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FORM B-1

SAMPLE CONTRACT

Practical Application: This Form Sample Contract should be used as an outline and therefore should be further modified to reflect the intentions of the parties.

Contract of Sale

This Contract of Sale made and entered into on this [INSERT DATE] between [INSERT NAME OF SELLER], [INSERT STATUS OF BUSINESS], located at [INSERT ADDRESS] (hereinafter referred to as "Seller") and [INSERT NAME OF BUYER], [INSERT STATUS OF BUSINESS], located at [INSERT ADDRESS] (hereinafter referred to as "Buyer"). [INSERT NAME OF SELLER] and [INSERT NAME OF SELLER] are collectively referred to as the "Parties."

RECITALS

WHEREAS, [INSERT NAME OF BUYER] is in the business of [INSERT BUSINESS] and is in need of [INSERT TYPE OF GOODS] for the purpose to conduct its business; and

WHEREAS, [INSERT NAME OF SELLER] is in the business of [INSERT BUSINESS] and has [INSERT TYPE OF PRODUCT]; and

WHEREAS, [INSERT NAME OF BUYER] desires to purchase [INSERT TYPE OF GOODS], as more specifically set forth in this Contract of Sale (hereinafter "Contract") from [INSERT NAME OF SELLER]; and

WHEREAS, [INSERT NAME OF SELLER], desires to sell [INSERT TYPE OF GOODS] to [INSERT NAME OF BUYER].

WHEREAS, it is the intention of the Parties that [INSERT NAME OF SELLER] shall sell Goods as more specifically set forth in this Contract herein, [INSERT NAME OF BUYER] will purchase said goods from [INSERT NAME OF SELLER] based on the terms and conditions set forth herein.

CONTRACT

In consideration of the mutual covenants and provisions contained herein, the Parties hereto agree as follows:

1. Description of Goods

Seller shall transfer and deliver to Buyer, and Buyer shall, subject to the conditions set forth herein, take delivery and accept the following Goods:

[DESCRIBE GOODS, QUANTITY AND QUALITY AND PURPOSE OF GOODS IF AVAILABLE]

[OR]

[REFERENCE TO ATTACHED SCHEDULE OR PURCHASE ORDER DATED [INSERT DATE] OR INVOICE [INSERT DATE] incorporated herein by reference, attached hereto as "Exhibit A."]

All Goods shall be packaged in accordance with the instructions received by Buyer prior to delivery. [BUYER OR SELLER (SELECT ONE)] shall pay all reasonable costs of packaging.

[OPTIONAL AVOIDANCE PROVISION FOR BUYER]:

Seller hereby agrees and acknowledges that all Goods must fully conform to this Contract and failure of the Seller to adhere to any portion of this Contract, including but not limited to, quantity, quality, and time of performance, shall constitute a fundamental breach under this Contract.

Practical Application: If the description of the Goods is extensive or in installments, the use of an Attachment is recommended; however, use of prevalence statement should be employed to avoid conflict of terms. See Paragraph 23 of this Contract. A full description of the Goods should be employed including make, design, and serial numbers, if applicable.

2. Time of Delivery

Seller shall deliver the Goods covered by this Contract to Buyer by [INSERT DATE] to [SPECIFY LOCATION]. Buyer shall have the right to change the date of delivery provided [OPTIONAL—INSERT DAYS] prior written notice. The parties mutual agree that time is of the essence.

[OR]

Seller shall deliver the Goods covered by this Contract to Buyer by [INSERT DATE] to [SPECIFY LOCATION]. Delivery terms are subject to change by either party with written notice. The parties mutual agree that time is of the essence. All shipments must be accompanied with itemization of all Goods.

3. Payment

Buyer shall pay Seller the amount of [INSERT AMOUNT] in [CURRENCY] for the Goods covered by this Contract. Payment shall be within [INSERT TIME PERIOD] by [INSERT METHOD OF PAYMENT] subject to terms set forth in Paragraph 5 of this Contract. All fees and other payments shall be due and payable upon the due dates mutually agreed to in writing by the parties. In the event that any fees are not paid to Seller by Buyer within [INSERT TIME PERIOD] of when such fees become due and payable, Seller shall notify [INSERT NAME] of no payment has been made within [INSERT TIME PERIOD] following such notice, any over due fee may be subject to a finance charge of [INSERT AMOUNT] per month simple interest, with such interest charges starting on the due date for such fees which Buyer shall pay.

[OR]

Seller shall invoice Buyer [INSERT PAYMENT] in [INSERT CURRENCY] upon Buyer's acceptance of the Goods. Payment terms shall [INSERT TIME PERIOD] from date of the invoice. Buyer shall remit full payment for invoices without any withholding, deduction, set-off or counterclaim.

