

# Toro Design and Manufacturing – VelociWrapper PSA

## Product Supply Agreement

This Product Supply Agreement (“**Agreement**”) is entered into on [DATE] (“Effective Date”) by and between Toro Design and Manufacturing LLC, a Utah limited liability company having its principal place of business at 885 N. Box Elder Street, Hildale, Utah 84784 (“**Seller**”), and [BUYER NAME], a [STATE OF ORGANIZATION] [TYPE OF ENTITY] having [its principal place of business/an address] at [BUSINESS ADDRESS] (“**Buyer**”, and together with Seller, the “**Parties**”, and each, a “**Party**”).

WHEREAS Seller is in the business of manufacturing and selling equipment;

WHEREAS Buyer wishes to purchase certain Goods (as defined subsequently) from Seller; and

WHEREAS Seller desires to manufacture and sell the Goods to Buyer.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. Capitalized terms have the meanings set out or referred to in this Section

“**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity or otherwise.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such Person.

“**Agreement**” has the meaning set forth in the preamble to this Agreement.

“**Basic Purchase Order Terms**” means, collectively, any one or more of the following terms specified by Buyer in a Purchase Order pursuant to Section 3.2: (a) a list of the Goods to be purchased, including part number and SKU; (b) the quantity of each of the Goods ordered; (c) the Requested Delivery Date; (d) the unit Price for each of the Goods to be purchased; (e) the billing address; and (f) the Delivery Location. For the avoidance of doubt, the term “Basic Purchase Order Terms” does not include any general terms or conditions of any Purchase Order.

“**Business Day**” means any day except Saturday, Sunday, or any other day on which commercial banks located in Utah are authorized or required by Law to be closed for business.

“**Buyer**” has the meaning set forth in the preamble to this Agreement.

“**Buyer Contracts**” means all contracts or agreements to which Buyer is a party or to which any of its material assets are bound.

“**Claim**” means any Action brought against a Person entitled to indemnification under Section 10.

“**Confidential Information**” has the meaning set forth in Section 13.1.

“**Control**” (and with correlative meanings, the terms “Controlled by” and “under common Control with”) means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of another Person, whether through the ownership of voting securities, by contract, or otherwise.

“**Defective**” means not conforming to the Product Warranty under Section 9.3.

“**Defective Goods**” means goods shipped by Seller to Buyer pursuant to this Agreement that are Defective.

“**Delivery Location**” means the street address within the Territory for delivery of the Goods specified in the applicable Purchase Order.

“**Disclosing Party**” has the meaning set forth in Section 13.1.

“**Dispute**” has the meaning set forth in Section 15.17.

“**Dispute Notice**” has the meaning set forth in Section 15.17.

“**Effective Date**” means the date first set forth previously.

“**Force Majeure Event**” has the meaning set forth in Section 15.22.

“**Forecast**” means, with respect to any six-month period, a good faith projection or estimate of the quantity of Goods that Buyer may order for each month, as accurate as possible, based on information available at the time to Buyer.

“**Goods**” means the goods identified on Schedule 1 and described in the Specifications.

“**Governmental Authority**” means any federal, state, local, or foreign government or political subdivision thereof, or any agency or instrumentality of a government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations, or orders of an organization or authority have the force of Law), or any arbitrator, court, or tribunal of competent jurisdiction.

“**Governmental Order**” means any order, writ, judgment, injunction, decree, stipulation, award, or determination entered by or with any Governmental Authority.

“**Indemnified Party**” has the meaning set forth in Section 10.1.

“**Indemnifying Party**” has the meaning set forth in Section 10.1.

“**Initial Term**” has the meaning set forth in Section 6.1.

“**Inspection Period**” has the meaning set forth in Section 4.6.

“**Intellectual Property Rights**” means all industrial and other intellectual property rights comprising or relating to: (a) Patents; (b) Trademarks; (c) internet domain names, whether or not Trademarks, registered by any authorized private registrar or Governmental Authority, web addresses, web pages, website, and URLs; (d) works of authorship, expressions, designs, and design registrations, whether or not copyrightable, including copyrights and copyrightable works, software and firmware, data, data files, and databases and other specifications and documentation; © Trade Secrets (f) all industrial and other intellectual property rights, and all rights, interests, and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, however arising, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, any rights or forms of protection pursuant to the Laws of any jurisdiction throughout in any part of the world.

“**Law**” means any statute, law, ordinance, regulation, rule, code, constitution, treaty, common law, Governmental Order, or other requirement or rule of law of any Governmental Authority.

“**Losses**” has the meaning set forth in Section 10.1.

“**Nonconforming Goods**” means any goods received by Buyer from Seller pursuant to a Purchase Order that: (a) do not conform to the part number and SKU listed in the applicable Purchase Order; (b) do not fully conform to the Specifications; or (c) materially exceed the quantity of Goods ordered by Buyer pursuant to this Agreement or any Purchase Order. Nonconforming Goods are deemed to be Goods for purposes of this Agreement.

“**Notice**” has the meaning set forth in Section 15.6.

“**Party**” has the meaning set forth in the preamble to this Agreement.

“**Patents**” means all patents (including all reissues, divisionals, provisionals, continuations and continuations-in-part, re-examinations, renewals, substitutions, and extensions thereof), patent applications, and other patent rights and any other Governmental Authority-issued indicia of invention ownership (including inventor’s certificates, petty patents, and patent utility models).

“**Payment Failure**” has the meaning set forth in Section 6.3(a).

“**Person**” means any individual, partnership, corporation, trust, limited liability entity, unincorporated organization, association, Governmental Authority, or any other entity.

“**Personnel**” of a Party means any agents, employees, contractors, or subcontractors engaged or appointed by the Party.

“**Price**” has the meaning set forth in Section 5.1.

“**Product Warranty**” has the meaning set forth in Section 9.3.

“**Purchase Order**” means Buyer’s purchase order issued to Seller hereunder, including all terms and conditions attached to, or incorporated into, the purchase order. For the avoidance of doubt, any references to purchase orders hereunder also include any applicable releases.

“**Receiving Party**” has the meaning set forth in Section 13.1.

“**Reimbursement Payment**” has the meaning set forth in Section 6.4.

“**Renewal Term**” has the meaning set forth in Section 6.2.

“**Representatives**” means a Party’s Affiliates and each of their respective Personnel, officers, directors, partners, shareholders, attorneys, third-party advisors, successors, and permitted assigns.

“**Requested Delivery Date**” means the requested delivery date for Goods ordered hereunder that is set forth in a Purchase Order, which must be no less than sixty (60) calendar days following delivery of the applicable Purchase Order to Seller.

“**Seller**” has the meaning set forth in the preamble to this Agreement.

“**Seller Contracts**” means all contracts or agreements to which Seller is a party or to which any of its material assets are bound.

“**Seller Tooling**” has the meaning set forth in Section 14.

“**Seller’s Intellectual Property Rights**” means all Intellectual Property Rights owned by or licensed to Seller.

“**Seller’s Trademarks**” means all Trademarks owned by or licensed to Seller.

