



EQUIPMENT MANUFACTURING AGREEMENT

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Equipment Manufacturing Agreement

This Equipment Manufacturing Agreement (this "Agreement") is made and entered into as of _____, 20____, (the "Effective Date") by and between Fluent Conveyors LLC, a Colorado Limited Liability Company ("Customer"), and _____, a _____ ("Manufacturer"). Customer and Manufacturer are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Customer is a manufacturer and seller of material handling systems; and

WHEREAS, Manufacturer is a manufacturer of the Products (as defined herein), which Products Customer uses in its business of manufacturing and selling _____; and

WHEREAS, Manufacturer desires to manufacture the Products and Customer wishes to purchase the Products under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the covenants and promises contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Definitions

Capitalized terms used but not defined herein shall have the meaning given to such terms in the Separation and Distribution Agreement. The following capitalized terms shall have the following meanings as used in this Agreement:

1.1 Agreement

Has the meaning set forth in the Preamble.

1.2 Business Day

Means (a) any day other than a Saturday, Sunday or a day on which banking institutions are authorized or obligated by law to be closed in Denver, Colorado or (b) any day other than any day on which banking institutions are authorized or obligated by law to be closed in the country in which the Facility is located.

1.3 Change of Control

Means with respect to a Party, (a) a merger or consolidation of such Party with a third party that results in the voting securities of such Party outstanding immediately prior thereto, or any securities into which such voting securities have been converted or exchanged, ceasing to represent at least fifty percent (50%) of the combined voting power of the surviving entity or the parent of the surviving entity immediately after such merger or consolidation, (b) a transaction or series of related transactions in which a third party, together with its Affiliates, becomes the beneficial owner of fifty percent (50%) or more of the combined voting power of the outstanding securities of such Party, or (c) the sale or other transfer to a third party, directly or indirectly, of all or substantially all of such Party's assets or business to which the subject matter of this Agreement relates.

1.4 Claim

Has the meaning set forth in Section 9.3.

1.5 Complaint

Means any written or oral expression or dissatisfaction relative to the identity, quality, durability, reliability, safety, effectiveness, or performance of a Product including, but not limited to, actual or suspected Product tampering, contamination, mislabeling, or wrong components.

1.6 Confidential Information

Has the meaning set forth in Section 10.1.

1.7 Customer

Means Customer and its designated affiliates or subsidiaries.

1.8 Facility

Means the facility where the Products will be manufactured, which is currently located at _____

1.9 Field Action

Has the meaning set forth in Section 8.1.

1.10 Force Majeure Event

Has the meaning set forth in Section 13.8.

1.11 Governmental Authority

Means any nation or government, any state, municipality or other political subdivision thereof, and any entity, body, agency, commission, department, board, bureau, court, tribunal or other instrumentality, whether federal, state, local, domestic, foreign or multinational, exercising executive, legislative, judicial, taxing, regulatory, administrative or other similar functions of, or pertaining to, government and any executive official thereof.

1.12 Inspection Period

Has the meaning set forth in Section 4.3(a).

1.13 Losses

Has the meaning set forth in Section 9.1.

1.14 Party or Parties

As the meaning set forth in the Preamble.

1.15 Product Price

Has the meaning set forth in Section 3.1.

1.16 Products

Shall mean the products to be manufactured by Manufacturer as set forth in any Purchase Order.

1.17 Purchase Order

Means a written or electronic order issued by Customer to Manufacturer specifying the project name, types, quantities, specifications, prices, lead times and Delivery Dates of Products to be manufactured and supplied under this Agreement

1.18 Raw Materials

Means all raw materials used to make the Product.

1.19 Rejection Notice

Has the meaning set forth in Section 4.3(a).

1.20 Representative(s)

Means (a) with respect to Manufacturer: Manufacturer, its affiliates and each of their respective officers, directors, employees, consultants, contractors and agents, in each case to the extent designated by Manufacturer to perform all or any portion of its obligations under this Agreement, and (b) with respect to Customer: Customer, its affiliates and each of their respective officers, directors, employees, consultants, contractors and agents, in each case to the extent authorized to receive any Product on behalf of Customer or perform any of Customer's obligations under this Agreement.

1.21 Specifications

Means the drawings and specifications for the Products set forth in the Purchase Order as the final manufacturing release packet.

1.22 Term

Means the duration for which the Agreement remains in effect, including start and end dates or conditions for renewal/termination. The Term for this Agreement shall initially be one (1) year from the Effective Date and shall automatically renew on an annual basis subject to any rights to terminate set forth in Article 12.