(OPTION FOR BUYER: SUBJECT TO BUYER'S RIGHT TO DISPUTE), or promptly (within [INSERT TIME PERIOD] business days after receipt of invoice) notify Seller in writing of the reason why payment of said invoice in whole or in part is in dispute. Said notification shall include sufficient detail as to provide Seller with all information required to mitigate against further loss in this respect. In the event only part of the invoice is in dispute, the Buyer shall pay the remainder of the undisputed or contested invoice in accordance with the payment terms cited herein. Upon resolution of any disputed invoice, the Buyer shall pay the amount agreed to by the parties within [INSERT TIME PERIOD]

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business days after resolution of the disputed or contested invoice if the dispute is resolved past the original invoice period; provided, however, if the dispute is resolved within the invoice period, payment shall be made in accordance with the payment terms cited herein:

[OPTIONAL AVOIDANCE PROVISION FOR BUYER SUBJECT TO CISG]:

Seller hereby agrees and acknowledges that payments and receipt of all Goods must fully conform to this Contract and failure of the Seller to adhere to any portion of this Contract shall constitute a fundamental breach under this Contract without further notice as provided in Article 39 of the United Nations Convention on Contracts for the International Sale of Goods.

4. Taxes

[BUYER OR SELLER (SELECT ONE)] shall be solely responsible for the payment of any and all foreign, federal, state, and local sales, use, value-added, luxury, and other taxes, duties, and charges; if any, that may accrue in connection with this Contract, including but not limited to, payment of any and all foreign, federal, state, and local sales, use, value-added, luxury, and other taxes, duties, and charges.

5. Inspection

Buyer shall have the right to inspect the Goods prior to acceptance. If the Goods fail to conform to this Contract, Buyer shall have [INSERT NUMBER OF DAYS] to inform Seller of any defect and/or any other matter that fails to conform to this Contract in the sole opinion of the Buyer. Upon written receipt of notice of nonconformity, the Seller shall have [INSERT NUMBER OF DAYS] to cure said nonconformity or other matter. If the Seller fails to cure within said time, the Buyer shall have the right to any remedy available under law.

[OR]

Buyer has no right to inspection until after payment. If nonconformity is discovered thereafter, the Buyer shall notify the seller, who shall cure said nonconformity within a reasonable period of time. If the seller fails to cure said nonconformity, the Buyer's only remedy is to [INSERT REMEDY LIMITATION].

6. Risk of Loss and Title

The risk of loss shall pass to the Buyer upon [INSERT TIME OF PASSAGE]. Title to the Goods shall remain with the Seller until Buyer said passage of time.

7. Compliance with Laws and Customs

It is the sole responsibility of the [SELLER OR BUYER—SELECT ONE] to assure complete compliance with all international, federal, state, or local laws, regulations, codes, rulings, which are applicable by any regulatory or certifying governmental agencies that in any manner affect the Goods set forth in this Contract and shall comply with all Laws. All permits, licenses, approvals and inspection fees and sales or use taxes mandated under this Contract shall be secured by [SELLER OR BUYER—SELECT ONE]. See also, Paragraph 4 of this Agreement.

Practical Application: Inclusion of Incoterms has been recognized under the CISG. See also Appendix A-6.

8. Waiver

Any of the provisions hereof may be waived by the Party entitled to the benefit thereof; however, neither Party shall be deemed, by any act or omission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the waiving Party, and then only to the extent specifically set forth in such writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.

Practical Application: This provision would eliminate implied waivers. As such, a Buyer's counsel may want to eliminate the writing requirement.

9. Warranties

Both parties represent and warrant to the other that: (i) it has all requisite power and authority to execute and deliver this Contract and to perform its obligations hereunder; (ii) the execution, delivery, and performance of this Contract shall not conflict with its charter or bylaws, or any agreement, order, or judgment to which it is bound; and (iii) it has

sufficient professional staff and other resources available to provide the Goods required by this Contract. The immediately foregoing warranty is a limited warranty. EACH DELIVERY OF GOODS IS PROVIDED, AND CUSTOMER ACCEPTS EACH DELIVERY OF GOODS, "AS IS" WITHOUT OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO ITS PERFORMANCE, ACCURACY, OR COMPLETENESS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SELLER HEREBY DISCLAIMS ALL WARRANTIES, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, [NONINFRINGEMENT], ABSENCE OF TITLE, CLAIMS OR INTERESTS, AND SUITABILITY OR COMPATIBILITY WITH BUYER'S EXISTING COMPUTER HARDWARE OR SOFTWARE SYSTEMS TO ACCOMPLISH THE PERFORMANCE OBJECTIVES DESIRED BY BUYER. THE ENTIRE RISK ARISING OUT OF CUSTOMER'S USE OR PERFORMANCE OF EACH DELIVERY OF GOODS IS, AND REMAINS, WITH CUSTOMER.