“**Specifications**” means the specifications for the Goods attached hereto as Exhibit[s] A[ through [LETTER]].

“**Taxes**” means any and all present and future sales, income, stamp, and other taxes, levies, imposts, duties, deductions, charges, fees, or withholdings imposed, levied, withheld, or assessed by any Governmental Authority, together with any interest or penalties imposed thereon.

“**Term**” has the meaning set forth in Section 6.1.

“**Territory**” means the U.S., and its territories and possessions.

“**Third-Party Product**” has the meaning set forth in Section 9.7.

“**Tooling**” means, collectively, all tooling, dies, test and assembly fixtures, gauges, jigs, patterns, casting patterns, cavities, molds, and documentation (including engineering specifications and test reports) used by Seller in connection with its manufacture and sale of the Goods, together with any accessions, attachments, parts, accessories, substitutions, replacements, and appurtenances thereto.

“**Trademarks**” means all rights in and to U.S. and foreign trademarks, service marks, trade dress, trade names, brand names, logos, corporate names and domain names, and other similar designations of source, sponsorship, association, or origin, together with the goodwill symbolized by any of the foregoing, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection in any part of the world.

“**Trade Secrets**” means all inventions, discoveries, trade secrets, business and technical information and know-how, databases, data collections, patent disclosures, and other confidential and proprietary information and all rights therein.

“**U.S.**” means the United States of America.

“**Warranty Period**” has the meaning set forth in Section 9.3.

## 2. Purchase and Sale of Goods.

2.1 Purchase and Sale. Subject to the terms and conditions of this Agreement, during the Term, Buyer will buy from Seller, and Seller will manufacture and sell Goods to Buyer. Schedule 1 contains: (a) a description of the Goods to be manufactured and sold; and (b) the purchase price for each of the Goods. The Parties may, from time to time, amend Schedule 1 to reflect any agreed revisions to any of the terms described in the foregoing clauses (a)-(b); provided that no such revisions will modify this Agreement or be binding on the Parties unless such revisions have been fully approved in a signed writing by authorized Representatives of both Parties.

2.2 Terms of Agreement Prevail Over Buyer’s Purchase Order. The Parties intend for the express terms and conditions contained in this Agreement (including any Schedules and Exhibits hereto) and the Basic Purchase Order Terms contained in the applicable Purchase Order to exclusively govern and control each of the Parties’ respective rights and obligations regarding the subject matter of this Agreement, and this Agreement is expressly limited to such terms and conditions. Without limitation of the foregoing, any additional, contrary, or different terms contained in any Purchase Order or other request or communication by Buyer pertaining to the sale of Goods by Seller, and any attempt to modify, supersede, supplement, or otherwise alter this Agreement, will not modify this

Agreement or be binding on the Parties unless such terms have been fully approved in a signed writing by authorized Representatives of both Parties.

2.3 Right to Manufacture and Sell Competitive Goods. This Agreement does not limit Seller's right to manufacture or sell, or preclude Seller from manufacturing or selling, to any Person, or entering into any agreement with any other Person related to the manufacture or sale of, the Goods and other goods or products that are similar to or competitive with the Goods.

3. Ordering Procedure.

3.1 Forecasts of Buyer's Anticipated Orders. On the 15<sup>th</sup> day of each calendar quarter after the Effective Date, Buyer will provide Seller with Forecasts when anticipated Purchase Orders within any rolling 365 calendar day period will involve more than \$3 million U.S. dollars. For Forecasts six months out, Buyer guarantees to buy at least 50% of each category of Goods identified in the Forecast.

3.2 Purchase Orders. Buyer will issue to Seller Purchase Orders (containing applicable Basic Purchase Order Terms that are consistent with the terms of this Agreement), in written form via electronic data interchange (EDI)/facsimile, e-mail, or U.S. mail. By issuing a Purchase Order to Seller, Buyer makes an offer to purchase Goods pursuant to the terms and conditions of this Agreement and the Basic Purchase Order Terms contained in such Purchase Order, and on no other terms. For the avoidance of doubt, any variations made to the terms and conditions of this Agreement by Buyer in any Purchase Order are void and have no effect. Buyer will be obligated to purchase from Seller quantities of Goods specified in a Purchase Order.

3.3 Acceptance, Rejection, and Cancellation of Purchase Orders. Seller accepts a Purchase Order by confirming the order in writing or by delivering the applicable Goods to Buyer, whichever occurs first. Seller may reject a Purchase Order or cancel a previously accepted Purchase Order, which it may do without liability or penalty, and without constituting a waiver of any of Seller's rights or remedies under this Agreement or any Purchase Order, by providing Notice to Buyer specifying the applicable date of rejection or cancellation:

- (a) if any one or more of the events described under **Sections 6.3(a)-(f)** has occurred;
- (b) pursuant to Seller's rights under Section 5.4(b) or Section 5.4(c); or
- (c) pursuant to Seller's rights under the last sentence of Section 5.6.

4. Shipment, Delivery, Acceptance, and Inspection.

4.1 Shipment. Unless otherwise expressly agreed by the Parties in writing, Buyer will select the method of shipment of and the carrier for the Goods. Each shipment will constitute a separate sale and Buyer will pay for the Goods shipped, in accordance with the payment terms specified in Section 5.3, whether such shipment is in whole or partial fulfillment of a Purchase Order.

4.2 Packaging and Labeling. Seller will properly pack, mark, and prepare Goods for Buyer to ship with documentation showing the Purchase Order number, the quantity of pieces, the number of cartons or containers, and Seller's name.

4.3 Delivery. Unless otherwise expressly agreed by the Parties in writing, Seller will deliver the Goods to the Delivery Location, using Seller's standard methods for packaging and shipping such Goods. All Prices are EXW [LOCATION].

4.4 Late Delivery. Any time quoted for delivery is an estimate only; provided, however, that Seller will use commercially reasonable efforts to deliver all Goods on or before the Requested Delivery Date. If Seller has delayed shipment of all or any Goods for more than thirty (30) calendar days after the Requested Delivery Date and if such delay is not due to any action or inaction of Buyer or otherwise excused in accordance with the terms and conditions of this Agreement, Buyer may, as its sole remedy therefor, cancel the portion of the related Purchase Order covering the delayed Goods by giving Seller Notice no earlier than thirty (30) calendar days of the Requested Delivery Date. Subject to Buyer's rights under this Section 4.4, no delay in the shipment or delivery of any Good relieves Buyer of its obligations under this Agreement, including accepting delivery of any remaining installment or other orders of Goods.

4.5 Transfer of Title and Risk of Loss.

(a) Title to Goods shipped under any Purchase Order passes to Buyer upon Seller's tender of the Goods to the carrier at [LOCATION].

(b) Risk of loss to Goods shipped under any Purchase Order passes to Buyer upon Seller's tender of such units to the carrier at [LOCATION].

