLOWS

1. DEFINITIONS

1.1 In this Agreement the following words and phrases mean:-

“Agreement” means this Design and Manufacture Agreement and includes all amendments or variations to this Agreement and all schedules, annexures and attachments to it.

“Approval” means all permits, licenses or approvals required from time to time for the manufacture of the Incredible Hats in India by the Manufacturer.

“Components” means all parts that will form the Incredible Hats when manufactured.

Initial: _____

“Conceptual Design & Specifications” means the conceptual designs and specifications created and owned by The Company and which relate to manufacture and design of the Incredible Hats.

“Confidential Information” means all of the following: -

- (a) the trade secrets of any Party.
- (b) the Plans, all communications relating to the Plans and all test procedures.
- (c) the names and details of all past, present, and prospective employees of any Party.
- (d) either Party's past, present, or prospective design systems, processes methods, manufacture processes and procedures used in the operation of any Party's business.
- (e) any other oral, written, electronic and/or recorded information of any Party's business, products, financial condition, operations, assets or liabilities,
- (f) any documentary information that is marked “Confidential”, “Private”, “Secret”, “In Confidence” or “Not to be disclosed”
- (g) all notes, reports, directions, Approvals, analyses, summaries, compilations, studies projections, forecasts budgets, price list or records of any Party that are marked confidential or which by their nature are confidential.

Confidential Information excludes information which is:-

- (a) Generally available other than as a result of a wrongful disclosure,
- (b) Independently acquired or developed by a Party without breach of this Agreement, or
- (c) Available to a Party on a non-confidential basis from a third person not bound by any confidentiality agreement or fiduciary obligation owed to the other Party.

“Consumer” means any person who may buy or use the Incredible Hats.

“Deliver/Delivery” means delivery to The Company or to its agent at the factory of the Manufacturer in India or at such other place as The Company and the Manufacturer may in writing agree.

“Dollars” means Australian Dollars or such other currency as the parties may from time to time agree.

“Ex-Works Price” means the price, which the Manufacturer and The Company agree, is to be the price, which The Company will purchase the New Products during each Year of the Term.

“Intellectual Property” includes but is not limited to all copyright, trade marks, designs, patents, processes and all other intellectual property of whatsoever kind or nature that is capable of legal protection anywhere in the world, regardless of whether such legal protection has been formally obtained.

“Law” means all applicable statutes, acts, rules, regulations and by-laws of any country that have any application to the rights and obligations of the Parties and/or the Consumers “Law” includes all amendments and replacing laws.

“Material Breach” means any of the following: -

- (a) any breach of a clause in this Agreement that is described as an essential term;
- (b) any breach of a clause that is capable of rectification and the Party in breach has failed to rectify within twenty eight (28) days after being requested so to do by the other Party.
- (c) any breach of this Agreement that involves the failure by a Party to pay any amount due to the other Party within twenty eight (28) days of such amount becoming due and payable irrespective of whether or not a demand for payment has been made.

“Merchantable” means in respect to each Incredible Hats that it is commercially saleable to and safe for use by Consumers having regard to its description and is reasonably fit for all purposes set forth in its specification.

“New Products” means all New Products of whatsoever kind that The Company or the Manufacturer develop or create during the Term for use in conjunction with the Incredible Hats and includes all enhancements, upgrades, new versions and/or replacements the Incredible Hats.

“New Product Plans” means all conceptual designs, plans, drawings, diagrams, specifications and designs whether in hard form or electronic form which are created by either the Manufacturer or The Company or any Person on their behalf during the Term for New Products together with all changes and/or additions thereto.

“Notice” means a notice in writing which shall include notices sent by facsimile, letter, or email and are served in accordance with this Agreement.

“Order” means an order placed by The Company on the Manufacturer for any of the Incredible Hats, New Products, and Spare Parts, which Order shall be in the form from time to time specified by the Company. The Order must include the quantity of the Incredible Hats, New Products and/or Spare Parts (whichever is applicable) that are subject to the order, the Ex-Works Price per item in Dollars, the total Ex-Works Price in Dollars, the requested time for Delivery, the country to which the items ordered are to be shipped, any special packaging requirements, and such other information as the Parties may reasonably require be included in the Order Form.

“Party/Parties” means the Parties to this Agreement and shall include their lawful successors and assigns. Any reference to a Party will include, where applicable, any subsidiary controlled by a Party or by the same persons who control that Party.

“Person” includes any body that is recognised at Law in any applicable place in the world whether it is a natural person, an entity or corporation.

“Prototypes” means all prototypes of the Incredible Hats.

“Plans” means all Conceptual Designs and Specifications, plans, drawings, diagrams, other specifications and designs whether in hard form and/or created at any time during the Term electronic form for the manufacture of the Prototypes and/or the manufacture of the Incredible Hats to be manufactured together with all amendments, changes and/or additions thereto.

“Stages” means the stages of work as set forth in Schedule One.

“Term” means the shorter of the following:-

- (a) the period commencing from the date hereof and continuing for a period of five (5) years, and thereafter continuing on the basis that either Party may terminate the Agreement by giving not less than twelve (12) months prior Notice of its intention to terminate this Agreement in which event this Agreement shall come to an end at the expiry of that Notice period, or
- (b) the period from the date hereof until it is properly and lawfully terminated by either Party during that period, in which case the Term will expire on the date of such termination.

The Parties may at any time during the Term by written Agreement extend or change the period of the Term.