[OR]

Seller hereby excludes all express or implied warranties, including the warranty of merchantability, not set forth in a writing signed by an authorized representative of Seller. DISCLAIMER OF ALL WARRANTIES; THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE DESCRIPTION ON THE FACE OF THIS CONTRACT. There are no representations between the Parties to this Contract other than those expressly set forth in this Contract and all reliance with respect to any representation is solely on representations expressly set forth in this Contract.

10. Applicable Law and Attorney Fees

This Contract shall be governed by the laws of the 1980 United Nations Convention on Contracts for the International Sale of Goods 1980.

[OR]

Pursuant to Article 6 of the United Nations Convention on Contracts for the International Sale of Goods ("the Convention"), the parties hereby expressly opt out of the United Nations Convention on the International

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Sale of Goods 1980 and hereby agree that all matters arising from this Contract shall be governed by the [INSERT LAW].

[OR]

All disputes arising under this Contract shall be settled in accordance with the 1980 United Nations Convention on Contracts for the International Sale of Goods 1980 except the parties mutually agree that [INSERT EXCEPTION, E.G. THE VALIDITY OF THIS CONTRACT SHALL BE GOVERNED BY CHAPTER 3 OF THE UNIDROIT PRINCIPLES OF THE INTERNATIONAL COMMERCIAL CONTRACTS, 2004].

[SELECT ONE OF THE FOLLOWING]

If either Party employs attorneys to enforce any rights or obligations arising out of or relating to this Contract, the Prevailing Party shall be entitled to recover its reasonable attorneys' fees, costs, and other reasonable expenses.

[OR]

If either Party employs attorneys to enforce any rights or obligations arising out of or relating to this Contract, the [SELLER OR BUYER OR NEITHER PARTY (SELECT ONE)] shall be entitled to recover its reasonable attorneys' fees, costs, and other reasonable legal expenses.

11. Assignment or Delegation

Neither party shall assign the other party's rights under this contracts, including rights to money due or to become due under this Contract, or delegation of any duties under this Contract or under any Orders unless both parties mutually agree in writing prior to said assignment or delegation.

12. Authority of Agents

No agent, employee or representative of either Party shall have the authority absent express written consent, to bind either party with regard to any affirmation, representation, or warranty of the Goods sold under this Contract.

13. Indemnification; Remedies; Limitation. [If Applicable]

If a claim or allegation is brought against Buyer that the Goods created by Seller infringes on any Third Party's Intellectual Property Rights then Seller agrees to and shall defend, indemnify and hold Buyer harmless from and against such claim or allegation, including reimbursing Buyer for all legal fees and expenses incurred in the investigation and defense of such claim or allegation and any royalties, payments, damages, penalties and interest that may be awarded therein or agreed to by Seller. As a condition of the foregoing, Buyer may agree to allow Seller, at Seller's option to either procure the necessary rights to allow Buyer to continue to use the Goods created by Seller or to replace or modify the Goods until it is deemed to be non-infringing. Seller shall have no obligation or liability whatsoever for any claim of infringement solely based upon work or materials provided by Buyer or any Third Party (other than Third Party materials that are part of Seller's Goods), or for any claim of infringement based solely upon Buyer's modification of the Goods provided by Seller. If a claim or allegation is brought against Seller that any Buyer Property infringes on any Third Party's Intellectual Property Rights, and Seller requests indemnification of same from Buyer, then Buyer agrees to and shall defend, indemnify and hold Seller harmless from and against such claim or allegation, including reimbursing Seller for all legal fees and expenses incurred in the investigation and defense of such claim or allegation and any royalties, payments, damages, penalties and interest that may be awarded therein or agreed to by Buyer.