1.23 Withholding Agent

Has the meaning set forth in Section 3.3.

2. Purchase And Supply

2.1 Purchase and Supply

During the applicable Term, Customer agrees to purchase from Manufacturer, and Manufacturer agrees to supply to Customer, Products (and, if applicable, related services) in such quantities as may be ordered by Customer pursuant to Purchase Orders as provided in Section 4.1 below and at such prices as provided in the Purchase Order. Customer may issue a change to any outstanding Purchase Order. If Manufacturer has already manufactured any Products that are removed or modified from the Purchase Order by any issued change, Customer shall pay for such Products.

2.2 Manufacturing Activities

Except as otherwise contemplated by the Purchase Order, Manufacturer shall be responsible for accommodating a value-added chain and the manufacturing, labeling, assembly, and packaging in accordance with the applicable Specifications, and delivery of Products in accordance with the Purchase Order. With respect to any sheet metal parts, just cut and bent that are not attached to other Products.

2.3 Standards

Manufacturer shall (a) use reasonably qualified personnel in connection with manufacturing the Products for Customer and perform such manufacturing activities in a competent and workmanlike manner consistent with prevailing industry standards and in material compliance with applicable laws, the terms of this Agreement, the Purchase Order and the Specifications, and (b) obtain and maintain all material licenses, permits or approvals required by applicable laws in connection with the manufacture of Products for Customer, including permits related to the Facility. Except as may be required to comply with applicable laws (in which case Manufacturer shall supply Customer with at least ninety (90) days advance written notice), Manufacturer shall not amend, change or supplement (i) the Specifications, (ii) the processes and procedures for manufacturing the Products, or (iii) the Facility, in each case without Customer's prior written consent.

2.4 Excused Performance

Notwithstanding any provision of this Agreement to the contrary, Manufacturer shall have no obligation to manufacture, sell or supply Products (whether at all or in such quantities as Customer submits in Purchase Orders) or to make deliveries hereunder, and shall not be in breach of this Agreement, to the extent Manufacturer is prevented from performing such activities as a result of Customer's failure to perform its obligations under this Agreement.

3. Pricing; Billing

3.1 Pricing

For each unit of a Product supplied by Manufacturer and delivered to Customer hereunder, Customer shall pay to Manufacturer the corresponding per unit price set forth on the Purchase Order (the "Product Price").

3.2 Billing

Within thirty (30) days after delivery of Products, Manufacturer shall send Customer one or more invoices setting forth in reasonable detail the aggregate amount owed by Customer to Manufacturer for Products delivered to Customer, with a breakdown showing: (a) the quantity of Products delivered to Customer during by Product SKU or other identifying label based on accepted Purchase Orders (b) the unit and aggregate Product Price for each Product, (c) all applicable taxes (as a separate line item); and (d) any other amounts owed by Customer to Manufacturer. Customer shall pay Manufacturer within thirty (30) days of receipt of the applicable invoice.

3.3 Taxes

All charges under this Agreement are exclusive of any taxes, including sales, use, VAT, consumption, excise, withholding, or similar taxes (other than taxes based on Manufacturer's or its affiliate's net income) that may apply to the transactions contemplated by this Agreement. Customer shall be responsible for paying all such taxes. Manufacturer may collect such Taxes from Customer as required by law. If any payments under this Agreement are subject to withholding or deduction, the applicable party (the "Withholding Agent") shall be entitled to withhold or deduct such amounts as required by applicable law, provided that prior to such withholding or deduction, the Withholding Agent shall give written notice of its intention to withhold or deduct and allow the other party sufficient time to furnish any required documentations and forms to minimize or eliminate such withholding or deduction. The Withholding Agent shall pay all such withheld or deducted amounts to the applicable governmental authority. For the avoidance of doubt, the provisions of this Section 3.4 shall apply to affiliates of Manufacturer and Customer as if such affiliate were Manufacturer or Customer, as applicable.

4. Orders; Delivery; Periodic Reviews

4.1 Purchase Orders

(a) At any time during the Term, Customer may place a Purchase Order for Products. To the extent the quantity of a Product set forth in a Purchase Order exceeds the capacity for Manufacturer to manufacture such Product, the Parties will work together in good faith to attempt to meet Customer's demand, subject to capacity limitations and the availability of Raw Materials.

