

국제계약, 영문계약 실무 - 상표사용허락 라이선스 계약서 조항 샘플



TRADEMARK LICENSE AGREEMENT

THIS AGREEMENT is entered into the last date written below by and between [INSERT NAME OF LICENSOR, ENTITY TYPE, and ADDRESS] ("LICENSOR"), and [INSERT NAME OF LICENSEE, ENTITY TYPE, and ADDRESS] ("LICENSEE").

WHEREAS, LICENSOR is the sole and exclusive owner of the following trademarks and registrations: [INSERT] (the "Trademarks"); and

WHEREAS, LICENSOR has the power and authority to grant to LICENSEE the right, privilege and license to use the Trademarks on or in association with the goods and/or services covered by the registrations (the "Licensed Products"); and

WHEREAS, LICENSEE has represented that it has the ability to manufacture, market and distribute the Licensed Products in [INSERT TERRITORY] (the "Territory") and to use the Trademarks on or in association with the Licensed Products; and

WHEREAS, LICENSEE desires to obtain from LICENSOR a license to use, manufacture, have manufactured and sell Licensed Products in the Territory and to use the Trademarks on or in association with the Licensed Products; and

WHEREAS, both LICENSEE and LICENSOR are in agreement with respect to the terms and conditions upon which LICENSEE shall use the Trademarks;

NOW, THEREFORE, in consideration of the promises and agreements set forth herein, the parties, each intending to be legally bound hereby, do promise and agree as follows.

1. LICENSE GRANT

A. LICENSOR hereby grants to LICENSEE a non-exclusive license to use the Trademarks on or in association with the Licensed Products in the [INSERT TERRITORY] (Territory), as well as on packaging, promotional and advertising material associated therewith.

B. LICENSOR hereby grants to LICENSEE the non-exclusive right and license to use, manufacture, have manufactured, sell, distribute, and advertise the Licensed Products in the Territory. It is understood and agreed that this license shall pertain only to the Trademarks and the Licensed Products and does not extend to any other mark, product or service.

C. LICENSEE may not grant any sublicenses to any third party without the prior express written consent of the LICENSOR which may be withheld for any reason.

2. TERM OF THE AGREEMENT

This Agreement and the provisions hereof, except as otherwise provided, shall be in full force and effect commencing on the last the date of execution below and shall extend for [INSERT LENGTH OF TERM] (the "Term").

3. COMPENSATION

A. In consideration for the licenses granted hereunder, LICENSEE agrees to pay to LICENSOR a royalty of ___% (the "Royalty") based on LICENSEE's Net Sales of Licensed Products, accruing upon the sale of the Licensed Products (i.e., when the Licensed Product is billed, invoiced, shipped, or paid for, whichever is first regardless of the time of collection by LICENSEE), calculated on a quarterly calendar basis (the "Royalty Period") and shall be payable no later than thirty (30) days after the termination of the preceding full calendar quarter, i.e., commencing on the first (1st) day of January, April, July, and October, with late payments incurring interest at the rate of ONE PERCENT (1%) per month from the date such payments were originally due.

B. In the event that LICENSEE grants any previously approved sub-licenses for the use of the Trademarks in countries outside of the United States, LICENSEE shall pay LICENSOR FIFTY PERCENT (50%) of the gross income received by LICENSEE from such sub-licensees.

C. LICENSEE shall provide LICENSOR with a written royalty statement in a form acceptable to LICENSOR each Royalty Period whether or not any Licensed Products were sold during that Period and the receipt or acceptance by LICENSOR of any royalty statement or payment shall not prevent LICENSOR from subsequently challenging the validity or accuracy of such statement or payment.

D. "Net Sales" shall mean LICENSEE's gross sales (the gross invoice amount billed customers) of Licensed Products, less discounts and allowances actually shown on the invoice and less any *bona fide* returns. No other costs incurred in the manufacturing, selling, advertising, and distribution of the Licensed Products or any uncollectible accounts or allowances shall be deducted.

4. AUDIT

A. LICENSOR shall have the right, upon at least five (5) days written notice to inspect LICENSEE's books and records and all other documents and material in the possession of or under the control of LICENSEE with respect to the subject matter of this Agreement at a location in the United States. LICENSOR shall have free and full access thereto for such purposes and shall be permitted to make copies thereof and extracts therefrom.

