

국제계약, 영문계약 상표사용허락 라이선스 계약서 샘플 – MIT 대학 로고 상표라이선스

계약서



TRADEMARK LICENSE AGREEMENT

This License Agreement ("Agreement") is effective as of the date above the signatures of the parties below("EFFECTIVE DATE") by and between the MIT, a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, having its principal office at 77 Massachusetts Avenue, Cambridge, Massachusetts, 02139, U.S.A. ("MIT"), and ___, a corporation duly organized under the laws of ___, having its principal office at ___("LICENSEE").

1. BACKGROUND

1.1 MIT owns rights in certain marks now and previously used by MIT and has acquired public recognition and goodwill through the use of such marks.

1.2 LICENSEE recognizes the goodwill appurtenant to use of said marks and desires to obtain a license to use certain of such marks. MIT is willing to grant such a license under the terms and conditions of this Agreement.

2. DEFINITIONS

2.1 LICENSED MARKS shall mean those marks listed in Appendix A.

2.2 LICENSED PRODUCTS shall mean the products in the categories specified in Appendix B that bear a LICENSED MARK.

2.3 TERRITORY shall mean U.S.A. and Canada only.

2.4 NET SALES PRICE shall mean LICENSEE's billing price to customers or distributors, less (1) discounts given that are customary in the trade, (2) returns, (3) transportation charges on returns if paid by LICENSEE, (4) taxes, and (5) prepaid transportation charges on LICENSED PRODUCTS SOLD by LICENSEE.

2.5 SOLD (or SALE) shall mean the first to occur of a LICENSED PRODUCT being shipped, distributed, paid for, billed or invoiced.

2.6 TERM shall mean the effective period of this Agreement, which shall commence on the EFFECTIVE DATE and which shall terminate on the fifth anniversary of the EFFECTIVE DATE.

3. LICENSE GRANT

3.1 Subject to the terms and conditions of this Agreement, MIT grants to LICENSEE the nonexclusive right to use, sell and have sold LICENSED PRODUCTS in the TERRITORY during the TERM hereof. In addition, MIT grants to LICENSEE, during the TERM, the nonexclusive right to manufacture and have manufactured the LICENSED PRODUCTS within and outside the United States, provided that LICENSEE and any manufacturers with whom LICENSEE subcontracts comply with MIT's Code of Conduct, further described in Paragraph 3.3.

3.2 LICENSEE shall not sublicense any of the rights granted hereunder.

3.3 LICENSEE acknowledges that MIT desires that LICENSEE not engage in practices that

adversely affect the dignity and welfare of the workers who manufacture or produce the LICENSED PRODUCTS. MIT has adopted a Code of Conduct that regulates the conditions of manufacture of LICENSED PRODUCTS. MIT has attached the current version of the Code of Conduct as Appendix C hereto, thereby becoming a part of LICENSEE's obligations under this Agreement. MIT reserves the right to amend its Code of Conduct from time to time and attach it to this Agreement. Any LICENSEE who is unable or unwilling to comply with the amended Code of Conduct, as it exists from time to time, shall be allowed to terminate this Agreement within ninety (90) days after receipt of the revised Code of Conduct from MIT.

4. PAYMENTS

4.1 Delivered with LICENSEE's signed Agreement, LICENSEE shall pay to MIT a non-refundable License Issue Fee of One Hundred Dollars (\$100.00). This fee is not creditable to future royalties due hereunder.

4.2 LICENSEE shall pay to MIT an annual non-refundable, non-creditable License Maintenance Fee of One Hundred Dollars (\$100.00), due on each anniversary of the

EFFECTIVE DATE during the TERM.

4.3 In addition to the License Issue Fee and annual License Maintenance Fee, LICENSEE shall pay to MIT a continuing royalty of seven and one half percent (7.5%) of the NET SALES PRICE of all LICENSED PRODUCTS SOLD by LICENSEE. If LICENSEE has SOLD any LICENSED PRODUCTS to any party affiliated with LICENSEE, or in any way directly or indirectly related to or under common control with LICENSEE, at a price less than the regular price charged to other parties, the royalties payable hereunder shall be computed on the basis of the regular price charged to nonaffiliated parties. There shall be no deduction from the royalties owed for uncollectible accounts or for advertising or other expenses of any kind which may be incurred or paid by LICENSEE, except those specifically enumerated in Paragraph 2.4 above.