(d) The terms and conditions of each Purchase Order shall be consistent with this Agreement, and to the extent any Purchase Order, invoice, acknowledgment or other form used by Manufacturer or Customer contains any provisions that are in addition to or contrary to the provisions of this Agreement, such additional or contrary provision shall have no force or effect and the terms of this Agreement, as applicable, shall govern (unless otherwise agreed to by the Parties in writing in the Purchase Order).

4.2 Delivery

Title; Risk of Loss. Delivery terms for Products shall be FCA Customer's warehouse or other location specified by Customer. Title and risk of loss of the Products shall pass to Customer upon receipt by Customer's carrier.

4.3 Product Inspection; Acceptance

(a) Customer shall have the right to inspect any shipment of Products for damage, failure to provide the quantity provided in a Purchase Order or other non-conformity with Manufacturer's warranties set forth in Section 5.1, in each case at the time of delivery pursuant to Section 4.2, within the period of sixty (60) days from the date of delivery of such Products (the "Inspection Period"), provided, however, with respect to any non-conformity with Manufacturer's warranties set forth in Section 5.1 that is not reasonably detectable, the Inspection Period shall be extended to the date that is the earlier of (a) fifteen (15) days after the date such non-conformity is first detected. Claims on account of non-conformity, loss or damage to Product shall be made by Customer in writing within the applicable Inspection Period (a "Rejection Notice"). Any such Rejection Notice shall be accompanied by reasonable supporting evidence that shows that there was a default in the quantity of the Product delivered to Customer by Manufacturer or that some or all of the Product delivered to Customer by Manufacturer was not manufactured in accordance with the applicable Specifications or otherwise breaches Manufacturer's warranties set forth in Section 5.1, in each case at the time of delivery pursuant to Section 4.2. If no Rejection Notice is delivered by Customer within the applicable Inspection Period, the Product shall be deemed accepted by Customer.

(b) Except as otherwise set forth in this Section 4.3(b) with respect to obtaining replacements from a separate manufacturer, Customer's sole remedy with respect to rejected Product shall be cancellation of the Purchase Order with respect to the rejected Products and shipment of replacement Products in the same quantities as provided in the previously rejected Products Purchase Order. Manufacturer shall resupply any replacement Products within five (5) business days of Manufacturer's receipt of an undisputed Rejection Notice, with Manufacturer being responsible for the cost of shipping the replacement Products; provided that, in each case, Manufacturer shall use commercially reasonable efforts to supply such replacement Products before the end of such five (5) business day period, to the extent Manufacturer is able to do so based on Manufacturer's available Raw Materials and manufacturing capacity.

If Manufacturer is unable to supply the replacement Products within that time period, Manufacturer shall notify Customer of the same within 24 hours of receipt of the Rejection Notice and Customer has the right to obtain replacements from another manufacturer and charge the cost of the same to Manufacturer. Manufacturer shall pay expenses related to the proper destruction of non-conforming Products to the extent such expense is reasonably necessary. At Manufacturer's written request, Customer shall return to Manufacturer, at Manufacturer's sole cost and expense, any non-conforming Products in accordance with the written instructions provided by Manufacturer to Customer.

5. Manufacture

5.1 Product Warranty

(a) Manufacturer represents and warrants that:

(i) The Products shall, as applicable, be manufactured, packaged, labeled, handled, stored, transported and delivered (i) in accordance with applicable law, good manufacturing practices and Section 4.2 in the quantities set forth in the applicable Purchase Order and (ii) consistent in all material respects with the Specifications;

(ii) The warranties set forth in this Section 5.1 shall not apply to the extent any claim arises after delivery to Customer in accordance with Section 4.2 as a result of (a) any Product having been misused, neglected, improperly handled, altered, abused or used for any purpose other than the one for which it was manufactured or other conditions beyond the control of Manufacturer or its Representatives, (b) any damage or defects caused by unauthorized repair or use of unauthorized parts or components or any other condition beyond the control of Manufacturer or its Representatives, (c) any Specifications or instructions provided to Manufacturer by Customer or any breach by Customer of its obligations under this Agreement, and (d) any damage or defect as a result of the actions or inactions of Customer or its Representatives.

(b) Customer's sole and exclusive remedy for, and Manufacturer's sole obligation under the warranty set forth in Section 5.1(a) (i) are set forth in Section 4.3(b).

5.2 Product Issues

Manufacturer will promptly, and in any case no later than five (5) Business Days, notify Customer of any lot failure, manufacturing problems or similar issues that may impact Customer's ability to distribute Products to its customers.