4.6 Inspection. Buyer will inspect Goods received under this Agreement within seven (7) calendar days of receipt of Goods ("**Inspection Period**") and either accept or, only if any Goods are Nonconforming Goods, reject Goods. Buyer will be deemed to have accepted Goods unless it provides Seller with Notice of any Nonconforming Goods within seven (7) calendar days following the Inspection Period, stating with specificity all defects and nonconformities, and furnishing other written evidence or other documentation as may be reasonably required by Seller (including the subject Goods, or a representative sample thereof, which Buyer contends are Nonconforming Goods). All defects and nonconformities that are not so specified will be deemed waived by Buyer, these Goods will be deemed to have been accepted by Buyer, and no attempted revocation of acceptance will be effective. If Buyer timely notifies Seller of any Nonconforming Goods, Seller will determine, in its

reasonable discretion, whether the Goods are Nonconforming Goods. If Seller determines that Goods are Nonconforming Goods, Seller will, in its sole and absolute discretion, either:

- (a) replace such Nonconforming Goods with conforming Goods; or
- (b) refund to Buyer such amount paid by Buyer to Seller for such Nonconforming Goods returned by Buyer to Seller.

Buyer will ship, at Buyer's expense and risk of loss, all Nonconforming Goods to Seller's facility located at 885 N. Box Elder Street, Hildale, Utah 84784 or to another location as Seller may instruct Buyer in writing. If Seller exercises its option to replace Nonconforming Goods, Seller will ship to the Delivery Location, at Seller's expense and risk of loss, the replacement Goods.

THE REMEDIES SET FORTH IN THIS SECTION 4.6 ARE BUYER'S EXCLUSIVE REMEDY FOR THE DELIVERY OF NONCONFORMING GOODS, SUBJECT TO BUYER'S RIGHTS UNDER SECTION 9.5 WITH RESPECT TO ANY SUCH GOODS FOR WHICH BUYER HAS ACCEPTED DELIVERY UNDER THIS SECTION 4.6.

4.7 Limited Right of Return. Except as provided under Section 4.6, Section 9.5, and Section 9.8, Buyer has no right to return Goods shipped to Buyer pursuant to this Agreement.

## 5. Price and Payment.

5.1 Price. Buyer will purchase the Goods from Seller at the prices set forth on Schedule 1 attached hereto ("**Prices**").

5.2 Shipping Charges, Insurance, and Taxes. Buyer shall pay for, and shall hold Seller harmless from, all shipping charges and insurance costs. In addition, all Prices are exclusive of, and Buyer is solely responsible for and shall pay, and shall hold Seller harmless from, all Taxes, with respect to, or measured by, the manufacture, sale, shipment, use, or Price of the Goods (including interest and penalties thereon); provided, however, that Buyer shall not be responsible for any Taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, Personnel or real or personal property or other assets.

5.3 Payment Terms. Seller will issue monthly invoices to Buyer for all Goods ordered in the previous month, setting forth in reasonable detail the amounts payable by Buyer under this Agreement. Buyer will pay to Seller all invoiced amounts within thirty (30) calendar days from the date of such invoice. Buyer will make all payments in U.S. dollars by check or wire transfer, in accordance with the following wire instructions:

**ABA Number:**

**Account Number:**

**Bank Address:**



Attn: [NAME].

5.4 Buyer's Unsatisfactory Credit Status. Each issuance of a Purchase Order to Seller will constitute Buyer's representation and warranty that Buyer is solvent and is able to pay for the Goods identified in such Purchase Order in accordance with the terms of this Agreement. Buyer will furnish Seller with statements accurately and fairly evidencing Buyer's financial condition as Seller may, from time to time, request. Throughout the Term, Buyer will be in compliance with all obligations to Buyer's creditors as and when such obligations are due and owing in the ordinary course of Buyer's business. Buyer will notify Seller, in writing, immediately of any and all events that have had or may have a material adverse effect on Buyer's business or financial condition, including any change in management, sale, lease, or exchange of a material portion of Buyer's assets, a change in Control of Buyer, or the breach of any loan covenants or other material obligations of Buyer to its creditors. If, at any time, Seller determines in its sole and absolute discretion that Buyer's financial condition or creditworthiness is inadequate or unsatisfactory, then, in addition to Seller's other right under this Agreement, at law or in equity, Seller may without liability or penalty, take one or more of the following actions:

- (a) On seven (7) calendar days prior Notice, modify the payment terms specified in Section 5.3 for outstanding and future purchases, including requiring Buyer to pay for Goods on a cash in advance or cash on delivery basis;
- (b) reject any Purchase Orders received from Buyer;
- (c) cancel any previously accepted Purchase Orders;
- (d) delay or withhold any further shipment of Goods to Buyer;
- (e) stop delivery of any Goods in transit and cause the Goods in transit to be returned to Seller;
- (f) on seven (7) days' prior Notice, terminate this Agreement;
- (g) accelerate the due date of all amounts owing by Buyer to Seller.

No action taken by Seller under this Section 5.4 (nor any failure of Seller to act under this Section 5.4) constitutes a waiver by Seller of any of its rights and remedies under this Agreement, including its right to enforce Buyer's obligation to make payments as required hereunder.

5.5 Invoice Disputes. Buyer will notify Seller in writing of any dispute with any invoice (along with substantiating documentation and a reasonably detailed description of the dispute) within thirty (30) calendar days from the date of the invoice. Buyer will be deemed to have accepted all invoices for which Seller does not receive timely notification of dispute and will pay all undisputed amounts due under such invoices within the period set forth in Section 5.3. The Parties will seek to resolve any disputes expeditiously and in good faith in accordance with the dispute resolution provisions set forth in Section 15.17. Notwithstanding anything to the contrary, Buyer will continue performing its obligations

under this Agreement during any dispute, including Buyer's obligation to pay all due and undisputed invoice amounts in accordance with the terms of this Agreement.

5.6 Late Payments. Except for invoiced payments that Buyer has successfully disputed, Buyer will pay interest on payments not made within the time indicated in Section 5.3 "**Late Payment**" (whether during the Term or after the expiration or earlier termination of the Term) "**Default Rate**," which is the prime rate of interest per annum publicly announced from time to time by the Bank of America through its newsroom (which as of the Effective Date is found at the following URL, which may be changed from time to time: <https://newsroom.bankofamerica.com/content/newsroom/home.html>) plus two percent (2%) per month, or the highest rate permissible under applicable Law, calculated daily and compounded monthly. Buyer also will reimburse Seller for all costs incurred by Seller in collecting any Late Payments, including attorneys' fees and court costs. In addition to all other remedies available under this Agreement or at Law (which Seller does not waive by the exercise of any rights under this Agreement), if Buyer fails to pay any amounts when due under this Agreement, Seller may (a) suspend the delivery of any Goods, (b) reject Buyer's Purchase Orders or cancel accepted Purchase Orders pursuant to the terms of Section 3.3, or (c) terminate this Agreement pursuant to the terms of Section 6.3(a).

