

Costume Manufacturing Agreement

This is a Costume Manufacturing Agreement (“Agreement”) dated as of _____, 20__, between _____ (“Company”), a _____ nonprofit corporation, and _____ (“Costumer”), a _____.

Background

Company is a [dance] company based in _____. Company desires that Costumer construct costumes for a work titled _____ (“Work”) on the basis set out in this Agreement.

1. Costume Construction

1.1 Construction and Delivery

Costumer will construct the costumes identified in the document attached as **Exhibit A** in accordance with the timeline set out in **Exhibit A**.

1.2 Procurement

Costumer will be responsible for procuring all labor, materials, and equipment it uses in producing the costumes. If Company or the costume designer retained by Company specifies suppliers for certain materials, Costumer will purchase only from such suppliers.

1.3 Production and Shipment

Costumer will cut, sew, finish, pack, and ship the costumes with proper skill, diligence, and care, and in accordance with professional standards, this Agreement, and applicable law. **Exhibit A** specifies shipment terms.

1.4 Inspection

Company may inspect the costumes after arrival. Company may refuse to accept, or reject and return to Costumer, any costumes which are defective or which do not conform to samples or the specifications set out in **Exhibit A**. Company may require Costumer to repair, at Costumer’s expense, defective costumes, or Company may repair or have repaired defective costumes and charge back the cost of these repairs to Costumer.

1.5 Warranty

Costumer warrants that all costumes will: (a) be free from defects in materials, workmanship, and fabrication; (b) conform to any prototype or sample approved by Company; (c) be of the quality, size, and description specified in **Exhibit A** or other instructions later provided by Company; and (d) be conveyed free and clear of all liens and adverse claims arising from Costumer’s activities. Inclusion of these express warranties will not be considered a waiver of other warranties that may be implied or otherwise provided under law.

1.6 Cooperation with Company and Costume Designer

Costumer will cooperate with Company and Company’s costume designer in connection with the production of the Work, including keeping them advised about potential construction issues or delays, working through cost items, health, and other issues, promptly responding to e-mail, text, and phone messages, and providing them with information and materials as appropriate.

Note: This document does not reflect or constitute legal advice. This is a sample made available by the Organizations and Transactions Clinic at Stanford Law School on the basis set out at nonprofitdocuments law stanford edu. The Clinic created it in connection with a project for Dance/USA; it is intended as a resource and source of ideas only and is not designed for a Dance/USA member’s or any other party’s particular situation. Your use of this document does not create an attorney client relationship with the Clinic or any of its lawyers or students.

1.7 Credit

Company will credit Costumer, in its programs, advertising and publicity materials, and other outreach materials or vehicles related to the Work, on a separate line as follows:

“Costumes constructed by _____”.

Such credit will be in the same size and prominence of that of designers associated with the Work.

2. Cost and Payment

2.1 Not-to-Exceed Cost

Costumer understands and acknowledges that the total cost of all costumes, including all materials, labor, and shipping expenses, may not exceed \$_____. This not-to-exceed amount includes all costume production and a minimum of two sets of costume fittings.

2.2 Payment

Company will pay for the costumes in two installments:

- It will pay \$_____ no later than ten days after receipt by Company of a signed copy of this Agreement.
- It will pay the remaining \$_____ after delivery of final costumes.

Upon such delivery, Costumer will invoice Company for the balance of the cost, which amount may not exceed the difference between the not-to-exceed amount stated in Section 2.1 and the amount of the first installment. Company will pay the invoiced amount within 30 days after receipt of invoice. If delivery of any costume is late without the written approval of Company, Company may reduce the amount payable by \$__ for each day the delivery is late.

2.3 Modifications

The not-to-exceed cost set out in this Section 2 is based on an estimate provided by Costumer. Should Costumer and/or costume designer propose any adjustments to the designs or execution that might increase the total cost, then Company, Costumer, and costume designer will discuss a solution. Company will not be obligated to pay more than the not-to-exceed amount unless Company has given its written approval of the solution and the additional cost.

2.4 Full Compensation

The payments contemplated by this Section 2 will be Costumer's sole compensation in respect of all work to be performed under this Agreement and Company's staging of the Work.

