

LICENSING AGREEMENT

EXAMPLE OF AN AGREEMENT: (Professional Assistance is recommended. This helps you anticipate what to expect.)

Date: _____

_____, located
at _____

(hereinafter referred to as LICENSOR) has given

_____ located at _____ (hereinafter referred to as
LICENSEE)

the exclusive production and marketing rights to his new product concept as herein described and as per drawings, patent applications, and / or prototype samples previously submitted. In exchange, LICENSEE agrees to pay LICENSOR a royalty in the amount and under the terms outlined in this Agreement.

PRODUCT DESCRIPTION

1. ROYALTY PAYMENTS. A _____% (_____percent) royalty, based on *net* selling price, will be paid by LICENSEE to LICENSOR on all sales of subject product line and all subsequent variations thereof by LICENSEE, its subsidiaries, and/or associate companies.

The term “net selling price” shall mean the price LICENSEE receives from its customers, less any discounts for volume, promotion, defects, or freight. (This can be modified but be very clear what the royalty payment is based upon!!!)

Royalty payments are to be made monthly by the 30th day of the month following shipment to LICENSEE’S customers, and LICENSOR shall have the right to examine LICENSEE’S books and records as they pertain thereto. Further, LICENSEE agrees to reimburse LICENSOR for any legal cost he may incur in collecting overdue royalty payments. *(Companies will usually request a quarterly payment period. This can be a concession you make to the company to show you are willing to work with it.)*

2. TERRITORY. LICENSEE shall have the right to market this product(s) throughout the World *(or alternatively some specific territory eg: United States, its possessions, and territories, Canada and Mexico)*. It may do so through any legal distribution channels it desires and in any manner it sees fit without prior approval from LICENSOR. However, LICENSEE agrees that it will not knowingly sell to parties who intend to resell the product(s) outside of the licensed territory.

(If LICENSEE is an international company, establish a separate export sales goal. The company will be required to file Foreign Patents, with you as the registered name and licensed to them, as part of this agreement.)

(This defines exclusive verses non-exclusive territory agreements.)

3. ADVANCED PAYMENT. Upon execution of this Agreement, LICENSEE will make a nonrefundable payment to LICENSOR of \$ _____ which shall be construed as an advance against future earned royalties.

4. COPYRIGHT, PATENT, AND TRADEMARK NOTICES. LICENSEE agrees that on product, its packaging and collateral material there will be printed notices of any patents issued or pending and applicable trademark and/or copyright notices showing the LICENSOR as the owner of said patents, trademarks or copyrights under exclusive license to LICENSEE. *(If you do not sell the rights to the patent outright, you can optionally have your business name accompany the product so you develop a position in the market)*

In the event there has been no previous registration or patent application for the licensed product(s), LICENSEE may, at LICENSEE's discretion and expense, make such application or registration in the name of the LICENSOR. However, LICENSEE agrees that at termination or expiration of this Agreement, LICENSEE will be deemed to have assigned, transferred and conveyed to LICENSOR all trade rights, equities, goodwill, titles or other rights in and to licensed product which may have been attained by the LICENSEE. Any such transfer shall be without consideration other than as specified in this Agreement.

4. TERMS AND WARRANTIES. This Agreement shall be considered to be in force for so long as LICENSEE continues to sell the original product line or subsequent extensions and / or variations thereof. However, it is herein acknowledged that LICENSEE has made no warrants to LICENSOR in regard to minimum sales and / or royalty payment guarantees. Further, LICENSOR agrees that, for the life of this Agreement, he will not create and / or provide directly competitive products to another manufacturer or distributor without giving the right of first refusal to LICENSEE.

(Alternatively, a PERFORMANCE CLAUSE can be inserted here to specify a minimum level of sales or royalties be met over s specified period of time. This protects the Licensor from having the Licensee do little or nothing to promote or sell the product)

5. *(This clause may not apply if no services are required to advance the product)*
PRODUCT DESIGNS. LICENSOR agrees to furnish conceptual product designs, if requested, for the initial product line and all subsequent variations and extensions at no charge to LICENSEE. In addition, if requested, LICENSOR will assist in the design of packaging, point-of-purchase material, displays, etc. at no charge to LICENSEE.

However, cost for finished art, photography, typography, mechanical preparation, etc. will be borne by LICENSEE.

