

MANUFACTURING & SUPPLY AGREEMENT

Buyer: Apex Manufacturing Co. · Governing law: United States

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1. Exclusive Supply

During the Term, the Buyer shall purchase one hundred percent (100%) of its requirements for the Products exclusively from Apex. The Buyer shall not, directly or indirectly, manufacture the Products itself or purchase the Products or substantially similar products from any third party, even if Apex is unable to supply the Buyer's requirements in full or on time.

2. Minimum Purchase Commitment

The Buyer commits to purchase a minimum annual volume as set forth in the Schedule (the "Minimum Commitment"). If the Buyer's actual purchases in any contract year fall below the Minimum Commitment, the Buyer shall nonetheless pay Apex for the shortfall as if it had been ordered and delivered (a take-or-pay obligation), regardless of the reason for the shortfall, including reduced demand or Apex's own delivery failures.

3. Pricing and Adjustments

Prices are set forth in the Schedule. Apex may increase prices upon thirty (30) days' written notice to reflect changes in raw-material, labor, energy, or other costs, in Apex's reasonable determination, with no cap on the frequency or magnitude of increases. The Buyer's sole remedy for a price increase it finds unacceptable is to continue purchasing at the increased price.

4. Forecasts and Capacity

The Buyer shall provide rolling twelve-month forecasts, of which the first ninety (90) days shall be binding purchase commitments. Apex does not guarantee capacity beyond accepted purchase orders and shall have no liability for any failure to meet forecasted or ordered volumes.

5. Quality and Acceptance

The Buyer shall inspect Products within five (5) days of delivery and shall be deemed to have irrevocably accepted any Products not rejected in writing within that period. Apex's sole obligation for non-conforming Products is, at Apex's option, replacement or credit. Apex disclaims all liability for latent defects discovered after the inspection period.

6. Product Liability and Recall

The Buyer shall indemnify, defend, and hold harmless Apex from all claims arising out of the Products, including product-liability claims and the entire cost of any product recall, regardless of whether the defect arose from Apex's manufacturing, design contribution, or materials, except to the extent finally adjudicated to result solely from Apex's willful misconduct.

7. Limitation of Liability

In no event shall Apex be liable for any indirect, incidental, consequential, or special damages, including lost profits, business interruption, or the cost of cover. Apex's total liability for any claim shall not exceed the price paid for the specific Products giving rise to the claim. This limitation applies even to Apex's failure to supply and to claims for defective Products.

8. Force Majeure

Apex shall not be liable for any delay or failure to supply due to any cause beyond its reasonable control,

including shortages of materials or labor, changes in market conditions, supplier failures, and increased costs. During any force-majeure event, the Buyer's exclusivity and Minimum Commitment obligations shall remain in full force, but Apex's supply obligations shall be suspended.

9. Term and Termination

The initial Term is five (5) years and automatically renews for additional three (3) year terms unless either party gives twelve (12) months' notice of non-renewal. Neither party may terminate for convenience. Upon any termination, the Buyer shall purchase all finished goods, work-in-process, and raw materials Apex has acquired in reliance on the Buyer's forecasts.

10. Tooling and Intellectual Property

All tooling, molds, and fixtures paid for by the Buyer shall remain in Apex's possession and control during the Term, and Apex shall have a lien on such tooling to secure all amounts owed by the Buyer. Any process improvements or manufacturing know-how developed in connection with the Products shall be owned exclusively by Apex.