4.4 Royalty payments shall be due within thirty (30) days of the end of each calendar quarter and shall be accompanied by the royalty reports described in Paragraph 5.2 below. Royalty payments shall be payable in United States dollars to "Massachusetts Institute of Technology" at the location in Paragraph 12.1 below, or at such other place as MIT may

reasonably designate consistent with the laws and regulations controlling in any foreign country. If any currency conversion shall be required in connection with the payment of royalties hereunder, such conversion shall be made by using the conversion rate existing in the United States, as reported in the Wall Street Journal, on the last working day of the calendar quarter of the reporting period to which such royalty payments relate.

4.5 The royalty payments set forth in this Agreement shall, if overdue, bear interest, to the extent permitted by law, at five (5) percentage points above the Prime Rate of interest as reported in the Wall Street Journal on the date payment is due. The payment of such interest shall not foreclose MIT from exercising any other rights it may have as a consequence of the lateness of any payment.

5. REPORTS AND RECORDS

5.1 LICENSEE shall keep full, true and accurate books of account containing all particulars that may be necessary for the purpose of showing the amounts payable to MIT hereunder. Such books of account shall be kept at LICENSEE's principal place of business or the principal place of business of the appropriate Division of LICENSEE to which this Agreement

relates.

Such books and the supporting data shall be open at all reasonable times for five (5) years following the end of the calendar year to which they pertain to the inspection of MIT or its agents for the purpose of verifying LICENSEE's royalty statement or compliance in other respects with this Agreement.

In the event that any audit performed under this paragraph reveals an underpayment in excess of five percent (5%), LICENSEE shall bear the full cost of such audit and shall remit any amounts due to MIT within thirty (30) days of receiving notice thereof from MIT.

5.2 Within thirty (30) days after each calendar quarter during the TERM, LICENSEE shall deliver to MIT true and accurate reports giving such particulars of the business conducted by LICENSEE during the preceding calendar quarter as shall be pertinent to a royalty accounting hereunder. These reports shall include at least the following: (a) A description, broken out under each individual trademark, of all LICENSED PRODUCTS manufactured and SOLD. (b) Total billings, broken out under each individual trademark, for LICENSED

PRODUCTS SOLD. (c) Deductions applicable as provided in Paragraph 2.4. (d) Total royalties due. (e) Names and addresses of LICENSEE's retail sellers of LICENSED PRODUCTS.

5.3 With each such report submitted, LICENSEE shall pay to MIT the royalties due and payable under this Agreement. If no royalties shall be due, LICENSEE shall so report.

6. TERMINATION

6.1 MIT may terminate this Agreement immediately upon written notice to LICENSEE upon the following: (a) If LICENSEE shall cease to carry on its business; (b) In the event LICENSEE fails to submit timely reports or payments due hereunder, and fails to submit such reports or make such payments within thirty (30) days after receiving written notice of such failure; (c) If, after expiration of the ninety (90) day grace period set forth in Paragraph 3.3, LICENSEE fails to comply with MIT's adopted Code of Conduct or any changes thereto; or (d) In the event LICENSEE commits a material breach of its obligations under this Agreement, except for breach as described in (a) through (c) of this Paragraph, and fails to cure that breach within ninety (90) days after receiving written notice of such breach.

6.2 LICENSEE may terminate this Agreement for any reason, (i) upon at least six (6) months prior written notice to MIT, such notice to state the date at least six (6) months in the future upon which termination is to be effective, and (ii) upon payment of all amounts due to MIT through such termination effective date.

6.3 Upon termination of this Agreement for any reason, nothing herein shall be construed to release either party from any obligation that matured prior to the effective date of such termination. The following provisions shall survive the expiration or termination of this Agreement: Articles 2, 7, 10 and 13, and Paragraphs 5.1, 5.2 (obligation to provide final report and payment), 6.3, and 6.4.

6.4 Upon expiration or termination of this Agreement, all rights granted to LICENSEE hereunder shall cease, and LICENSEE shall refrain from further use of the LICENSED MARKS in any manner. LICENSEE acknowledges that failure to comply with this provision shall result in immediate and irreparable harm affording injunctive and any and all other appropriate relief to MIT.

6.5 Upon expiration or termination of this Agreement, LICENSEE shall not operate its business in any manner which would falsely suggest to the public that this Agreement is still in force or that any relationship exists between LICENSEE and M.I.T.