B. In the event that such inspection reveals a discrepancy in the amount of Royalty owed LICENSOR from what was actually paid, LICENSEE shall pay such discrepancy, plus interest, calculated at the rate of ONE AND ONE-HALF PERCENT (1 1/2%) per month. In the event that such discrepancy is in excess of ONE THOUSAND UNITED STATES DOLLARS (\$1,000.00), LICENSEE shall also reimburse LICENSOR for the cost of such inspection including any attorney's fees incurred in connection therewith.

C. All books and records relative to LICENSEE's obligations hereunder shall be maintained and kept accessible and available to LICENSOR for inspection in the United States for at least three (3) years after termination of this Agreement.

D. In the event that an investigation of LICENSEE's books and records is made, certain confidential and proprietary business information of LICENSEE may necessarily be made available to the person or persons conducting such investigation. It is agreed that such confidential and proprietary business information shall be retained in confidence by LICENSOR and shall not be used by LICENSOR or disclosed to any third party for a period of two (2) years from the date of disclosure, or without the prior express written permission of LICENSEE unless required by law. It is understood and agreed, however, that such information may be used in any proceeding based on LICENSEE's failure to pay its actual Royalty obligation.

5. WARRANTIES AND OBLIGATIONS

A. LICENSOR represents and warrants that it has the right and power to grant the licenses granted herein and that there are no other agreements with any other party in conflict herewith.

B. LICENSOR further represents and warrants that to the best of its knowledge, the Trademarks do not infringe any valid right of any third party.

C. LICENSEE represents and warrants that it will use its best efforts to promote, market, sell, and distribute the Licensed Products.

D. LICENSEE shall be solely responsible for the manufacture, production, sale, and distribution of the Licensed Products and will bear all related costs associated therewith.

E. It is the intention of the parties that LICENSEE shall introduce the Licensed Products in all countries in the Territory on or before [INSERT DATE]. Failure to meet this deadline shall constitute grounds for immediate termination of this Agreement by LICENSOR.

6. NOTICES, QUALITY CONTROL AND SAMPLES

A. The licenses granted hereunder are conditioned upon LICENSEE's full and complete compliance with the marking provisions of the patent, trademark and copyright laws of the United States and other countries in the Territory.

B. The Licensed Products, as well as all promotional, packaging, and advertising material relative thereto, shall include all appropriate legal notices as required by LICENSOR. [INSERT REQUIRED NOTICE].

C. The Licensed Products shall be of a high quality which is at least equal to comparable products previously manufactured and marketed by LICENSEE under the trademarks and in conformity with a standard sample approved by LICENSOR.

D. If the quality of a class of the Licensed Products falls below such a production-run quality, as previously approved by LICENSOR, LICENSEE shall use its best efforts to restore such quality. In the event that LICENSEE has not taken appropriate steps to restore such quality within thirty (30) days after notification by LICENSOR, LICENSOR shall have the right to terminate this Agreement and require that the LICENSEE cease using the Trademarks.

E. Prior to the commencement of manufacture and sale of the Licensed Products, LICENSEE shall submit to LICENSOR, at no cost to LICENSOR and for approval as to quality, six (6) sets of samples of all Licensed Products which LICENSEE intends to manufacture and sell and

one (1) complete set of all promotional and advertising material associated therewith. Failure of LICENSOR to approve such samples within thirty (30) working days after receipt thereof will be deemed approval. Once such samples have been approved by LICENSOR, LICENSEE shall not materially depart therefrom without LICENSOR's prior express written consent, which shall not be unreasonably withheld.

F. At least once during each calendar year, LICENSEE shall submit to LICENSOR, for approval, an additional six (6) sets of samples.

G. The LICENSEE agrees to permit LICENSOR or its representative to inspect the facilities where the Licensed Products are being manufactured and packaged.

7. NOTICE AND PAYMENT

A. Any notice required to be given pursuant to this Agreement shall be in writing and delivered personally to the other designated party at the above stated address or mailed by certified or registered mail, return receipt requested or delivered by a recognized national

overnight courier service, except e-mail may be used for day-to-day operations and contacts but not for 'notice' or other communications required under this agreement or by law.