“**Tooling**” means all tooling, dies, moulds and other specialised equipment and tools required at any time during the Term for the manufacture of the Prototype, the Incredible Hats and/or New Products.

“**Year**” means each period of twelve months during the Term, the first Year commencing on the date hereof and expiring on the day before the anniversary of the date hereof.

2. INTERPRETATION

2.1 Words importing any genders shall include all genders including the neuter gender.

2.2 Words importing the singular shall include the plural and vice versa.

3. APPOINTMENT

3.1 The Company appoints the Manufacturer, and the Manufacturer accepts its appointment:-

3.1.1 to carry out the work required in the Planning Stage as set forth in Schedule One;

3.1.2 subject to the satisfactory completion of the Planning Stage, carry out the work required in the Prototype Stage as set forth in Schedule One;

3.1.3 subject to the satisfactory completion of the Planning Stage and Prototype Stage, carry out the work required in the Manufacturing Stage as set forth in Schedule One during the Term;

3.1.4 to carry out the work required in the New Products Stage as set forth in Schedule One should The Company require the Manufacturer to do so during the Term;

3.2 The Manufacturer acknowledges that its right to be the Manufacturer of the Incredible Hats during the Term is on the fundamental and essential basis that it will not during the Term and for twelve months after its termination, sell the Incredible Hats or New Products to any Person other than The Company or its nominee(s).

3.3 The Manufacturer acknowledges that The Company will be expending substantial sums in the establishment of markets for the Incredible Hats throughout the world and in providing ongoing support and maintenance to all Consumers. The Manufacturer further acknowledges that all times The Company must be able to source new products and have the ability to establish alternative sources for their manufacture in the event that the Manufacturer is unable or unwilling to continue to supply the Incredible Hats or, Spare Parts. The Manufacturer shall therefore provide to the Company: -

3.3.1 A full list of all suppliers of Components together with their full details;

3.3.2 A full list of all sub-contractors used by the Manufacturer to manufacture any

part of the Incredible Hats;

- 3.3.3 A full duplicate set of all Plans, testing procedures and quality control documentation.
- 3.3.4 The location of and with details all Persons in possession of all Tooling.
- 3.4 During the Term, each Party promises to act reasonably and in good faith towards the other and provide to the other on request all reasonable assistance.
- 3.5 The Manufacturer must follow all reasonable and lawful directions given by The Company in respect to the manufacture of the Prototype, it's testing, and in the manufacture of the Incredible Hats and make such changes to the Incredible Hats as The Company may direct. The Manufacturer acknowledges that high safety standards must at all times be maintained and in this regard The Company shall be entitled to give such directions as it may regard as necessary and the Manufacturer must follow those directions.
- 3.6 The Manufacturer is responsible for all acts and omissions of its sub contractors, agents and other representatives as if those acts or omissions were those of the Manufacturer with the intent that any such act of omission if it is done or not done by the sub-contractors, agents or other representatives then shall be deemed to be an act or omission on the part of the Manufacturer.
- 3.7 The Company grants to the Manufacturer the right to use the Plans and all Intellectual Property but only for the purposes set forth in clause 3.1 and only during the Term. The Company acknowledges that the Manufacturer may in order to carry out its obligations under this Agreement provide the Plans or some of them to sub-contractors, agents or representatives.
- 3.8 The Manufacturer will be responsible throughout the Term to ensure that its sub-contractors, agents or representatives only use the Plans to carry out the tasks provided to them and for no other purpose and take all steps as maybe reasonably required to ensure that the Plans are kept safe and in such a manner as to prevent the wrongful use or disclosure to unauthorised Persons.
- 3.9 The Manufacturer must keep full and comprehensive records of all Plans provided to sub-contractors, agents and representatives and the purposes and times when they are provided. In the event that The Company directs the Manufacturer to repossess any such Plans the Manufacturer must promptly take all steps at its own cost to recover such Plans and to ensure that no copies thereof have been left with the sub-contractors, agents

and/or representatives.

- 3.10 The Manufacturer promises and undertakes to The Company that it will not, during the Term and for a period of twelve (12) months after the expiry or termination of the Term directly or indirectly (other than through and for the Company)
- 3.10.1 Manufacture market, sell or distribute the Incredible Hats anywhere in the world.
- 3.10.2 Manufacture for any other Person anywhere in the world the same or similar items which may be deemed competitive with the Incredible Hats
- 3.10.3 Facilitate any other Person anywhere in the world being able to market, sell or distribute the same or similar items which may be deemed competitive with the Incredible Hats
- 3.11 The Manufacturer acknowledges that the covenants in clause 3.10 are necessary and reasonable to protect the Confidential Information of Intellectual Property of the Company.
- 3.12 Provided nothing in this clause shall apply to prevent the Manufacturer from continuing to carry out its obligations under any existing contract entered into between the Manufacturer and another Person and it is expressly acknowledged by The Company that the carrying out of such obligations by the Manufacturer shall not in any way constitute a breach of this Agreement.