7. GOODWILL IN LICENSED MARKS

7.1 LICENSEE agrees that the essence of this Agreement is founded on the goodwill associated with the LICENSED MARKS and value of that goodwill in the minds of the consuming public. LICENSEE agrees that it is critical that such goodwill be protected and enhanced and, toward this end, LICENSEE shall not during the TERM or thereafter:

(a) attack the title or any rights of MIT in or to the LICENSED MARKS; (b) apply to register or maintain any application or registration of the LICENSED MARKS or any other mark confusingly similar thereto in any jurisdiction, domestic or foreign; (c) use any colorable imitation of any of the LICENSED MARKS, or any variant form (including variant design forms, logos, colors, or typestyles) of the LICENSED MARKS not specifically approved by MIT; (d) misuse the LICENSED MARKS; (e) take any action that would bring the LICENSED MARKS into public disrepute; (f) use the LICENSED MARKS, or any mark or name confusingly similar thereto, in its corporate or trade name; or (g) take any action that would

tend to destroy or diminish the goodwill in the LICENSED MARKS.

7.2 All use by LICENSEE of the LICENSED MARKS shall inure to the benefit of MIT.

7.3 LICENSEE agrees to cooperate fully with MIT in securing and maintaining the goodwill of MIT in the LICENSED MARKS.

7.4 Upon becoming aware of any third party infringement of the LICENSED MARKS, LICENSEE shall promptly advise MIT of such infringement, including the name and location of such infringer.

8. QUALITY CONTROL; PACKAGING AND ADVERTISING APPROVAL

8.1 All LICENSED PRODUCTS shall be of a quality acceptable to MIT LICENSEE acknowledges that if LICENSED PRODUCTS manufactured and SOLD by it are of inferior quality in design, material or workmanship, the substantial goodwill that MIT possesses in the LICENSED MARKS would be impaired.

Accordingly, LICENSEE agrees that all LICENSED PRODUCTS shall be of high quality. To this end, LICENSEE shall furnish to MIT, free of cost, for its approval, a sample of each LICENSED PRODUCT, together with any carton or container, packing or wrapping material. MIT shall have fourteen (14) days from receipt of each LICENSED PRODUCT in which to approve the sample.

In absence of approval, the sample shall be deemed as rejected as an example of the quality for the LICENSED PRODUCT. The LICENSED MARKS may be applied by LICENSEE only to such LICENSED PRODUCTS as are manufactured in accordance with the corresponding samples accepted hereunder and that have substantially the same relative quality position in the market place as do the samples thereof; provided, however, LICENSEE may furnish to MIT a further sample of any LICENSED PRODUCT of which it desires to change the quality, style and/or appearance and MIT shall have fourteen (14) days from receipt thereof in which to approve in writing said further sample. Failure to approve shall be deemed rejection thereof as an example of quality for that LICENSED PRODUCT.

MIT shall have the right through its employee(s) or designated representative(s) during normal business hours to inspect the facilities and product inventory of LICENSEE to assure itself that such acceptable level of quality is being maintained at all times. 8.2 Prior to any sale or commercial use, an example of each graphic design incorporating the LICENSED MARKS shall be provided to MIT for its approval and MIT shall have fourteen (14) days from receipt thereof in which to approve in writing said graphic design. Failure to approve shall be deemed as rejection thereof for that graphic design.

8.3 All packaging and advertising bearing the LICENSED MARKS shall be subject to the approval of MIT LICENSEE shall furnish to MIT one (1) copy of any packaging and advertisement of LICENSED PRODUCT used by LICENSEE. MIT shall have fourteen (14) days from receipt thereof in which to approve in writing the packaging or advertising materials. In the absence of approval, the packaging and advertising materials shall be deemed as rejected. LICENSEE shall furnish to MIT a further sample of packaging and advertising if it desires to change the packaging or advertising. MIT shall have fourteen (14) days to approve such changed packaging and advertising.

8.4 MIT's failure to approve under Paragraphs 8.1, 8.2 and 8.3 above shall be deemed rejection, unless MIT shall have requested within any such fourteen (14) day period an additional period of time (no greater than two (2) additional weeks) for further consideration of the material in question, in which case the initial period for MIT consideration and approval shall be extended by such additional period of time. MIT reserves the right to revise its quality and design criteria at any time and to rereview, pursuant to this Article 8, LICENSEE's merchandise and graphic designs for compliance with such criteria. 8.5 Graphic designs of LICENSED MARKS must conform to the MIT Merchandise Style Guide attached hereto as Appendix D, which can be changed at MIT's reasonable discretion upon ninety (90) days notice.