5.7 No Set-off Right. Buyer will not, and acknowledges that it will have no right, under this Agreement, any Purchase Order, any other agreement, document or Law to, withhold, offset, recoup or debit any amounts owed (or to become due and owing) to Seller or any of its Affiliates, whether under this Agreement or otherwise, against any other amount owed (or to become due and owing) to it by Seller or Seller's Affiliates, whether relating to Seller's or its Affiliates' breach or non-performance of this Agreement, any Purchase Order, any other agreement between (a) Buyer or any of its Affiliates, or (b) Seller or any of its Affiliates.

5.8 Purchase-money Security Interest. To secure Buyer's prompt and complete payment and performance of any and all present and future indebtedness, obligations, and liabilities of Buyer to Seller, Buyer hereby grants Seller a first-priority security interest, with priority over all other liens, claims, and encumbrances, in all inventory of goods purchased under this Agreement (including Goods and Nonconforming Goods) by Buyer from Seller, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. Buyer acknowledges that the security interest granted under this Section 5.8 is a purchase-money security interest under the State of Utah's law. Seller may file a financing statement for such security interest and Buyer will execute such statements or other documentation necessary to perfect Seller's security interest in such Goods. Buyer also authorizes Seller to execute, on Buyer's behalf, such statements or other documentation necessary to perfect Seller's security interest in such Goods. Seller will be entitled to all applicable rights and remedies of a secured party under applicable Law.

6. Term; Termination.

6.1 Term. The term of this Agreement commences on the Effective Date and continues for a period of two (2) years unless it is earlier terminated pursuant to the terms of this Agreement or applicable Law (“**Initial Term**”/“**Term**”).

6.2 Renewal Term. Upon expiration of the Initial Term, the term of this Agreement will automatically renew for additional successive terms of one (1) year unless either Party provides Notice of non-renewal at least 30 calendar days prior to the end of the then-current term (each, a “**Renewal Term**” and together with the Initial Term, the “**Term**”), unless any Renewal Term is earlier terminated pursuant to the terms of this Agreement or applicable Law. If the Initial Term or any Renewal Term is renewed for any Renewal Term(s) pursuant to this Section 6.2, the terms and conditions of this Agreement during each Renewal Term will be the same as the terms in effect immediately prior to renewal. In the event either Party provides timely Notice of its intent not to renew this Agreement, then, unless earlier terminated in accordance with its terms, this Agreement terminates on the expiration of the Initial Term or then-current Renewal Term, as applicable.

6.3 Seller’s Right to Terminate. Seller may terminate this Agreement, by providing Notice to Buyer:

(a) if Buyer fails to pay any amount when due under this Agreement (“**Payment Failure**”);

(b) if Buyer is in breach of any representation, warranty, or covenant of Buyer under this Agreement (other than committing a Payment Failure), and either the breach cannot be cured or, if the breach can be cured, it is not cured by Buyer within thirty (30) calendar days after Buyer’s receipt of Notice of the breach;

(c) pursuant to and in accordance with Section 5.4(f);

(d) if Buyer (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due, (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law, (iii) makes or seeks to make a general assignment for the benefit of its creditors, or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business;

(e) if Seller terminates any other agreement between (i) Seller and (ii) Buyer or Buyer’s Affiliates, due to Buyer’s or Buyer’s Affiliates’ breach or non-performance thereof; or

(f) if without obtaining Seller’s prior written consent, (i) Buyer sells, leases, or exchanges a material portion of Buyer’s assets, (ii) Buyer merges or consolidates with or into another Person, or (iii) a change in Control of Buyer occurs.

Any termination under this Section 6.3 will be effective on Buyer's receipt of Seller's Notice of termination or such later date (if any) set forth in the Notice.

6.4 Buyer's Right to Terminate. Buyer may terminate this Agreement, by providing Notice to Seller:

(a) If Seller is in material breach of any representation, warranty, or covenant of Seller under this Agreement and either the breach cannot be cured or, if the breach can be cured, it is not cured by Seller within thirty (30) calendar days after Seller's receipt of Notice of such breach; or

(b) if Seller (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due, (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law, (iii) makes or seeks to make a general assignment for the benefit of its creditors, or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

As a condition precedent to Buyer's right to terminate this Agreement pursuant to this Section 6.4, within seven (7) calendar days following the date of Buyer's termination Notice, Buyer will pay to Seller all amounts due to Seller for Goods delivered by Seller to Buyer prior to Seller's receipt of the termination Notice and reimburse Seller for all of Seller's out-of-pocket costs and expenses (including raw materials, machinery and equipment purchases) incurred by Seller prior to receipt of Buyer's termination Notice that arise from or relate to this Agreement or any Purchase Order issued by Buyer to Seller prior to Seller's receipt of the Notice (each, a "**Reimbursement Payment**"). Any termination under this Section 6.4 will be effective on the latest to occur of Seller's receipt of Buyer's Notice of termination, Seller's receipt of the Reimbursement Payment or such other later date (if any) set forth in such termination Notice, if and to the extent that such later date is approved by Seller in writing.

6.5 Effect of Expiration or Termination.

(a) Upon the expiration or earlier termination of this Agreement, all indebtedness of Buyer to Seller under this Agreement, any other agreement or otherwise, of any kind, will become immediately due and payable to Seller, without further notice to Buyer.

(b) Expiration or termination of the Term will not affect any rights or obligations of the Parties that:

(i) come into effect upon or after termination or expiration of this Agreement; or

(ii) otherwise survive the expiration or earlier termination of this Agreement pursuant to Section 15.4 and were incurred by the Parties prior to the expiration or earlier termination.

(c) Any Notice of termination under this Agreement automatically operates as a cancellation of any deliveries of Goods to Buyer that are scheduled to be made subsequent to the effective date of termination, whether or not any orders for such Goods had been accepted by Seller. With respect to any Goods that are still in transit upon termination of this Agreement, Seller may require, in its sole and absolute discretion, that all sales and deliveries of such Goods be made on either a cash-only or certified-check basis.

(d) Upon the expiration or earlier termination of this Agreement, Buyer will:

(i) destroy all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on Seller's Confidential Information;

(ii) permanently erase all of Seller's Confidential Information from its computer systems and destroy any such copies upon the normal expiration of its backup files; and

(iii) certify in writing or provide other evidence to Seller that it has complied with the requirements of this clause.

(e) Subject to Section 6.5(b), the Party terminating this Agreement, or in the case of the expiration of this Agreement, each Party, will not be liable to the other Party for any damage of any kind (whether direct or indirect) incurred by the other Party by reason of the expiration or earlier termination of this Agreement. Termination of this Agreement will not constitute a waiver of any of the terminating Party's rights or remedies/either Party's rights, remedies, defenses under this Agreement, at law, in equity, or otherwise.

## 7. Certain Obligations of Buyer.

7.1 Certain Prohibited Acts. Notwithstanding anything to the contrary in this Agreement, neither Buyer nor any Buyer Personnel will:

(a) make any representations, warranties, guarantees, indemnities, similar claims, or other commitments:

(i) actually, apparently, or ostensibly on behalf of Seller, or

(ii) to any customer or other Person with respect to the Goods, which are additional to or inconsistent with any then-existing representations, warranties, guarantees, indemnities, similar claims, or other commitments in this Agreement or any written documentation provided by Seller to Buyer.