4. NEW PRODUCTS

- 4.1 The Company may from time to time during the Term require the Manufacturer to create and manufacture New Products.
- 4.2 The Manufacturer shall provide to The Company an estimate of the Ex-Works Price of the New Products in accordance with the procedure in Schedule One. The Company may or may not accept that estimate Ex-Works Price.
- 4.3 Where the Parties are unable to agree on the Ex-Works Price of a New Product, they shall engage in negotiations in good faith and having regard to the prices other Persons would charge for the manufacture of the New Product.
- 4.4 Where after one month from the time the Manufacturer provided its estimated Ex-Works Price of the New Products, the Parties are still unable to reach agreement as to the estimated Ex-Works Price of the New Products, then The Company shall be entitled to appoint another Person to manufacture the New Products at an Ex-Works Price that is no greater than the estimated Ex-Works Price of those New Products as put forward by the Manufacturer.

4.5 Where the Manufacturer and The Company have been able to reach agreement as to the Ex-Works Price for the New Products then the Manufacturer undertakes to use its best endeavours to manufacture the New Products in accordance with the Stages set forth in Schedule One.

4.6 All New Product Plans with all changes to them shall at all times whether created by the Manufacturer or any other Person be the sole and exclusive property of The Company and the Manufacturer's license to use the New Product Plans is limited to the manufacture of the New Products and the making of any Tooling.

5. INTELLECTUAL PROPERTY

5.1 The Company is and at all times will be the exclusive owner of all of the Intellectual Property in the Plans and any New Product Plans. The Manufacturer shall not challenge or dispute or encourage or facilitate any other Person challenging or disputing the Company's ownership of the Intellectual Property or any part thereof or the Company's ownership of the Plans or any part thereof or the Company's ownership of the New Product Plans or any part thereof. This is an essential term.

5.2 The Manufacturer shall not do anything or omit to do anything or permit any other Person to do anything, which could detrimentally affect the Company's Equipment's ownership of the Intellectual Property. This is an essential term.

5.3 The Manufacturer is entitled during the Term to use under license the Intellectual Property, the Plans and the New Product Plans in such manner as it may reasonably require but only for the sole purpose of effectively manufacturing the Incredible Hats, New Products and/or Spare Parts. The Manufacturer must not use any Intellectual Property or the Plans or New Product Plans for any other purpose without the prior consent of the Company.

5.4 The Manufacturer undertakes and promises to The Company to execute all documents, including assignments, transfers, declarations, and statements of ownership as The Company may from time to time require in order to assign, convey or transfer ownership and title to The Company or its nominee in:-

5.4.1 the Intellectual Property or any part thereof,

5.4.2 the Plans or any part thereof, and /or,

5.4.3 New Product Plans or any part thereof.

5.5 The Manufacturer undertakes and promises to The Company to execute all documents, including assignments, transfers, declarations, and statements of ownership as The

Company may from time to time require in order to register The Company or its nominee anywhere in the world as the owner of:-

- 5.5.1 the Intellectual Property or any part thereof,
 - 5.5.2 the Plans or any part thereof, and /or,
 - 5.5.3 New Product Plans or any part thereof.
- 5.6 The Manufacturer hereby irrevocably appoints The Company as its due and lawful attorney and representative for the purposes of:-
- 5.6.1 Signing any documents on the Manufacturer's behalf as may be reasonably required to ensure or bring about the sole and exclusive ownership by The Company or its nominee of the Intellectual Property, Plans and Product Plans as provided in Clause 5.4.
 - 5.6.2 Signing any documents on the Manufacturer's behalf as may be reasonably required to ensure or bring about the registration of The Company or its nominee as the sole and exclusive owner of the Intellectual Property, Plans and Product Plans as provided in Clause 5.5, and
 - 5.6.3 Doing all other things, giving all undertakings, assurances, and making all applications and requests as may be reasonably required or necessary in order to transfer, assign or bring about the ownership of The Company or its nominee in the Intellectual Property, Plans and Product Plans as provided in Clause 5.4, and/or the registration of The Company or its nominee as owner of the Intellectual Property, Plans and New Product Plans as provided in Clause 5.5.
- 5.7 Where in any country in the world the appointment of an attorney requires registration under the Law of that country then the Manufacturer shall, if requested by the Company, do all things and sign all documents as may be reasonably required in order to facilitate and bring about that registration.
- 5.8 The Manufacturer acknowledges that in preparing the Plans and the New Product Plans it will be creating Intellectual Property in those Plans and New Product Plans including copyright and rights in respect to designs. Notwithstanding anything elsewhere contained, the Manufacturer shall stand possessed of all of its rights, entitlements and interests in that created Intellectual Property solely for the benefit of The Company and hold all such interests and rights as a bare trustee for the Company. The Company may require the Manufacturer to register such Intellectual Property when created in such countries in the world and under such international Agreements relating to Intellectual

Property as The Company deems appropriate provided that The Company must pay or reimburse all reasonable expenses and costs involved in such registration.