3. Use of Designs; No Conflicts

3.1 Limited Use

Costumer will use the designs provided by Company for the sole purpose of constructing costumes under this Agreement. Costumer will not make costumes using the designs for itself or for any third party, or disclose the designs to any third party, without first obtaining Company's written consent. Costumer's entry into and performance of its obligations under this Agreement will not confer any trademark, copyright, license, or other right to use the designs other than to make costumes for Company as provided under this Agreement.

3.2 No Conflicts

Costumer confirms, represents, and warrants to Company that Costumer's execution and performance of this Agreement will not conflict with or result in a breach of any agreement by which Costumer is bound, including, without limitation, agreements with other companies.

4. Relationship

4.1 Independent Contractor

Costumer is and will be an independent contractor. Costumer will have control and sole responsibility for the planning, management, and implementation of Costumer's activities under this Agreement, including, without limitation, selecting and managing Costumer's employees and paying Costumer's own expenses. Costumer will be solely responsible to its employees, contractors, and suppliers for payment, and for performance of all contracts it may enter into in connection with Costumer's responsibilities under this Agreement.

4.2 Relationship

Nothing in this Agreement creates an employment, partnership, joint venture, fiduciary, or similar relationship between Costumer and Company for any purpose. Neither Costumer nor Company has the power or authority to bind or obligate the other to a third party or commitment in any manner.

[4.3 Taxes and Contributions

Costumer will have sole responsibility for all tax returns and payments required by any federal, state, or local tax authority, and for paying all disability, unemployment insurance, workers' compensation contributions, and any other contributions and expenses that may be required in connection with Costumer's activities under this Agreement. Costumer understands that Company will not: (a) withhold income, social security, or Medicare taxes; (b) make unemployment or disability insurance contributions; or (c) obtain workers' compensation or other insurance on Costumer's behalf. Costumer understands that Company will withhold, from purchase price payments under Section 2, taxes, fees, or other amounts as may be required by state, city, or other local law.]

[4.4 No Entitlement to Employee Benefits

Costumer will not be entitled to or eligible for any benefits that Company makes available to Company's employees, including, without limitation, coverage under any Company medical, dental, liability, automobile, or other insurance policies. Costumer waives any rights or claims to those benefits.]

[4.5 Harassment and Discrimination

In carrying out its obligations under this Agreement, Costumer will not harass, discriminate, retaliate, or be abusive toward any Company employee, any designer or other individual retained by Company in connection with the Work, or any other person at Company, including, without limitation, engaging in any verbal, physical, written, or visual harassment, discrimination, or retaliation on the basis of race, religious creed, color, national origin, disability, sex, gender identity, gender expression, age, sexual orientation, or other characteristic protected by law.]

5. Force Majeure

5.1 Force Majeure

Neither Costumer nor Company will be liable to the other or be considered in breach of this Agreement for any failure or delay in performing its obligations under this Agreement due to any act of God, flood, earthquake, natural disaster, severe weather, fire, unhealthy air quality, war, terrorist act, riot or other civil disorder, strike or other labor dispute, pandemic, epidemic, government-designated health threat, government action, interruption of public utilities, internet or telecommunications services, or air travel, or any other similar event in each case beyond the party's reasonable control (each, a "Force Majeure Event").

For clarity, Force Majeure Events do not include financial insolvency or distress, changes in a party's financial condition or performance, or changes in general economic conditions, whether or not resulting from a Force Majeure Event.

5.2 Consequences of Force Majeure Event

A Force Majeure Event will have the following consequences:

- A Force Majeure Event will excuse contract performance by the affected party only for the duration of, and to the extent performance is actually prevented or delayed by, the Force Majeure Event, it being understood that a Force Majeure Event will not (a) automatically entitle either party to immediately terminate this Agreement or (b) excuse payment of amounts owing as of the commencement of the Force Majeure Event.
- A Force Majeure Event will entitle the non-affected party to suspend its performance for so long as the affected party is not performing.
- Should a Force Majeure Event occur, the affected party will give prompt written notice of such event to the other party. The notice should describe the nature of the event, the expected impact on the affected party's activities and key events under this Agreement, and the steps the affected party is taking or will take to address the problem. The affected party will use diligent efforts to work around the Force Majeure Event and resume contract performance as soon as reasonably possible.
- Company and Costumer will stay in close communication during the pendency of the Force Majeure Event and will discuss in good faith possible work-arounds and alternative arrangements.