In addition to the foregoing indemnification, it is agreed and understood that Seller shall, at its cost and expense, defend, indemnify, protect and hold harmless Buyer from and against any and all claims arising out of or related to, (i) a breach of a covenant, representation or warranty set forth in this Agreement, and/or (ii) the activities or omissions of Seller in connection with this Agreement, including but not limited to, negligence, wrongful act or misrepresentation, errors or omissions. Seller's duty to appear, defend, indemnify and hold Buyer harmless shall not extend to a claim that is the result of the Buyer's sole negligence or willful misconduct. In any and all claims against Buyer by any employee of Seller, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Seller under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

[OPTIONAL]

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT (INCLUDING LOSS OF PROFIT AND BUSINESS OPPORTUNITIES), INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR SPECIAL DAMAGES ARISING HEREFROM OR RELATED HERETO IN ANY CAUSES OF ACTION OF ANY KIND, EVEN IF ADVISED OF, OR IS AWARE OF, THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY'S TOTAL LIABILITY TO THE OTHER PARTY FOR EVERY REASON SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF FEES ACTUALLY PAID BY CUSTOMER TO SELLER PURSUANT HERETO OR RECEIVED BY SELLER UNDER ANY INSURANCE POLICY REQUIRED TO BE MAINTAINED HEREIN.

The Parties agrees to act in a commercially reasonable manner that will serve to mitigate any and all losses that may be incurred by the other Party through the timely communication of any and all issues that may arise during the performance of services under this Agreement.

14. Jurisdiction

Any disagreement or claim arising out of or relating to this Contract, or the breach thereof, or its termination shall be submitted to a court [INSERT COURT]. **BOTH PARTIES HEREBY AGREE AND CONSENT THAT THIS CLAUSE IS MANDATORY AND ALL ACTIONS SHALL BE FILED [INSERT NAME OF COURT] AND BOTH PARTIES HEREBY KNOWINGLY WAIVE ANY RIGHT TO COMMENCE AN ACTION IN ANY OTHER COURT EXCEPT FOR THE ONE SET FORTH IN THIS PARAGRAPH.**

[OR]

All disputes arising out of this Contract, including but not limited to breach, termination, defenses or validity of this Contract, shall be submitted to [BINDING OR NONBINDING (SELECT ONE)] arbitration under the [INSERT TRIBUNAL] with [INSERT RULES] and shall take place in [INSERT SPECIFIC LOCATION]. [OPTIONAL CLAUSE: THE COMMENCEMENT OF ARBITRATION BY ONE PARTY SHALL PRECLUDE THE OTHER PARTY FROM FILING ELSEWHERE]. The selection of the arbitrators shall be in compliance with the rules

adopted by [INSERT RULES]. Both parties agree that they have the capacity to understand this paragraph and that this paragraph is fully recognizable under the applicable law of [INSERT LAW]. All notices with regard to commencing arbitration proceeding shall be in accordance with [INSERT RULES]. The parties agree to adhere to the decision rendered by the arbitrator(s). In the event, a party fails to adhere to this provision, and the other party elects to seek judicial relief to enforce this provision, the defaulting party shall remain liable for all court costs including attorney fees.

Practical Application: The Federal Arbitration Act ("FAA") is applicable to CISG cases.¹ Notably, the Supreme Court has repeatedly emphasized the strong federal public policy in favor of arbitration:

[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability.²

15. Validity of Provisions

If any provision of this Contract is held to be void, illegal, unenforceable, or in conflict with any law, the validity of the remaining portions and/or provisions of this Contract shall not be affected thereby.

16. Notice

Any notice required or permitted to be given under this Contract shall be in writing and delivered in accordance with the provisions of this Section. Such notice, if delivered by personal delivery or U.S. mail, shall be delivered to the Party at its address set forth in the opening paragraph hereof. Such notice, if delivered by electronic mail, shall be delivered to the following address: if to [INSERT NAME OF SELLER, CONTACT

¹ See generally *Medical Marketing v. Internazionale Medico Scientifica*, 1999 U.S. Dist. LEXIS 7380, 1999 WL 311945 (E.D. La.), also available at <http://cisgw3.law.pace.edu/cases/990517u1.html>.

² See *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983). See also *Shearson/American Express v. McMahon*, 482 U.S. 220 (1987); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626 (1985); *Southland Corp. v. Keating*, 465 U.S. 1 (1984); *United States v. Southern-Eastern Underwriters Ass'n*, 322 U.S. 533 (1944); *Vimar Seguros y Reaseguros, S.A. v. M/V Sky Reefer*, 115 S. Ct. 2322, 2329 (1996), citing *Allied Bruce Terminex v. Dobson*, 115 S. Ct. 834 (1995).

PERSON, ADDRESS, EMAIL, FACSIMILE]. If to [INSERT NAME OF BUYER, CONTACT PERSON, ADDRESS, EMAIL, FACSIMILE]. Such notice shall be effective immediately upon confirmation of receipt if delivered personally or electronically, otherwise three working days from mailing such notice if mailed through the United States mail, certified, postage prepaid, and addressed to the Party as per this Contract.