B. Either party may change the address to which notice or payment is to be sent by written notice to the other in accordance with the provisions of this paragraph.

8. PATENTS, TRADEMARKS AND COPYRIGHTS

A. LICENSOR shall seek, obtain and, during the Term of this Agreement, maintain in its own name and at its own expense, appropriate protection for the Trademarks, and LICENSOR shall retain all right, title and interest in the Trademarks as well as any modifications made to the Trademarks by LICENSEE. LICENSEE agrees that its use of the Trademarks inures to the benefit of LICENSOR and that the LICENSEE shall not acquire any rights in the Trademarks.

B. The parties agree to execute any documents reasonably requested by the other party to effect any of the above provisions.

C. LICENSEE acknowledges LICENSOR's exclusive rights in the Trademarks and, further, acknowledges that the Trademarks are unique and original to LICENSOR and that LICENSOR is the owner thereof. LICENSEE shall not, at any time during or after the effective Term of the Agreement dispute or contest, directly or indirectly, LICENSOR's exclusive right and title to the Trademarks or the validity thereof. LICENSOR, however, makes no representation or warranty with respect to the validity of any patent, trademark or copyright which may issue or be granted therefrom.

9. TERMINATION OR EXPIRATION

A. In addition to the termination rights that may be provided elsewhere in this Agreement, either party may terminate this Agreement upon thirty (30) days written notice to the other party in the event of a breach of a material provision of this Agreement by the other party, provided that, during the thirty (30) day period, the breaching party fails to cure such breach. Upon expiration or termination, all Royalty obligations, including any unpaid portions of the Guaranteed Minimum Royalty, shall be accelerated and shall immediately become due and payable, and LICENSEE's obligations for the payment of a Royalty and the Guaranteed Minimum Royalty shall survive expiration or termination of this Agreement and

will continue for so long as LICENSEE continues to manufacture, sell or otherwise market the Licensed Products.

B. Upon expiration or termination, LICENSEE shall provide LICENSOR with a complete schedule of all inventory of Licensed Products then on-hand (the "Inventory").

C. Upon expiration or termination, except for reason of a breach of LICENSEE's duty to comply with the quality control or legal notice marking requirements, LICENSEE shall be entitled, for an additional period of three (3) months and on a nonexclusive basis, to continue to sell such Inventory. Such sales shall be made subject to all of the provisions of this Agreement and to an accounting for and the payment of a Royalty thereon, due and paid within thirty (30) days after the close of the three (3) month period.

D. Upon the expiration or termination of this Agreement, all of the rights of LICENSEE under this Agreement shall terminate and immediately revert to LICENSOR and LICENSEE shall immediately discontinue all use of the Trademarks at no cost whatsoever to LICENSOR,

and LICENSEE shall immediately return to LICENSOR all material relating to the Trademarks including at no cost to LICENSOR.

10. GOOD WILL

LICENSEE recognizes the value of the good will associated with the Trademarks and acknowledges that the Trademarks and all rights therein including the good will pertaining thereto, belong exclusively to LICENSOR.

11. INFRINGEMENTS

If an action for infringement of the rights licensed in this Agreement is brought, each party shall execute all papers, testify on all matters, and otherwise cooperate in every way necessary and desirable for the prosecution of any such lawsuit.

12. INDEMNITY

LICENSEE agrees to defend and indemnify LICENSOR, its officers, directors, agents and employees, against all costs, expenses and losses (including reasonable attorneys' fees and costs) incurred through claims of third parties against LICENSOR based on the manufacture

or sale of the Licensed Products including, but not limited to, actions founded on product liability.