5.3 Termination if Force Majeure Event Continues

If the affected party remains unable to perform for a period exceeding 60 days after the commencement of the Force Majeure Event and the parties have not during that period rescheduled or made other alternative arrangements, then either party may terminate this Agreement, without liability to the other party, under Section 7.2.

6. Indemnification and Liability

6.1 Indemnification by Costumer

Costumer will defend, indemnify, and hold harmless Company, and its directors, officers, employees, agents, and assigns (collectively, "Company Parties"), to the fullest extent under law, from and against all claims, liabilities, losses, damages, and expenses, including, without limitation, attorneys' fees, that any Company Party may suffer and which arise from: (a) Costumer's performance under or breach of this Agreement, or (b) claims by Company employees or other third parties arising from their interaction(s) with Costumer. For clarity, this Section 6.1 provides for indemnity, including payment of attorneys' fees, in respect of both first party and third party claims.

6.2 Limitation of Liability

Neither Costumer nor Company will be liable to the other for any incidental, special, exemplary, punitive, or indirect damages arising out of or otherwise related to this Agreement even if the other party has been apprised of the likelihood of such damages.

7. Termination

7.1 Termination for Breach

If either party breaches any of its obligations under this Agreement, the non-breaching party may provide the breaching party with written notice of the breach. If the breaching party fails to cure the breach within 15 days after receipt of such notice, the non-breaching

party may terminate this Agreement upon delivery to the breaching party of a written notice to that effect, with the termination effective upon receipt of such notice by the breaching party. The non-breaching party may in its reasonable discretion determine whether the breach has been cured.

7.2 Termination for Force Majeure

Costumer and Company may each terminate this Agreement by giving written notice to the other party as provided in Section 5.3. Such termination will be effective upon delivery of the notice by the terminating party.

7.3 Survival

Sections 1.5, 3.1, 4.3, 6, 7.3, and 8 will survive any termination of this Agreement.

8. General Provisions

8.1 Entire Agreement

This Agreement expresses Company's and Costumer's final, complete, and exclusive agreement, and supersedes any and all prior or contemporaneous written and oral agreements, negotiations, communications, courses of dealing, or understandings between Company and Costumer relating to its subject matter.

8.2 Amendment

This Agreement may be amended only as described in a written document signed by Company and Costumer that refers specifically to this Agreement and says that it is amending this Agreement.

8.3 Severability and Waiver

If any provision in this Agreement is held invalid or unenforceable, the other provisions will remain enforceable, and the invalid or unenforceable provision will be considered modified so that it is valid and enforceable to the maximum extent permitted by law. Waiver of any breach or provision of this Agreement will not be considered a waiver of any separate or later breach of this Agreement.

8.4 Third-Party Beneficiaries

Except as contemplated by Section 6.1, this Agreement is for the exclusive benefit of Company and Costumer, and is not for the benefit of any third party, including, without limitation, any employee or other associate of Costumer.

8.5 No Assignment

Company by this Agreement intends to obtain the personal services of Costumer. As such, Costumer may not assign Costumer's rights or delegate Costumer's duties under this Agreement to anyone else without the prior written consent of Company.

8.6 Governing Law

This Agreement is governed by _____ law. Company and Costumer consent to the exclusive jurisdiction of the state and federal courts for _____, _____.

8.7 Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

* * * * *

Company and Costumer signed this Agreement as of the date set out in its first paragraph.

[Company name]

[Costumer name]

By: _____

By: _____

Name: _____

Name: _____

T t e: _____

T t e: _____

Exhibit A

Costumes, Timeline, Shipment, and Contact Information

Costumes

[describe costumes and specifications]

Timeline

[insert preparation/delivery schedule]

Shipment

[insert shipment instructions]

Contact information

Customer	
Company	Account information (for payments):