17. Non-Exclusive Engagement

Seller reserves the right to offer the Goods of any kind or nature whatsoever to any person or entity as Seller, in its sole discretion, deems appropriate. Buyer acknowledges that this is a non-exclusive engagement, and that Buyer acknowledges that Seller markets its services and Goods to other Buyers.

18. Force Majeure

Notwithstanding any other terms and conditions hereof, in the event that [INSERT ONE PARTY OR BOTH PARTIES' NAMES] is materially unable to perform any of its obligations hereunder because of natural disasters, Acts of God, riots, wars, acts of terrorism, governmental action or any other event, whether or not similar to the causes specified herein that are beyond such Party's control, then said Party shall, upon written notice to the other Party thereof, be relieved from its performance of such obligations to [THE EXTENT, AND SOLELY FOR THE DURATION OR INSERT OTHER TIME LIMITATION], that such performance is prevented by such events; provided that such Party shall at all times use its best efforts to resume such performance. If the total number of days exceeds [INSERT NUMBER], either party may terminate this Agreement by giving written notice of termination to the other prior to the affected party's giving notice that it has resumed its performance under and in accordance with this Agreement.

Practical Application: Counsel should check for consistency with Force Majeure and Warranty issues.³

³ See also Jennifer M. Bund, *Force Majeure Clauses: Drafting Advice for the CISG Practitioner*, 17 Journal of Law and Commerce (1998) 381-413.

19. Language

The Parties mutually agree that this Agreement and all correspondences herein, including but not limited to Purchase Orders, shall be written and communicated verbally in the [INSERT LANGUAGE] language and each party warrants that they are or their designated agents are fluent in [INSERT LANGUAGE] and fully understand the contents of this Contract.

20. Modification

This Contract can be modified or rescinded only by written consent of either Parties or their duly authorized agents.

21. Entire Contract

This Contract supersedes any and all prior Contracts between the parties regarding the subject matter hereof. No amendment, modification or waiver of any provision of this Contract shall be effective unless in writing and signed by both Parties.

22. Headings

The headings used in this Contract are for convenience only and not relevant to the interpretation of the provisions contained therein.

Any conflict of provisions between this Contract and subsequent agreements, including Purchase Orders, shall be resolved in favor of this Contract unless otherwise agreed in writing and signed by designated agents.

23. Order of Precedence [if applicable]

In the event of any conflict, ambiguity or inconsistency between or among the terms and conditions of this Contract and [ANY STATEMENT OF WORK OR INVOICE (SELECT ONE)], the terms and conditions of the [SELECT ONE] shall control.

24. Representations and Acceptance

Each Party mutually warrants to the other that it has full power and authority to enter into this Contract and to perform its obligations hereunder, and that the entering into of this Contract and the performance of its obligations does not violate, and will not be in conflict with, any provision of its articles of incorporation, bylaws, or other governing documents, or any contract or Contract with a third party.

25. Integrated Contract

The foregoing Contract, including any attachments incorporated by reference, constitutes the entire Contract between the parties and supercedes any oral or written representations or Contracts that may have been made by either party. Further, Buyer represents that Buyer has relied solely on Buyer's judgment in entering into this Contract. Seller acknowledges that Buyer has read and understood this Contract and has been furnished a duplicate original.

26. Adherence to Company Policy

[INSERT PARTY NAME] agrees to adhere to [INSERT PARTY'S] company policies, which are herein incorporated into this Contract by reference, as set forth at [INSERT WEBSITE]

*[AND SELECT APPLICABLE CLAUSE]

[INSERT PARTY] reserves the right update or modify this policy with [OR] without prior [OPTIONAL INSERT TIME] written notice to other party. [OR] The website content as dated on [INSERT DATE] shall be solely incorporated into this Contract.

Practical Application: As more companies transact business via the Internet, counsel may confront the incorporation of company policies by inclusion of a company website reference. Practitioner should delete said reference if possible. Or in the alternative, request a hard copy during negotiations and date of last update and incorporate this policy into the Contract. Furthermore, practitioner should campaign against further updates by restricting the other party's discretion in modification.

27. Counterparts; Facsimiles.

This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute one and the same instrument. Each Party shall receive a duplicate original of the counterpart copy or copies executed by it. A facsimile or electronically transmitted original copy of this Agreement, including the signature pages hereto, shall be deemed to be an original.

IN WITNESS WHEREOF, the Parties have entered into this Contract effective as of the date set forth above.

SELLER		BUYER	
Signed: _____	Signed: _____	Signed: _____	Signed: _____
Name: _____	Name: _____	Name: _____	Name: _____
Title: _____	Title: _____	Title: _____	Title: _____
Date: _____	Date: _____	Date: _____	Date: _____