13. INSURANCE

LICENSEE shall, throughout the Term of the Agreement, obtain and maintain at its own cost and expense from a qualified insurance company licensed to do business in California, standard Product Liability Insurance naming LICENSOR as an additional named insured. Such policy shall provide protection against any and all claims, demands and causes of action arising out of any defects or failure to perform, alleged or otherwise, of the Licensed Products or any material used in connection therewith or any use thereof. The amount of coverage shall be a \$10 million combined single limit for each single occurrence for bodily image and/or property damage. The policy shall provide for ten (10) days notice to LICENSOR from the insurer by Registered or Certified Mail, return receipt requested, in the event of any modification, cancellation or termination thereof. LICENSEE agrees to furnish LICENSOR a certificate of insurance evidencing same within thirty (30) days after execution of this Agreement and, in no event shall LICENSEE manufacture, distribute or sell the Licensed Products prior to receipt by LICENSOR of such evidence of insurance.

14. JURISDICTION AND DISPUTES

A. This Agreement shall be governed in accordance with the laws of the State of California, United States of America.

B. Any controversy, claim or dispute arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate (except at the option of either party for any application for injunctive relief) shall be finally settled by arbitration in Los Angeles County, California under the rules of the American Arbitration Association (AAA) before one arbitrator and judgment upon the award rendered may be entered in any court having jurisdiction. In this regard, the parties submit to the personal subject matter jurisdiction of the State of California. The arbitration provisions of this Section shall be interpreted according to, and governed by, the Federal Arbitration Act, and any action to enforce any rights hereunder shall be brought exclusively in the U.S. District Court for the Central District of California. **EACH PARTY HERETO KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO A TRIAL BY JURY OF ANY**

DISPUTE RELATING TO THIS AGREEMENT AND AGREES THAT ANY SUCH ACTION SHALL BE ADJUDICATED BY AN ARBITRATOR AND WITHOUT A JURY.

C. The parties may mutually agree upon any procedure for appointing the arbitrator and shall inform the AAA administrator as to such procedure; however, if within 45 days after the commencement of the arbitration, all of the parties have not mutually agreed on a procedure for appointing the arbitrator or have not mutually agreed on the designation of the arbitrator, the AAA administrator shall unilaterally appoint and designate the presiding arbitrator.

D. If a party fails to file a statement of defense within the time established by the tribunal without showing sufficient cause for such failure, as determined by the tribunal, or if a party, duly notified, fails to appear at a hearing without showing sufficient cause for such failure, as determined by the tribunal, the tribunal may proceed with the arbitration; or if a party, duly invited to produce evidence or take any other steps in the proceedings fails to do so within the time established by the tribunal without showing sufficient cause for such failure, as determined by the tribunal, the tribunal may make the award on the evidence before it.

E. The arbitrator may, in the Award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party.

15. AGREEMENT BINDING ON SUCCESSORS

The provisions of this Agreement shall be binding on and shall inure to the benefit of the parties hereto, and their heirs, administrators, successors, and assigns.

16. WAIVER

No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same or other provisions of this Agreement.

17. SEVERABILITY

If any term, clause, or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement.

18. NO JOINT VENTURE

Nothing contained herein shall constitute this arrangement to be employment, a joint venture or a partnership.

19. ASSIGNABILITY

The license granted hereunder is personal to LICENSEE and shall not be assigned by any act of LICENSEE or by operation of law unless in connection with a transfer of substantially all of the assets of LICENSEE or with the consent of LICENSOR.

20. GOVERNMENTAL APPROVAL

As promptly as possible after execution of this Agreement, LICENSEE agrees to submit copies of this Agreement to any governmental agency in any country in the Territory where approval of a license agreement is necessary and agrees to promptly prosecute any such application diligently. This Agreement shall only become effective in such country or countries upon receipt of appropriate approval from the applicable governmental agency.

21. INTEGRATION

This Agreement constitutes the entire understanding of the parties, and revokes and supersedes all prior agreements between the parties, including any option agreements which may have been entered into between the parties, and is intended as a final expression of their Agreement. It shall not be modified or amended except in writing signed by the parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents which may be in conflict with said Agreement.

22. AMENDMENTS

Any amendment to this Agreement must be in writing and signed by an authorized person of each party.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have each caused to be affixed hereto its or his/her hand and seal the day indicated.

[INSERT NAME OF LICENSOR]

[INSERT NAME OF LICENSEE]

By:

By:

Title:

Title:

Date:

Date:

국제계약, 영문계약, 계약분쟁, 손해배상, 민형사소송, Claim, License, R&D 제휴계약

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