6. CONFIDENTIAL INFORMATION

- 6.1 Each Party undertakes not to use or disclose to any other Person or entity any of the other Party's Confidential Information and shall only use such Confidential Information in good faith and for the proper purposes of this Agreement and then subject to any restrictions imposed by the Party that is the provider of the Confidential Information.
- 6.2 Where any Party is provided with Confidential Information by the other Party it shall take all reasonable steps to ensure that access within its company is limited to employees and officers who reasonably require access to that confidential information for the purposes of this Agreement. Any Confidential Information shall be kept secure, if in hard form it shall be kept in such a manner as its access is limited and if in electronic form it shall be kept secure. A register shall be maintained of all individuals who are given access to the Confidential Information. That register shall provide the name of the individual, the purpose for which access is given, how that access is given, when and where that access is given and when where in what manner that access ceased.
- 6.3 No access to Persons who are not Parties is to be given to any Confidential Information unless such access is contemplated by this Agreement or the consent of the other Party is given and in either circumstance such access shall only be given on terms reasonably acceptable to both Parties.
- 6.4 Each Party indemnifies the other and undertakes to keep the indemnified against any loss damage or liability the other might sustain or incur as a result of any wrongful use or disclosure of any Confidential Information.
- 6.5 Each Party acknowledges that damages alone are an insufficient remedy to compensate a Party where its Confidential Information has been wrongfully disclosed or there is a reasonable threat of such wrongful disclosure and each Party will not oppose or contest any application or proceedings by the other Party for an injunction to prevent wrongful disclosure of Confidential Information or the wrongful use by anyone of Confidential Information.

7. THE MANUFACTURERS OBLIGATIONS

- 7.1 The Manufacturer covenants and undertakes to The Company that it shall promptly take all steps to fulfil all Orders placed with it by the Company.
- 7.2 The Manufacturer covenants with The Company that it shall promptly notify the

Company:-

- 7.2.1 Of any fact or circumstance which could or might prevent it or delay it in the Delivery of any Order.
 - 7.2.2 Of any manufacturing defect of which it becomes aware in any of the Incredible Hats or in any of the New Products, Components or Spare Parts.
 - 7.2.3 Of any design defect of which it becomes aware in any of the Incredible Hats or in any of the New Products, Components or Spare Parts.
 - 7.2.4 Of any claim by any Person of which it becomes aware that in any way relates to the Incredible Hats, New Products, components, Spare Parts or to any of the Intellectual Property relating to the Plans or New Products Plans.
- 7.3 The Manufacturer undertakes to promptly attend to any reasonable request by the Company, including requests relating to: -
- 7.3.1 Any information about the Incredible Hats, the specifications, testing, quality control inspections, certification process, Components used, Spare Parts, New Products, and packaging.
 - 7.3.2 Any urgent Delivery required of any Order.
 - 7.3.3 Any particular requirements of a Consumer.
- 7.4 The Manufacturer undertakes to The Company to endeavour to sell and deliver The Company sufficient quantities of the Spare Parts so as to enable The Company to properly and efficiently maintain all of the Incredible Hats sold to Consumers.
- 7.5 The Manufacturer shall give full and unrestricted access to the representatives to all records kept by the Manufacturer for the purpose of enabling The Company to verify any aspect of compliance required under this Agreement.
- 7.6 The Company may require the Manufacturer to Deliver the Incredible Hats and/or New Products in an unassembled or partly assembled state. The Manufacturer shall comply with that request.

8. PRODUCT DEFECTS & GENERAL LIABILITY

- 8.1 The Manufacturer undertakes and warrants to The Company that:-
- 8.1.1 The Incredible Hats, New Products, Spare Parts and all their packaging at Delivery will be fit and Merchantable at that time and shall meet and be in accordance with the Laws of the Country to which they are to be shipped; and
 - 8.1.2 If the Incredible Hats, New Products, Spare Parts and/or its packaging are defective and/or not Merchantable the Manufacturer must either replace or repair

or pay the cost of replacing the defective items at its own cost; or

- 8.1.3 The Incredible Hats, New Products, Spare Parts will at Delivery all be safe for use by the Consumer in accordance with the manual and the specifications and provided that they are properly maintained.
- 8.1.4 It will take out and maintain throughout the Term a policy of insurance with an international insurance company reasonably acceptable to The Company covering the Manufacturer up to an amount of One Hundred Thousand Dollars per claim for claims arising out of any defect in the manufacture or design of the Incredible Hats, New Products and/or Spare Parts.
- 8.2 Neither Party will in the course of conducting its business engage in conduct, which is misleading or deceptive or likely to mislead or deceive and/or constitutes any breach of any Law. This is an essential term.
- 8.3 The Parties shall co-operate and assist each other and do all things requested by each other in order to obtain all any necessary approvals, licenses, permits authorisations and certifications that may be required in order to import, market and sell the Incredible Hats, New Products, and/or Spare Parts in any country of the world.
- 8.4 The Manufacturer has no authority to make any representation on behalf of the Company. This is an essential term.
- 8.5 No agreement, arrangement or understanding between the Manufacturer and any other Person which in any way relates to this Agreement or to anything to be done pursuant to this Agreement shall in anyway be binding on The Company or directly or indirectly impose any obligation on the Company.

9. PRICES, ORDERING, AND PAYMENT

- 9.1 The agreed Ex-Works Prices shall remain current for one (1) Year and shall thereafter be only be increased if the Manufacturer gives The Company sixty days (60) prior written Notice and is able to provide reasonable evidence that its manufacturing costs have increased over the preceding Year. The Manufacturer shall only be entitled to increase its Ex-Work Prices once in each Year.
- 9.2 Where such increases exceed five (5) percent on the preceding Year's Ex-Works Prices then The Company may at its discretion by giving Notice to the Manufacturer do all or some of the following:-
- 9.2.1 Suspend all outstanding Orders indefinitely.
- 9.2.2 Nominate an alternative currency to pay in.