(b) Engage in any unfair, competitive, misleading, or deceptive practices respecting Seller, Seller's Trademarks, or the Goods, including any disparagement.

7.2 Restrictions on Sales or Delivery Outside the Territory. Neither Buyer nor any Buyer Personnel or Representatives will:

(a) sell, offer to sell, lease, rent, or otherwise make available any of the Goods or any other products incorporating any of the Goods outside the Territory unless the sales are made with the prior written consent of Seller, which consent may be withheld or withdrawn for any or no reason;

(b) ship or otherwise deliver Goods or any other products incorporating any of the Goods to any facility in a location that is outside of the Territory unless the location has been approved in writing by Seller, which consent may be withheld or withdrawn for any or no reason; or

(c) sell, offer to sell, lease, rent, ship, deliver, or otherwise make Goods or any other products incorporating any of the Goods available outside of the Territory except in compliance with all of the terms and conditions contained in this Section 7 and in Section 8 of this Agreement.

7.3 Government Contracts. Buyer will not resell Goods to any Governmental Authority or its respective agencies without Seller's prior written approval. Unless otherwise separately agreed in writing between Seller and Buyer, no provisions required in any government contract or subcontract related thereto will be a part of this Agreement or imposed upon or binding upon Seller, and this Agreement will not be deemed an acceptance of any government provisions that may be included or referenced in Buyer's request for quotation, Purchase Order, or any other document.

7.4 Credit Risk on Resale of the Goods to Customers. Buyer will be responsible for all credit risks with respect to, and for collecting payment for, all products (including Goods) sold to its customers or other third parties, whether or not Buyer has made full payment to Seller for such products. The inability of Buyer to collect the purchase price for any product will not affect Buyer's obligation to pay Seller for any Goods.

8. Compliance with Laws. Buyer will at all times comply with all Laws applicable to this Agreement, Buyer's performance of its obligations hereunder, and Buyer's use or sale of the Goods. Without limiting the generality of the foregoing, Buyer will (a) at its own expense, maintain all certifications, credentials, licenses, and permits necessary to conduct its business relating to the purchase, use or resale of the Goods and (b) not engage in any activity or transaction involving the Goods, including, without limitation, by way of resale, lease, shipment, use or otherwise, that violates any Law.

9. Representations and Warranties.

9.1 Buyer's Representations and Warranties. Buyer represents and warrants to Seller that:

(a) it is a [TYPE OF ENTITY], duly organized, validly existing, and in good standing under the laws of the [STATE OF ORGANIZATION]/ [FORMATION];

(b) it is duly qualified to do business and is in good standing in every jurisdiction in which such qualification is required for purposes of this Agreement;

(c) it has the full right, power, and authority to enter into this Agreement and to perform its obligations herein;

(d) the execution of this Agreement by its Representative whose signature is set forth at the end of this Agreement, and the delivery of this Agreement by Buyer, have been duly authorized by all necessary action on the part of Buyer;

(e) the execution, delivery, and performance of this Agreement by Buyer will not violate, conflict with, require consent under, or result in any breach or default under (i) any of Buyer's organizational documents, (ii) any applicable Law, or (iii) with or without notice or lapse of time or both, the provisions of any Buyer Contract;

(f) this Agreement has been executed and delivered by Buyer and (assuming due authorization, execution, and delivery by Seller) constitutes the legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with its terms;

(g) it is in material compliance with applicable Law and Buyer Contracts relating to this Agreement, the Goods, and the operation of its business;

(h) it has obtained all material licenses, authorizations, approvals, consents, or permits required by applicable Law to conduct its business generally and to perform its obligations under this Agreement;

(i) it is not insolvent and is paying all its debts as they become due; and

(j) all financial information that it has provided and will provide to Seller is true and accurate and fairly represents Buyer's financial condition.

9.2 Seller's Representations and Warranties. Seller represents and warrants to Buyer that:

(a) it is a limited liability company, duly organized, validly existing, and in good standing under the laws of the State of Utah;

(b) it is duly qualified to do business and is in good standing in every jurisdiction in which such qualification is required, except where the failure to be so qualified, in the aggregate, would not reasonably be expected to adversely affect its ability to perform its obligations under this Agreement;

(c) it has the full right, corporate power, and authority to enter into this Agreement and to perform its obligations herein;

(d) the execution of this Agreement by its Representative whose signature is set forth at the end of this Agreement, and the delivery of this Agreement by Seller, have been duly authorized by all necessary corporate action on the part of Seller;

(e) the execution, delivery, and performance of this Agreement by Seller will not violate, conflict with, require consent under or result in any breach or default under (i) any of Seller's organizational documents, (ii) any applicable Law, or (iii) with or without notice or lapse of time or both, the provisions of any material Seller Contract;

(f) this Agreement has been executed and delivered by Seller and (assuming due authorization, execution, and delivery by Buyer) constitutes the legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws and equitable principles related to or affecting creditors' rights generally or the effect of general principles of equity;

(g) it is in material compliance with applicable Law and Seller Contracts relating to this Agreement and the Goods and the operation of its business; and

(h) it has obtained all licenses, authorizations, approvals, consents, or permits required by applicable Law to conduct its business generally and to perform its obligations under this Agreement.

9.3 Limited Product Warranty. Subject to the provisions of Sections 9.4 through 9.8, Seller warrants to Buyer ("**Product Warranty**") that:

(a) for a period of 180 calendar days from the date of shipment of a Good (the "**Warranty Period**"), each Good will materially conform to the Specifications set forth in Exhibit A and will be free from significant defects in material and workmanship; and

(b) Buyer will receive good and valid title to all Goods, free and clear of all encumbrances and liens of any kind.

9.4 Product Warranty Limitations. The Product Warranty does not apply to any Good that:

(a) has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any instructions issued by Seller;

(b) has been reconstructed, repaired, or altered by Persons other than Seller or its authorized Representative; or

(c) has been used with any third-party products, hardware, or product that has not been previously approved in writing by Seller.



9.5 Buyer's Exclusive Remedy for Defective Goods. Notwithstanding any other provision of this Agreement (except for Section 9.8), this Section 9.5 contains Buyer's exclusive remedy for Defective Goods. Buyer's remedy under this Section 9.5 is conditioned upon Buyer's compliance with its obligations under Section 9.5(a) and Section 9.5(b). During the Warranty Period, with respect to any allegedly Defective Goods:

(a) Buyer will notify Seller, in writing, of any alleged claim or defect within five (7) calendar days from the date Buyer discovers, or upon reasonable inspection should have discovered, such alleged claim or defect but in any event before the expiration of the applicable Warranty Period;

(b) Buyer will ship, at its expense and risk of loss, such allegedly Defective Goods to Seller's facility located at 885 N Box Elder Street, Hildale, UT 84784 for inspection and testing by Seller;

(c) if Seller's inspection and testing reveal, to Seller's reasonable satisfaction, that the Goods are Defective and any such defect has not been caused or contributed to by any of the factors described under Section 9.4, subject to Section 9.5(a) and Section 9.5(b). Seller will in its sole and absolute discretion and at its expense, repair, or replace such Defective Goods; and

(d) Seller will make Goods available to Buyer, at Buyer's expense and risk of loss, the repaired or replaced Goods to 885 N Box Elder Street, Hildale, UT 84784.