9. MARKING

LICENSEE agrees that it shall mark the LICENSED PRODUCTS to indicate the rights of MIT in the LICENSED MARKS, including registration status of the LICENSED MARKS and that the products are manufactured pursuant to license. The LICENSED PRODUCTS or their packaging may also bear the statement "made by/for LICENSEE under license from the

Massachusetts Institute of Technology, all rights reserved", and each LICENSED PRODUCT shall bear the notation " (R) " if registered for that class of goods or, if not registered for such class of goods, "TM" or other appropriate indication. Registrations are indicated in Appendix A.

10. INDEMNIFICATION AND INSURANCE

10.1 LICENSEE agrees that it is wholly responsible for all products manufactured or SOLD by or for it, including all LICENSED PRODUCTS, and that MIT shall have no liability for any items, including any LICENSED PRODUCT, manufactured or SOLD by or for LICENSEE. LICENSEE shall comply with all government regulations in the manufacture, advertisement, sale, or disposal of the LICENSED PRODUCTS.

10.2 LICENSEE shall indemnify, defend, and hold harmless MIT and its trustees, officers, faculty, students, employees, and agents and their respective successors, heirs and assigns (the "Indemnitees"), against any liability, damage, loss, or expense (including reasonable attorneys fees and expenses) incurred by or imposed upon any of the Indemnitees in connection with any claims, suits, actions, demands or judgments arising out of any theory

of liability (including without limitation actions in the form of tort, warranty, or strict liability and regardless of whether such action has any factual basis) concerning the use of any LICENSED MARK, or use, sale, manufacture, workmanship, material, design, or advertisement of any LICENSED PRODUCT, arising out of, directly or indirectly, the rights granted in this Agreement.

10.3 LICENSEE shall obtain and carry in full force and effect commercial general liability insurance, including product liability insurance, which shall protect LICENSEE and Indemnitees with respect to events covered by Paragraph 10.2 above. Such insurance (i) shall be issued by an insurer licensed to practice in the Commonwealth of Massachusetts or an insurer pre-approved by MIT, such approval not to be unreasonably withheld, (ii) shall list MIT as an additional insured thereunder, (iii) shall be endorsed to include product liability coverage, and (iv) shall require thirty (30) days written notice to be given to MIT prior to any cancellation or material change thereof.

The limits of such insurance shall not be less than One Million Dollars (\$1,000,000) per occurrence with an aggregate of Two Million Dollars (\$2,000,000) for bodily injury including

death; and One Million Dollars (\$1,000,000) per occurrence with an aggregate of Two Million Dollars (\$2,000,000) for property damage. LICENSEE shall provide MIT with Certificates of Insurance evidencing compliance with this paragraph.

LICENSEE shall continue to maintain such insurance after the expiration or termination of this Agreement during any period in which LICENSEE continues to make, have made, or SELL a LICENSED PRODUCT under this Agreement.

11. ASSIGNMENT

This Agreement is personal to LICENSEE and may not be assigned without the prior written consent of MIT, which shall not be unreasonably withheld, and the assignee or transferee must agree in writing to MIT to be bound by the terms and conditions of this Agreement prior to such assignment or transfer.

12. PAYMENTS, NOTICES AND OTHER COMMUNICATIONS

12.1 Any notices required or permitted under this Agreement shall be in writing, shall

specifically refer to this Agreement, and shall be sent by hand, recognized national overnight courier, confirmed facsimile transmission, confirmed electronic mail, or registered or certified mail, postage prepaid, return receipt requested, to the following addresses or facsimile numbers of the parties:

All notices under this Agreement shall be deemed delivered when sent via confirmed electronic mail, or telecopier to the telefacsimile number identified above, or three (3) days after mailing via certified or registered mail, return receipt requested, postage prepaid, addressed to the party for whom intended, or when actually received by the party for whom intended, whichever is earlier. A party may change its contact information immediately upon written notice to the other party in the manner provided in this paragraph.

12.2 Any items (or packages thereof) to be shipped by LICENSEE to MIT shall be deemed sufficiently made or given on the date of receipt by MIT if such package or items are shipped prepaid via Federal Express, UPS, DHL or similar first class service to MIT at the address in Paragraph 12.1.

13. MISCELLANEOUS PROVISIONS

13.1 This Agreement shall be construed, governed, interpreted and applied in accordance with the internal laws of the Commonwealth of Massachusetts, U.S.A.

13.2 The parties hereto acknowledge that this Agreement sets forth the entire Agreement and understanding of the parties hereto as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument executed by the parties hereto.

13.3 The provisions of this Agreement are severable, and in the event that any provision of this Agreement shall be determined to be invalid or unenforceable under any controlling body of law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.

13.4 The failure of either party to assert a right hereunder or to insist upon compliance

with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized representatives.

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

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