- 9.2.3 Cancel any Orders.
- 9.2.4 Terminate the Agreement.
- 9.3 The Manufacturer must provide The Company with an estimate of the costs of creating the Plans and making the Tooling for The Company to consider and approve or not approve. The Company may approve or not approve those estimates. If The Company accepts those estimates the Manufacturer is to proceed with the creation of the Plans and the making of the Tooling.
- 9.4 Provided the Manufacturer has first sort the approval of The Company and The Company has given that approval. The Company shall reimburse the Manufacturer for all costs and expenses incurred by the Manufacturer in preparing the Plans and in having any Tooling made. The Manufacturer acknowledges that such reimbursement is full consideration for the Company's entitlement to exclusive ownership in the Plans, New Products Plans, the Intellectual Property and the Tooling. Such reimbursement shall be made within thirty days (30) of the Manufacturer providing to The Company an Invoice for the expenses together with reasonable evidence of all payments to third Persons and providing the assignments referred to in clause 9.5, whichever is the last to occur.
- 9.5 The Manufacturer must obtain signed assignments of all copyright including moral copyright from all third Persons who have in any way created the Plans, New Product Plans or any part thereof or the Tooling or any part thereof.
- 9.6 The Manufacturer must provide The Company with a complete set of all Plans and with all signed assignments of copyright to enable The Company to register the Plans in with a registration body of The Company's choice. Except with the prior written approval of the Company, the Manufacturer must not create the Prototype prior to the registration of the Plans by The Company.
- 9.7 All payments are to be paid electronically. The Incredible Hats, New Products, Spare Parts must be paid for by The Company by the last to occur of the following:-
- 9.7.1 within fourteen (14) days of receipt of the relevant Invoice from the Supplier; or
- 9.7.2 within fourteen (14) days of Delivery

Whichever is the last to occur. This is an essential term.

10. DELIVERY OF PRODUCTS

- 10.1 The Manufacturer must deliver the Incredible Hats, New Products and Spare Parts so Ordered by The Company to The Company or to its nominee.
- 10.2 The Manufacturer shall bear all the costs and charges up to Delivery. Title to the

Incredible Hats, New Products and/or Spare Parts and risk shall pass to The Company on Delivery.

- 10.3 Where the Incredible Hats, New Products and/or Spare Parts are fragile, the Manufacturer must ensure they are packaged and labelled in accordance with all applicable Laws that relate where applicable to fragile air/sea/overland transportation of such products to the place designated by The Company in the Order form.
- 10.4 The Company must inspect the Incredible Hats, New Products and/or Spare Parts within a reasonable time after their physical shipment and arrival at the Company's warehouse or other destination and must within twenty one (21) days of such inspection notify the Manufacturer of any defects which are visually apparent from such inspection.
- 10.5 Where a defect is only apparent after testing or use of the Incredible Hats, New Products and/or Spare Parts the Company must promptly after it becomes aware of any such defect notify the Manufacturer thereof. The Manufacturer will do all things commercially reasonable to replace any such defective products as soon as possible.

11. TERMINATION

- 11.1 This Agreement may be terminated by either Party if the other Party commits a Material Breach. The procedure for termination is set out in this Clause.
- 11.2 On termination the Manufacturer must either Deliver sufficient quantities of the Incredible Hats, New Products and/or Spare Parts Ordered by The Company so as to allow The Company to satisfy all of its outstanding contractual obligations to its Consumers;
- 11.3 It shall be a breach of an essential term by the Company, and the Manufacturer shall be entitled to terminate this Agreement by giving twenty one (21) days prior Notice to that affect to the Company if:-
- 11.3.1 The Company fails to pay any amount owing to the Manufacturer within twenty one (21) days of the date of a written request by the Supplier to make payment;
 - 11.3.2 The Company becomes insolvent;
 - 11.3.3 The Company commits any breach of this Agreement and fails to remedy that breach within twenty one (21) days of the date of a written request from the Manufacturer to do so;
 - 11.3.4 The Company ceases to carry on business;
 - 11.3.5 The Company ceases to use commercially reasonable efforts to market, distribute and sell the Incredible Hats, New Products and/or Spare Parts;

- 11.3.6 The Company breaches any terms of this Agreement that is expressed to be an essential term.
- 11.4 It shall be a breach of an essential term by the Manufacturer and The Company shall be entitled to terminate this Agreement by giving twenty one (21) days prior Notice to that affect to the Manufacturer if:-
- 11.4.1 The manufacture fails to Deliver any of the Incredible Hats, New Products and/or Spare Parts to The Company within fourteen (14) days of the time specified in the Order.
- 11.4.2 The Manufacturer fails to carry out the tasks and work required in the stages as set out in Schedule one or carries out such tasks and work but does not do so to the reasonable notification of the Company.
- 11.4.3 The Manufacturer becomes insolvent;
- 11.4.4 The Manufacturer commits any breach of this Agreement and fails to remedy that breach within twenty one (21) days of being requested by The Company to remedy that breach;
- 11.4.5 The Manufacturer ceases to carry on business;
- 11.4.6 The Manufacturer ceases to supply any of the Incredible Hats, New Products and/or Spare Parts as ordered fails to maintain quality control standards for the manufacture of the Incredible Hats, New Products and/or Spare Parts;
- 11.4.7 The Manufacturer fails to follow any reasonable and lawful direction given by The Company for the purposes of protecting the Company's Confidential Information or the Company's Intellectual Property;
- 11.4.8 There is a product recall of any of the Incredible Hats, New Products and/or Spare Parts required to be carried under the Laws of any place where any Consumer uses the Incredible Hats, New Products and/or Spare Parts;
- 11.4.9 It becomes unlawful to sell the Incredible Hats, New Products and/or Spare Parts or any of them under any applicable Laws.
- 11.4.10 The Manufacturer breaches any term of this Agreement that is expressed to be an essential term.
- 11.5 Notwithstanding anything elsewhere contained in this Agreement, and without giving any Notice under this clause either Party may terminate this Agreement immediately by giving Notice to the other Party if the recipient Party of such Notice has breached any Law then applying to this Agreement or does any act or omits to do any act that could

cause the terminating Party to be in breach of any Law applicable to this Agreement or wrongfully and knowingly uses or discloses the terminating Party's Confidential Information to any third party;