Buyer has no right to return for repair, replacement, credit, or refund any Good except as set forth in this Section 9.5 or if otherwise applicable, Section 4.6 or Section 9.8. In the event Buyer reconstructs, repairs, alters, or replaces any Good, in whole or in part, either itself or by or through any third party, the warranty is void.

SUBJECT TO SECTION 9.8, THIS SECTION 9.5 SETS FORTH BUYER'S SOLE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED PRODUCT WARRANTY SET FORTH IN SECTION 9.3.

9.6 DISCLAIMER OF OTHER REPRESENTATIONS AND WARRANTIES; NON-RELIANCE. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 9.2 AND THE PRODUCT WARRANTY SET FORTH IN SECTION 9.3, (A) NEITHER SELLER NOR ANY PERSON ON SELLER'S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, EITHER ORAL OR WRITTEN, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT OR PERFORMANCE OF GOODS OR PRODUCTS TO STANDARDS SPECIFIC TO THE COUNTRY OF IMPORT, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, AND (B) BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY SELLER, OR ANY OTHER PERSON ON SELLER'S BEHALF,

EXCEPT AS SPECIFICALLY PROVIDED IN SECTIONS 9.2 AND 9.3 OF THIS AGREEMENT.

9.7 Third-Party Products. Buyer acknowledges that the Goods purchased by Buyer under this Agreement may contain, be contained in, incorporated into, attached to, or packaged together with products manufactured by a third party (“**Third-Party Products**”). Third-Party Products are not covered by the warranty in Section 9.3. For the avoidance of doubt, Seller makes no representations or warranties with respect to any Third-Party Products.

9.8 Withdrawal of Goods. If Seller determines that any Goods sold to Buyer may be Defective, at Seller’s request, Buyer will withdraw all similar Goods from sale and, at Seller’s sole and absolute option, either return such Goods to Seller (pursuant to the terms of Section 9.5(b)) or destroy the Goods and provide Seller with written certification of such destruction. Notwithstanding the limitations of Section 9.5, if Buyer returns all withdrawn Goods or destroys all withdrawn Goods and provides Seller with written certification of such destruction within seven (7) days following Seller’s withdrawal request, in either case, consistent with Seller’s instructions, unless any such defect has not been caused or contributed to by any of the factors described under Section 9.4, Seller will (a) repair or replace all such returned Goods or (b) replace such destroyed Goods, in either case, pursuant to the terms of Section 9.5(d). THIS SECTION 9.8 SETS FORTH BUYER’S SOLE REMEDY AND SELLER’S ENTIRE LIABILITY FOR ANY GOODS THAT ARE WITHDRAWN PURSUANT TO THIS SECTION 9.8.

## 10. Indemnification.

10.1 Indemnification. Subject to the terms and conditions of this Agreement, including those set forth in Section 10.2, Buyer (as “**Indemnifying Party**”) will indemnify, defend and hold harmless the Seller and its Representatives/officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, “**Indemnified Party**”) against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees, other fees, and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers, incurred by Indemnified Party (collectively, “**Losses**”), relating to/arising out or resulting from any third-party Claim or any direct Claim against Indemnifying Party alleging:

(a) a material breach or non-fulfillment of any representation, warranty, or covenant set forth in Section 9.1 of this Agreement by Indemnifying Party or Indemnifying Party’s Personnel;

(b) any grossly negligent or more culpable act or omission of Indemnifying Party or its Personnel (including any recklessness or willful misconduct) in connection with the performance of this Agreement;

(c) any bodily injury, death of any Person, or damage to real or tangible personal property caused by the acts or omissions of Indemnifying Party or its Personnel; or

(d) any failure by Indemnifying Party or its Personnel to materially comply with any applicable Law.

Notwithstanding anything to the contrary in this Agreement, this Section 10.1 does not apply to any Claim (whether direct or indirect) for which a sole or exclusive remedy is provided for under another section of this Agreement, including Section 4.4, Section 4.6, Section 9.5, and Section 9.8.

10.2 Exceptions and Limitations on Indemnification. Notwithstanding anything to the contrary in this Agreement, an Indemnifying Party is not obligated to indemnify or defend (if applicable) an Indemnified Party against any Claim if such Claim or corresponding Losses arise out of or result from, in whole or in part, the Indemnified Party's or its Personnel's:

(a) gross negligence or more culpable act or omission, including recklessness or willful misconduct; or

(b) bad faith failure to materially comply with any of its obligations set forth in this Agreement.

10.3 EXCLUSIVE REMEDY. THIS SECTION 10 SETS FORTH THE ENTIRE LIABILITY AND OBLIGATION OF EACH INDEMNIFYING PARTY AND THE SOLE AND EXCLUSIVE REMEDY FOR EACH INDEMNIFIED PARTY FOR ANY DAMAGES COVERED BY THIS SECTION 10.

## 11. Limitation of Liability.

11.1 IN NO EVENT WILL SELLER OR ITS REPRESENTATIVES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT BUYER/THE OTHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

11.2 MAXIMUM LIABILITY FOR DAMAGES. IN NO EVENT WILL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED TEN (10) PERCENT OF THE TOTAL OF THE AMOUNTS PAID TO SELLER PURSUANT

TO THIS AGREEMENT IN THE THREE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR \$10,000 WHICHEVER IS LESS.

11.3 ASSUMPTION OF RISK. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BUYER ASSUMES ALL RISK AND LIABILITY FOR THE RESULTS OBTAINED BY THE USE OF ANY GOODS IN THE PRACTICE OF ANY PROCESS, WHETHER IN TERMS OF OPERATING COSTS, GENERAL EFFECTIVENESS, SUCCESS, OR FAILURE, AND REGARDLESS OF ANY ORAL OR WRITTEN STATEMENTS MADE BY SELLER, BY WAY OF TECHNICAL ADVICE OR OTHERWISE, RELATED TO THE USE OF THE GOODS.

12. Intellectual Property Rights.

12.1 Ownership. Buyer acknowledges and agrees that:

- (a) except to the extent provided in a separate written agreement between Buyer and Seller, Seller (or its licensors) will retain all Intellectual Property Rights used to create, embodied in, used in, and otherwise relating to the Goods and any of their component parts;
- (b) any and all Seller's Intellectual Property Rights are the sole and exclusive property of Seller or its licensors;
- (c) Buyer will not acquire any ownership interest in any of Seller's Intellectual Property Rights under this Agreement;
- (d) any goodwill derived from the use by Buyer of Seller's Intellectual Property Rights inures to the benefit of Seller or its licensors, as the case may be;
- (e) if Buyer acquires any Intellectual Property Rights in or relating to any product (including any Good) purchased under this Agreement (including any rights in any Trademarks, derivative works or patent improvements relating thereto), by operation of law, or otherwise, the rights are deemed and are hereby irrevocably assigned to Seller or its licensors, as the case may be, without further action by either Party; and
- (f) Buyer will use Seller's Intellectual Property Rights only in accordance with this Agreement and any instructions of Seller.