6. **QUALITY OF MERCHANDISE.** LICENSEE agrees that Licensed product(s) will be produced and distributed in accordance with federal, state and local laws. LICENSEE further agrees to submit a sample of said product (s), its cartons, containers, and packing material to LICENSOR for approval (which approval shall not be reasonably withheld). Any item not specifically disapproved at the end of fifteen (15) working days after submission shall be deemed to be approved. The product(s) may not thereafter be materially changed without approval of the LICENSOR

7. **DEFAULT, BANKRUPTCY, VIOLATION, ETC.**

A. In the event LICENSEE does not commence to manufacture, distribute and sell product(s) within _____ months after the execution of this Agreement, LICENSOR, in addition to all other remedies available to him, shall have the option of canceling this Agreement. Should this event occur, to be activated by registered letter, LICENSEE agrees not to continue with the product's development and is obligated to return all prototype samples and drawings to LICENSOR.

B. In the event LICENSEE files a petition in bankruptcy, or if the LICENSEE becomes insolvent, or makes an assignment for the benefit of creditors, the licensed granted hereunder shall terminate automatically without the requirement of a written notice. No further sales of licensed product(s) may be made by LICENSEE, its receivers, agents, administrators or assigns without the express written approval of the LICENSOR.

C. If LICENSEE shall violate any other obligations under the terms of this Agreement, and upon receiving written notice of such violation by LICENSOR, LICENSEE shall have thirty (30) days to remedy such violation. If this does has not been done, LICENSOR shall have the option of canceling the Agreement upon ten (10) days written notice. If the event occurs, all sales activity must cease and any royalties owing are immediately due.

8. **LICENSEE'S RIGHT TO TERMINATE.** Notwithstanding anything contained in this Agreement, LICENSEE shall have the absolute right to cancel this Agreement at any time by notifying LICENSOR of his decision in writing to discontinue the sale of the Product(s) covered by this Agreement. This cancellation shall be without recourse from LICENSOR other than for the collection of any royalty payment that may be due him.

9. **INDEMNIFICATION.** LICENSEE agrees to obtain, at its own expense, product liability insurance for at least two million dollars (\$2,000,000) combined single unit for LICENSEE and LICENSOR against claims, suits, loss or damage arising out of any alleged defect in the licensed product(s). As proof of such insurance, LICENSEE will submit to LICENSOR a fully paid certificate of insurance naming LICENSOR as an

insured party. This submission is to be made before any licensed product is distributed or sold.

10. NO PARTNERSHIP, ETC. This Agreement shall be binding upon the successors and assigns of the parties hereto. Nothing contained in this Agreement shall be construed to place the parties in the relationship of legal representatives, partners, or joint ventures. Neither LICENSOR nor LICENSEE shall have the power to bind or obligate in any manner whatsoever, other than as per this Agreement.

11. GOVERNING LAW. This Agreement shall be construed in accordance with the laws of the state of _____ (your home state or other). IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the day and year written below.

LICENSEE (PRINT)

LICENSOR (PRINT)

LICENSEE Authorized Signature

LICENSOR Authorized Signature

DATE: _____

DATE: _____

(No mention is intentionally made obligating the Licensor to defend infringement. Do not under any circumstances agree to defend against infringement. You performed your obligations as best you could and shall not be held responsible for going after infringers. You only receive a royalty not 100% of the net sales. This in no way prevents the Licensee from using their best judgement as to whether or not to defend against infringement. If it is really important, the Licensee will loose more than the Licensor anyway. Licensor could pay more to defend against infringement than the royalties received!)

If you find ways to improve the product but are disappointed in the Licensee, that Agreement does not obligate the Licensor to reveal it only to the Licensee. However the Licensee IS required to pay royalties on any products originating out of the Licensor's product.

Avoid discussion of disposal of merchandize. If this were ever to happen accept a proportionally fair discounted royalty. If you receive advanced royalties and a business goes bankrupt, should you return the royalties if the company never gets paid? No simple answer. Many factors play into this but doing business equitably is in everyone's best interest as long as glaring mistakes were not intentionally made.

An inheritance clause can be added to turn the rights of the Licensor over the family should the need be. If the licensor is a company and not an individual, the company's rights could be better clarified separate from this licensing agreement.

Additional clauses can be added to achieve any reasonable request but the above represents the basics. Anyone would do well to have this reviewed by a contract attorney to avoid important omissions or to better clarify specific points