- 11.6 Upon termination each of the Parties must promptly return to each other all Confidential Information and Intellectual Property belonging to the other Party. Where such Confidential Information is incapable of being returned in tangible form then each Party undertakes to the other that it will destroy all electronic records of such Confidential Information. In addition, the Manufacturer must deliver all Plans, New Products Plans and Intellectual property relating to the Incredible Hats, New Products or the Spare Products that are in its possession. The Manufacturer must also notify The Company of all other Persons, which might have copies of the Plans, New Product Plans or Intellectual Property and provide The Company with full details of all Persons who hold the Tooling.
- 11.7 Notwithstanding termination of this Agreement, all provisions relating to the following obligations including provisions that will facilitate the meeting of those obligations will continue to be binding on the Parties and fully enforceable in respect to the rights and obligations of each Party in so far as they relate to:-
- 11.7.1 The payment of any sum;
 - 11.7.2 Any continuing obligations to any Consumers;
 - 11.7.3 Product warranty to Consumers;
 - 11.7.4 Confidential Information;
 - 11.7.5 Return of property and transfer of Intellectual Property;
 - 11.7.6 Obligations in this Clause and otherwise in this Agreement that are expressly intended to apply after termination;
 - 11.7.7 Obligations on the Manufacturer not to sell competitive products.

12. RELATIONSHIP

- 12.1 The Parties acknowledge that they are not in partnership, there is no joint venture between them or franchise arrangement and that the only relationship between them is that of, in the case of the Manufacturer as Manufacturer and seller The Company as buyer and owner the Plans and all Intellectual Property created pursuant to this Agreement. Neither Party shall claim or hold itself out as having any other relationship, authority, right or entitlement to represent or act as agent of the other or to have any interest or shareholding in the other.

12.2 The Manufacturer sells all the Incredible Hats, New Products and/or Spare Parts as principal not as agent for any other Person.

12.3 It is expressly agreed that nothing in this Agreement shall give rise to any fiduciary relationships between The Company and the Manufacturer.

13. DISPUTE RESOLUTION AND JURISDICTION

13.1 It is agreed by the Parties that this Agreement shall be construed in accordance with the Laws of Australia and each Party covenants and expressly agrees that it shall submit to the jurisdiction of Australia for the resolution of any dispute under the Agreement.

13.2 The Parties will comply with the following dispute resolution procedure:-

13.2.1 where a dispute arises between the Parties, the complainant Party will set out in writing and in English what it regards the dispute to be, telling the respondent Party:-

13.2.2 the nature of the dispute; and

13.2.3 what outcome the complainant wants;

13.2.4 what action the complainant Party requires in order to settle the dispute.

13.2.5 Both Parties will make every effort to resolve the dispute through negotiation and will in so doing act in good faith.

13.2.6 For mediation under this Agreement:-

13.2.7 if the Parties cannot agree under sub clause (ii) within seven (7) days, either Party may refer the matter to a mediator; and

13.2.8 if the Parties cannot agree about who should be the mediator, either party may ask the Chief Executive Officer (at that time), Australian Commercial Disputes Centre to appoint a retired Judge or court officer or practicing barrister of at least ten (10) years admission to the Bar to act as the mediator and that mediator shall act as mediator of the dispute.

13.2.9 The mediator may decide the time and place for mediation.

13.2.10 The Parties or their legal representative(s) must attend the mediation and try in good faith to resolve the dispute through mediation.

13.2.11 The Parties are equally liable for the costs of mediation and the costs of the mediator under this part unless they agree otherwise. The Parties must pay their own costs for attending at or being represented at the mediation;

13.2.12 Nothing in this clause affects the right of a Party to take legal proceedings under this Agreement, if mediation fails to resolve the dispute.

- 13.2.13 Nothing contained in the dispute resolution procedures above will deny from, or delay any Party seeking immediate injunctive relief from an appropriate Court, where in the reasonable opinion of the Party, the failure to obtain such relief would cause irreparable damage to the Party concerned;
- 13.2.14 These dispute resolution procedures will not apply to events giving rise to a right of termination of this Agreement where there is no legitimate dispute as to the occurrence of that event.

14. VARIATION AND WAIVER

- 14.1 This Agreement may only be varied in writing signed by both the Parties.
- 14.2 The waiver by any Party of any right or entitlement or to claim in respect of any breach of this Agreement must be in writing signed by the Party so waiving. No purported waiver that is not in writing and signed by the waiving Party shall have any effect whatsoever.
- 14.3 A waiver shall not preclude that waiving Party from relying upon any such right or entitlement arising in the future or to claim in respect of any subsequent breach of this Agreement even if that future right, entitlement or subsequent is the same as that previously waived.