12.2 Prohibited Acts. Buyer will not:

- (a) take any action that may interfere with any of Seller's rights in or to Seller's Intellectual Property Rights, including Seller's ownership or exercise thereof;
- (b) challenge any right, title, or interest of Seller in or to Seller's Intellectual Property Rights;

(c) make any claim or take any action adverse to Seller's ownership of Seller's Intellectual Property Rights;

(d) register or apply for registrations, anywhere in the world, for Seller's Trademarks, any other Trademark that is similar to Seller's Trademarks or that incorporates Seller's Trademarks in whole or in confusingly similar part, or any other Intellectual Property Rights;

(e) use any mark or any other Intellectual Property Rights, anywhere, that are confusingly similar to Seller's Trademarks;

(f) engage in any action that tends to disparage, dilute the value of, or reflect negatively on the products purchased under this Agreement (including Goods) or any Seller Trademark or other Intellectual Property Rights;

(g) misappropriate any of Seller's Trademarks for use as a domain name without prior written consent from Seller; or

(h) alter, obscure, or remove any of Seller's Trademarks or trademark or copyright notices or any other proprietary rights notices placed on the products purchased under this Agreement (including Goods), marketing materials, or other materials that Seller may provide.

### 13. Confidentiality.

13.1 Scope of Confidential Information. From time to time during the Term, Seller (as the "**Disclosing Party**") may disclose or make available to Buyer (as the "**Receiving Party**") information about its business affairs, goods and services, confidential information and materials comprising or relating to Intellectual Property Rights, trade secrets, third-party confidential information, and other sensitive or proprietary information. Such information, as well as the terms of this Agreement, whether orally or in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential," is collectively referred to as "**Confidential Information**" herein. Notwithstanding the foregoing, Confidential Information does not include information that at the time of disclosure and as established by documentary evidence:

(a) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Section 13 by the Receiving Party or any of its Representatives;

(b) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that the third party is not and was not prohibited from disclosing such Confidential Information;

(c) was known by or in the possession of the Receiving Party or its Representatives prior to being disclosed by or on behalf of the Disclosing Party;

(d) was or is independently developed by the Receiving Party without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information; or

(e) is required to be disclosed pursuant to applicable Law.

13.2 Protection of Confidential Information. The Receiving Party will for two (2) years from the termination or expiration of this Agreement:

(a) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;

(b) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and

(c) not disclose any such Confidential Information to any Person, except to the Receiving Party's Representatives who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement.

The Receiving Party will be responsible for any breach of this Section 13 caused by any of its Representatives. On the expiration or earlier termination of this Agreement, the Receiving Party and its Representatives will, pursuant to Section 6.5(d), promptly return or destroy all Confidential Information and copies thereof that it has received under this Agreement.

14. Tooling. All Tooling used to manufacture the Goods is owned by Seller ("Seller Tooling"). Buyer has no right, title, or interest in or to any of the Seller Tooling.

15. Miscellaneous.

15.1 Further Assurances. Upon Seller's reasonable request, Buyer will, at its sole cost and expense, execute and deliver all documents and instruments, and take all acts, necessary to give full effect to this Agreement.

15.2 Relationship of the Parties. The relationship between Seller and Buyer is solely that of vendor and vendee, and they are independent contracting parties. Nothing in this Agreement creates any agency, joint venture, partnership, or other form of joint enterprise, employment, or fiduciary relationship between the Parties. Neither Party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement, or undertaking with any third party.

15.3 Entire Agreement. This Agreement, including and together with the Basic Purchase Order Terms and any related exhibits and schedules, constitutes the sole and entire

agreement of the Parties with respect to the subject matter contained herein and therein and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to the subject matter.

15.4 Survival. Subject to the limitations and other provisions of this Agreement: (a) the representations and warranties of the Parties contained herein will survive the expiration or earlier termination of this Agreement for a period of 12 months after the expiration or termination; and (b) Sections 5.8, 6.5, 7.1, 7.2, 7.3, 9.6, 10.1, 11.1, 11.2, 11.3, 12.2, 13.2, 15.16, 15.17, 15.18, and 15.19 of this Agreement, as well as any other provision that, in order to give proper effect to its intent, should survive the expiration or termination, will survive the expiration or earlier termination of this Agreement for the period specified therein, or if nothing is specified for a period of 12 months after the expiration or termination. All other provisions of this Agreement will not survive the expiration or earlier termination of this Agreement.

15.5 Statute of Limitations. Notwithstanding any right under any applicable statute of limitations to bring a claim, no Action based upon or arising in any way out of this Agreement may be brought by either Party after the expiration of the applicable survival or other period set forth in this Section 15.4, and the Parties waive the right to file any Action after the expiration of the applicable survival or other period; provided, however, that the foregoing waiver and limitation do not apply to the collection of any amounts due to Seller under this Agreement.

15.6 Notices. All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement must be in writing (each, a “**Notice**”) and addressed to the other Party at its address set forth subsequently (or to another address that the Receiving Party may designate from time to time in accordance with this section). All Notices must be delivered by personal delivery, nationally recognized overnight courier, certified or registered mail (in each case, return receipt requested, postage prepaid), or e-mail (with confirmation of transmission) to satisfy the requirements of this Section 15.6. Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the Receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

Notice to Seller:

885 N Box Elder St.  
PO Box 2493  
Hildale, UT 84784

E-mail: [E-MAIL ADDRESS]

Attention: [TITLE OF OFFICER TO  
RECEIVE NOTICES]

[BUYER ADDRESS]

Notice to Buyer:

E-mail: [E-MAIL ADDRESS]

Attention: [TITLE OF OFFICER TO  
RECEIVE NOTICES]

Attention: [TITLE OF OFFICER TO  
RECEIVE NOTICES]

15.7 Interpretation. For purposes of this Agreement: (a) the words “include,” “includes” and “including” are deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments, and appendices mean the sections of, and exhibits, schedules, attachments and appendices attached to, this Agreement; (y) to an agreement, instrument or other document means the agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means the statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The Parties drafted this Agreement without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

15.8 Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

15.9 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, the invalidity, illegality, or unenforceability does not affect any other term or provision of this Agreement or invalidate or render unenforceable the term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the Parties will negotiate in good faith to modify this Agreement to reflect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally anticipated to the greatest extent possible.

15.10 Amendment and Modification. No amendment to or rescission, termination, or discharge of this Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination or discharge of this Agreement and signed by an authorized Representative of each Party.

15.11 Waiver.

(a) No waiver under this Agreement is effective unless it is in writing and signed by an authorized representative of the Party waiving its right.



(b) Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated and does not operate as a waiver on any future occasion.

(c) None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege, or condition arising from this Agreement:

(i) any failure or delay in exercising any right, remedy, power, or privilege, or in enforcing any condition under this Agreement; or

(ii) any act, omission, or course of dealing between the Parties.

