



## MAJOR ELEMENTS AND KEYS TO A SUCCESSFUL CO-PACKER PARTNERSHIP

### Keys to a Successful Co-Packer Partnership

1. Evaluate and choose wisely. For example: Size match appropriately. If a co-packer is too big, you may get lost in shuffle in capacity crunches.
2. Same as any business partnership – compatibility, trust, and mutually agreed upon expectations for both parties as to roles and responsibilities.
3. A legal agreement that lays out these clear expectations.
4. Brand developer needs to do their homework – business plan, clear product specifications and costings, ingredient and packaging sourcing plan, food safety plans, as well as delivery and distribution paths established. Don't expect your co-packer to educate you.
5. Clear and well-defined communication lines and processes in all the critical areas – production scheduling, quality control management, procurement responsibilities
6. Mutual commitment to openness and transparency – from “ledger to data.” Both parties have to make money.



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## Major Elements of a Co-Packer Agreement

Source: Food to Market, Inc.

**IMPORTANT:** Always consult with your own legal counsel to ensure you have covered all elements appropriate to your situation.

This Contract Manufacturing Agreement (“Agreement”) is made as of this \_\_\_\_\_ day of \_\_\_\_\_, by and between \_\_\_\_\_ (hereinafter referred to as the “Customer”) with an office at \_\_\_\_\_, and \_\_\_\_\_, (hereinafter referred to as the “Supplier”) with an office at \_\_\_\_\_.

WHEREAS, Customer desires that Supplier produce for the Customer certain products in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual undertakings of the parties as set forth below, the parties hereto have mutually agreed as follows:

### DEFINITIONS

For the purposes of this Agreement, the following words and phrases have the meanings set forth below:

- “Agreement” means this agreement and any instrument or Schedule attached hereto or referred to herein.
- “Effective Date” means, TBA or such other date as may be agreed to by the parties as the commencement date of the Agreement.
- “Facility” means the manufacturing facility of City/town, Province, Canada.
- “Non-Conforming Product” has the meaning set forth in Section 7.

- “Operating Equipment” means all equipment, supplies and materials of every nature and kind as may from time to time be required or desirable for the due performance of Supplier’s obligations hereunder.
- “Products” or “Product” means the Customer products identified on the attached **Schedule A** to be manufactured, packaged and delivered to Customer by TBA in accordance with this Agreement.
- “Specifications” means the Products Specifications, Packaging Specifications and Ingredient and Packaging Materials Specifications as set forth in the Schedules and as modified from time to time **by Customer** pursuant to Paragraph 1 and provided Supplier consents to such modifications, which consent shall not be unreasonably withheld.

### 1. Products

Set out in a Schedule A the products to be manufactured, forecast quantities, and varieties. Set out in Schedule B the specifications by the Customer for the products.

### 2. Price

Set out the price and payment terms for the products to be manufactured, as well as any adjustment mechanisms. Includes Price and Payment Terms, Minimum Order Quantities, and Treatment of Taxes

### 3. Term

Set out the term of contract as well as renewal and termination procedures.

### 4. Materials and Equipment

Set out the respective responsibilities between supplier and customer for procuring and supplying production and packaging materials, equipment, and code dating procedures. As well, sets out which party maintains the associated inventories and what happens with remaining materials at contract termination.



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## 5. Order and Delivery

Detail the process and responsibilities around volume forecasts, product specifications, purchase orders (and confirmations thereof) and lead times for delivery, delivery specifics, and the process for order modifications or cancellation, ownership and title of finished product, and associated risk of loss. Finally, the responsibilities and procedures around raw material, ingredients and packaging procurement required for manufacture of the co pack product need to be specified.

- a. Forecast.
- b. Specifications.
- c. Order of Products.
- d. Lead Time.
- e. Delivery.
- f. Cancellation or Modification.
- g. Ownership.
- h. Risk of Loss.
- i. Raw Materials.

## 10. Records

Establish the Supplier requirement for records.

## 11. Non-Conforming Product

Prescribe procedures for determining and dealing with non-conforming product, including who bears the cost.

## 12. Relationship of the Parties

Outline the legal relationship between parties.

## 13. Compliance with Laws

Specify the legal responsibility of the supplier to comply with all applicable laws including those related to the production of food and associated import requirements of designated countries if co-pack product destined for export.

## 14. Product Quality

Outline the requirements and responsibility for the Supplier to provide necessary quality and food safety assurance to meet CFIA and identified third party certification schemes as well as warrant that co-pack product will be free of defects as outlined in product specifications.

## 15. Trade Secrets/Confidential Information

Outline the terms of any Mutual Confidentiality and Non-Disclosure Agreements between the parties as they relate to elements such as Trade Secrets.

## 16. Recall

Outline procedures, responsibilities and cost sharing in event of a product recall.

## 17. Termination

Outline the respective terms and conditions under which either party has the right to terminate the Agreement.

## 18. Trademarks and Labels

Outline the rights and any restrictions in the use of Customer trademarks and labels.

## 19. Force Majeure

Outline the circumstances under which the obligations within the Agreement may be delayed or excused.

## 20. Indemnification and Insurance

Outline the minimum requirements to be maintained by the Supplier.

## 21. Liability for Damages

Outline the limitations and conditions around the Suppliers liability for damages.

## 22. Arbitration and Choice of Law

Outline how dispute resolution will be handled between the parties and which provincial laws shall govern the Agreement.



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