15. NOTICES

- 15.1 All Notices or requests given by either Party to the other shall be deemed to have been properly given if posted by mail or faxed to the addresses or fax numbers set out in Schedule Two.
- 15.2 Any Notice or request sent by fax shall be deemed served on the day after faxing. A facsimile transmission record shall be conclusive evidence of the date of faxing. Any Notice or request sent by mail shall be deemed served seven (7) days after the date of posting, not including the date of posting.
- 15.3 Any Notice or request sent by a Party to the other shall be signed by a director or officer of the sending Party or appear on its face (where a fax) to be so signed.
- 15.4 All Notices must be given in English.
- 15.5 Either Party may change its details for service of a Notice by serving a Notice on the other party setting forth its new address for service and/or facsimile number.

16. ENTIRE AGREEMENT

- 16.1 This Agreement represents the entire agreement between the Parties relating to the subject matter of the Agreement and supersedes all prior agreements, understandings,

representations and warranties relating to the subject matter of this Agreement.

16.2 No Party has relied on or been induced by any representations or promises made to it prior to entering into this agreement in reaching its decision to enter into this Agreement on these terms.

17. FORCE MAJEURE

17.1 Except for obligations to make payment, non-performance by any Party shall be excused to the extent that performance is rendered impossible or impractical by acts of God, lightning strike, earthquakes, floods, storms, explosions, fires and any natural disaster, acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution or governmental acts or orders or restrictions.

18. SEVERABILITY

18.1 If any clause of this Agreement is invalid under any applicable such Laws, the invalid clause shall be limited, narrowed, construed or altered as necessary to render it valid, but only to the extent necessary to achieve such validity. If necessary the invalid clause shall be deleted from the Agreement. The remaining clauses shall remain in full force and effect.

19. COUNTERPARTS

19.1 This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one instrument and Agreement.

20. NO THIRD PARTY BENEFICIARIES

20.1 This Agreement is entered into for the benefit of the parties and shall not be deemed to grant any rights or interests to any third party.

21. LEGAL ADVICE

21.1 Each Party acknowledges and represents to each other that it has had the opportunity to seek and obtain separate and independent legal advice before entering into this Agreement. If either Party has entered this Agreement without first taking legal advice it has done so at its sole and absolute discretion and shall not be entitled to rely upon the absence of legal advice as a defence to any breach of any of the clauses of this Agreement.

EXECUTED BY ALL PARTIES AS AGREEMENT

SIGNED BY)
Crazy Hats Pty Ltd ACN 154 168 920)
pursuant to)
Section 127 of the *Corporations Act* 2001)
(Cth) in the presence of:

Director
Print Name:

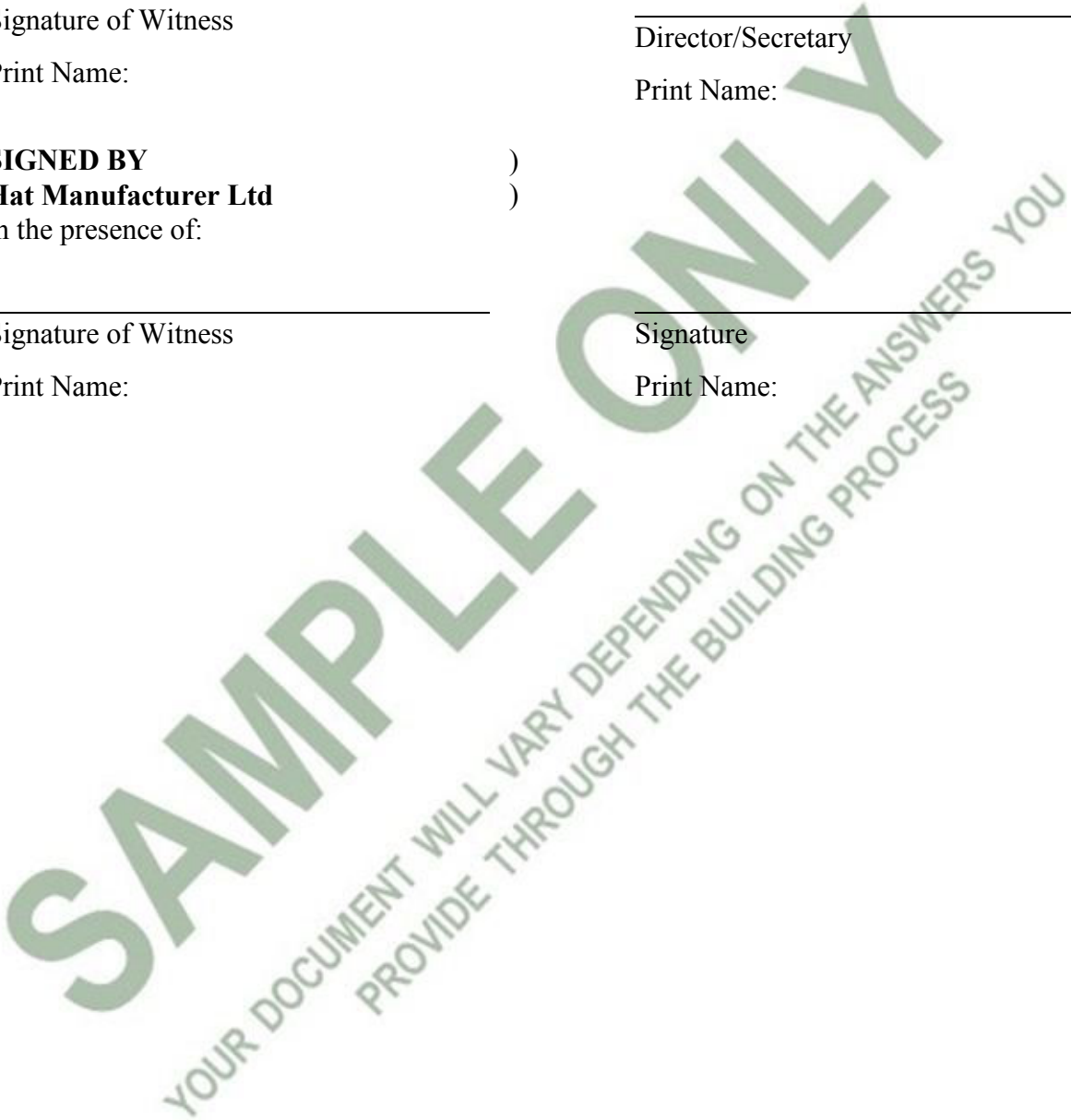
Signature of Witness
Print Name:

Director/Secretary
Print Name:

SIGNED BY)
Hat Manufacturer Ltd)
in the presence of:

Signature of Witness
Print Name:

Signature
Print Name:



SCHEDULE ONE

Planning Stage

During the Planning Stage the Manufacturer shall:-

- (a) Provide to The Company estimates of the costs involved in creating the Plans and making the Tooling.
- (b) Create all preliminary Plans based on the Conceptual Design so as to enable the manufacture of Prototypes and provide an estimate of the Ex-Works Price of the Incredible Hats.
- (c) Submit the Plans as created to The Company for its approval.
- (d) Carry out and make any changes to the Plans that The Company may reasonably require.
- (e) Provide to The Company a list of all Components to be used in the manufacture and/or assembly of the Incredible Hats together with the price of each of those Components.
- (f) Provide to The Company an estimate of the price for any required Tooling and an estimate of the ongoing maintenance costs of that Tooling.

Prototype Stage

During the Prototype Stage the Manufacturer shall: -

- (a) Prepare detailed and comprehensive Plans for the manufacture of Prototypes and ultimately for the manufacture of the Incredible Hats.
- (b) Confirm the previous estimated Ex-Works Prices for the Incredible Hats or provide a revised Ex-Works Price for the Incredible Hats setting forth in detail the reasons for the revisions.
- (c) Manufacture Prototypes of the Incredible Hats in accordance with the Plans and subject to the directions of the Company.
- (d) Test the functionality and capacities of the Prototypes and report thereon to the Company.
- (e) Carry out such further tests on the Prototypes as The Company may require and report thereon to the Company.
- (f) Record the results of all tests.

- (g) To carry out all tests and inspections as maybe required to ensure that the Prototype meets all specific Design Requirements as provided by The Company from time to time.
- (h) To certify the quality and standards of materials and Components used in the manufacture of the Prototype.
- (i) Make the Prototypes available to The Company for further testing.

Manufacturing Stage

During the Manufacturing Stage the Manufacturer shall:-

- (a) Subject to the satisfactory of completion of the Planning Stage and the satisfactory testing by The Company of the Prototypes, establish a manufacturing procedure for the manufacture of the Incredible Hats to meet Orders placed by the Company.
- (b) Establish ongoing quality control inspections and test procedures to be followed in respect to the manufacture of all the Incredible Hats and to maintain reports of those inspections and on the carrying out and results of all test procedures.
- (c) Establish a process whereby every Incredible Hats has a certification that it has passed or quality control inspections and test procedures.
- (d) Establish an inventory of available Spare Parts, available Components and available New Products that can be ordered by The Company from time to time.
- (e) Provide such assistance to The Company as it may require in the creation and publication of manuals to assist and provide instructions to Consumers in the safe and proper use of the Incredible Hats.
- (f) Provide such assistance to The Company as it may require in the creation and publication of specifications for the Incredible Hats such specifications to be provided to Consumers.
- (g) Use such colour schemes, labelling, trade marks and logos as The Company may require in respect to the manufacture of the Incredible Hats.
- (h) Package all manufactured Incredible Hats using suitable packaging materials and in a manner so is to ensure that they can be safely handled and shipped either by sea or air and to follow all directions which The Company may from time to time give to the Manufacturer in respect to packaging materials to be used and packaging generally

- (i) Keep such other records as The Company may from time to time reasonably require.

New Products Stage

During the New Products Stage the Manufacturer shall:-

- (a) If requested by The Company develop New Products and in that regard engage in, if requested by The Company all of the work and processes set forth in this Agreement in respect to those New Products.

SAMPLE ONLY
YOUR DOCUMENT WILL VARY DEPENDING ON THE ANSWERS YOU
PROVIDE THROUGH THE BUILDING PROCESS

SCHEDULE TWO

The address for service of notices on the Company is:-

Address: 20 Andross Street

Attention: Andrew Collins

Trandwood NSW

Facsimile: +61 2 918 67445

Australia

Email: Andrew@crazyhats.biz

The address for service of notices on the Manufacturer is:-

Address: 15 Bango Street

Attention: Karm Ganetrea

Philipberg

Facsimile: +71 3 4587 4231

India

Email: Karm@incrediblehats.biz

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