15.12 Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties or otherwise. Notwithstanding the previous sentence, the Parties intend that Buyer's rights under Section 4.4, Section 4.6, Section 9.5, and each of the Parties' rights under Section 10 are Buyer's exclusive remedies for the events specified therein.

15.13 Equitable Remedies. Buyer acknowledges and agrees that (a) a breach or threatened breach by Party of any of its obligations under Section 13 and Sections 7.1(b), 7.2, 7.3, and 12.2 would give rise to irreparable harm to the other Party for which monetary damages would not be an adequate remedy and (b) in the event of a breach or a threatened breach by Buyer of any obligations, Seller will, in addition to any and all other rights and remedies that may be available to Seller at law, at equity or otherwise in respect of the breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from any court of competent jurisdiction anywhere in the world, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages will not afford an adequate remedy. Buyer agrees that Buyer will not oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this Section 15.13.

15.14 Assignment. Buyer may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Seller may assign any of its rights or delegate any of its obligations to any Person. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves the assigning or delegating Party of any of its obligations under this Agreement.

15.15 Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties and their respective permitted successors and permitted assigns.

15.16 No Third-Party Beneficiaries. Except as expressly set forth in the second sentence of this Section 15.16, this Agreement benefits solely the parties to this Agreement and their respective permitted successors and permitted assigns, and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right,

benefit or remedy of any nature whatsoever under or by reason of this Agreement. The Parties hereby designate persons who may benefit under Section 10.1 as third-party beneficiaries.

15.17 Dispute Resolution. Any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach, termination or invalidity hereof (each, a “**Dispute**”), will be submitted for negotiation and resolution to the [TITLE] of Seller (or to another person of equivalent or superior position designated by Seller in a Notice to Buyer) and the [TITLE] of Buyer (or to another person of equivalent or superior position designated by Buyer in a Notice to Seller), by delivery of Notice (each, a “**Dispute Notice**”) from either of the Parties to the other Party. The persons will negotiate in good faith to resolve the Dispute. If the Parties are unable to resolve any Dispute within thirty (30) calendar days after delivery of the applicable Dispute Notice, either Party may file suit in a court of competent jurisdiction in accordance with the provisions of Section 15.19 and Section 15.20 hereunder.

15.18 Governing Law. This Agreement, including all exhibits, schedules, attachments, and appendices attached hereto and thereto, and all matters arising out of or relating to this Agreement, are governed by and construed in accordance with, the Laws of the State of Utah, United States of America, without regard to the conflict of laws provisions thereof. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

15.19 Choice of Forum. Except as provided for in Section 15.13, each Party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments and appendices attached hereto and thereto, and all contemplated transactions, including contract, equity, tort, fraud, and statutory claims, in any forum other than the U.S. District Court for the District of Utah or, if the court does not have subject matter jurisdiction, the courts of the State of Utah sitting in Washington County, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts and agrees to bring any action, litigation or proceeding only in U.S. District Court for the District of Utah or, if the court does not have subject matter jurisdiction, the courts of the State of Utah sitting in Washington County of the State of Utah. Each Party agrees that a final judgment in any action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

15.20 Waiver of Jury Trial. Each Party acknowledges and agrees that any controversy that may arise under this Agreement, including any exhibits, schedules, attachments, and appendices attached to this Agreement, is likely to involve complicated and difficult issues and, therefore, each Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement, including any exhibits, schedules, attachments, and appendices attached to this Agreement, or the transactions contemplated hereby. Each Party certifies and acknowledges that (a) no Representative of the other Party has represented, expressly or otherwise, that the other Party would not seek to enforce the foregoing waiver in the event of a legal action, (b) Party

has considered the implications of this waiver, (c) Party makes this waiver voluntarily, and (d) Party has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section.

15.21 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement if the party sending the facsimile, e-mail or other means of electronic transmission has received express confirmation that the recipient party received the Agreement (not merely an electronic facsimile confirmation or automatic e-mail reply).

15.22 Force Majeure. No Party will be liable or responsible to the other Party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Seller hereunder), when and to the extent the failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)"): (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials; and (i) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party will give notice within seven (7) calendar days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party will use diligent efforts to end the failure or delay and ensure the effects of the Force Majeure Event are minimized. The Impacted Party will resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of thirty (30) consecutive calendar days following Notice given by it under this Section 15.21, either Party may thereafter terminate this Agreement upon seven (7) calendar days' Notice.

15.23 No Public Announcements or Trademark Use. Unless expressly permitted under this Agreement, Buyer will not:

- (a) make any statement (whether oral or in writing) in any press release, external advertising, marketing, or promotion materials regarding the subject matter of this Agreement, the other Party or its business unless:
  - (i) it has received the express written consent of Seller, or
  - (ii) it is required to do so by Law.

(b) use Trademarks, service marks, trade names, logos, symbols, or brand names, in each case, without the prior written consent of Seller/, which will not be unreasonably withheld or delayed.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first set forth previously.

	[SELLER NAME]
	By _____ Name: Torrance Bistline Title: Owner Phone: 866-874-7539 Email: torranceb@velociwrapper.com Address: 885 N. Box Elder Street Hildale, Utah 84784
	[BUYER NAME]
	By _____ Name: Title: Phone: Email: Address:

**SCHEDULE 1****GOODS**

<b>Part Number</b>	<b>SKU</b>	<b>Description</b>	<b>Model</b>	<b>MSRP</b>
8310-1100	VW-VWPE11-1	VelociWrap™ 11,000ft Roll	<b>Cherry Red</b>	\$ <b>186</b>
8310-1132	VW-VWPE11-32	VelociWrap™ 11,000ft Roll - Pallet	<b>Cherry Red</b>	\$ <b>5,958</b>
8310-1142	VW-VWPE11-44	VelociWrap™ 11,000ft Roll - Truckload	<b>Cherry Red</b>	\$ <b>262,152</b>
8810-1100	VW-VW312	VelociWrapper	<b>VW312</b>	\$ <b>115,000</b>
8810-1200	VW-FL15FS	VelociWrapper Fairlead	<b>FL15FS</b>	\$ <b>16,500</b>
8810-1300	VW-VTR614	VelociWrapper Trailer	<b>VTR614</b>	\$ <b>18,800</b>

**EXHIBIT A**  
**SPECIFICATIONS**

SKU Number	Name	Description
VW-VW312	VelociWrapper	Machine that triplexes cable and lays it in a variety of different applications.
VW-FL15FS	Fairlead	Adjustable arm that helps position the cable that has been tri-plexed by the VelociWrapper.
VW-VWPE11-1 (Roll) VW-VWPE11-32 (Pallet) VW-VWPE11-44 (Truckload)	VelociWrap	Specially designed filaments that keeps the cable being tri-plexed bound together.
VW-VTR614	Trailer	Specially designed trailer that carries the VelociWrapper while it lays cable.

**[EXHIBIT [B/C/D]]**

**[USE FOR ADDITIONAL SPECIFICATIONS]**