5.3 Reliance on Customer Instructions and Performance

In performing its obligations under this Agreement, Manufacturer will be entitled to rely upon any written instructions or written authorizations provided to Manufacturer by Customer's Representatives. Manufacturer will be relieved of its obligation to perform any obligation under this Agreement to the extent it is prevented from performing such obligation by (a) its compliance with such written instructions or (b) Customer's failure to perform its obligations under this Agreement.

6. Procurement Of Raw Materials

6.1 Management of Raw Materials

Manufacturer shall be responsible for procuring Raw Materials, except where otherwise set forth in a Purchase Order.

6.2 Changes

Manufacturer will promptly notify Customer upon receiving any communication from a Manufacturer with respect to material limitations on production capacity or inventory, or any notice of discontinuation of production of, any Raw Materials that is reasonably likely to have a material impact on the manufacture and supply of Products for Customer.

7. Manufacturer's Insurance

7.1 Insurance Requirements

Manufacturer shall, at its own expense, procure and maintain in full force and effect throughout the term of this Agreement and for a period of at least two (2) years thereafter (or as required by applicable law), the following insurance coverages with insurers licensed and authorized to do business in the jurisdictions where the products are manufactured, distributed, or sold, and having an A.M. Best rating of A- or better:

- a. Commercial General Liability Insurance, including coverage for bodily injury, property damage, personal and advertising injury, contractual liability, products and completed operations liability, with minimum limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate;
- b. Product Liability Insurance, on an occurrence basis, covering all Products manufactured under this Agreement, with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate;
- c. Workers' Compensation Insurance, as required by applicable law, and Employer's Liability Insurance with minimum limits of \$1,000,000 per accident, \$1,000,000 per employee, and \$1,000,000 policy limit;
- d. Automobile Liability Insurance, if vehicles are used in connection with the performance of this Agreement, with minimum combined single limits of \$1,000,000 per accident for bodily injury and property damage.

7.2. Additional Insured

Customer (and its affiliates and Representatives) shall be named as additional insureds on the Commercial General Liability and Product Liability policies, with such coverage applying on a primary and non-contributory basis.

7.3. Certificates of Insurance

Upon execution of this Agreement and upon renewal of each policy, Manufacturer shall provide Customer with certificates of insurance evidencing compliance with the requirements set forth herein. Certificates shall provide for thirty (30) days' prior written notice to Customer in the event of cancellation or material change in coverage.

7.4. No Limitation of Liability

The insurance requirements set forth in this Section shall in no way limit Manufacturer's indemnification obligations or any other liability under this Agreement.

8. Regulatory; Customers

8.1 Recall

Customer shall control any recall, withdrawal, adverse event or field correction (each, a "Field Action") with respect to any Product. In connection with a Field Action, Manufacturer shall reasonably cooperate with responding to Customer's requests for information or other assistance, and in otherwise effecting such Field Action. To the extent reasonably possible, Customer shall consult with Manufacturer before issuing any press release or otherwise making any public statement or making any other public (or non-confidential) disclosure (whether or not in response to an inquiry) regarding any Field Action that directly or indirectly references or implicates Manufacturer.

Customer shall be responsible for communicating with any Governmental Authorities in connection with a Field Action. Customer shall bear any costs and expenses incurred by it and by Manufacturer in connection with any such Field Action (including with respect to any Field Action caused by any Manufacturer of Raw Materials); provided, however, that if a Field Action results primarily from Manufacturer's breach of its warranties under Section 5.1, Manufacturer shall pay the reasonable out-of-pocket costs incurred by Customer for each such Field Action in connection with Customer's response to any such Field Action, including the cost of shipping, inspecting and sorting Products impacted by such Field Action, which reimbursable costs with respect to any such Field Action shall not, in the aggregate, exceed \$1,000,000. The remedies set forth in Section 4.3(b) shall be available to Customer for (a) Products that do not conform with the warranties set forth in Section 5.1 and (b) conforming Products that Customer is required to include in a Field Action involving non-conforming Products pursuant to applicable law. Notwithstanding anything to the contrary in this Agreement, the foregoing shall be Customer's sole and exclusive remedy with respect to a Field Action. Any information of any nature obtained by either Party during any Field Action shall be subject to the provisions of Section 10.

8.2 Compliance with Laws

Manufacturer shall comply with applicable law with respect to the manufacture of the Products and shall not be required to perform or omit to perform any act required or permitted under this Agreement if such performance or omission would violate the provisions of any such law.

8.3 Government Inspection

Requests for Information. Manufacturer shall, pursuant to applicable law, allow any Governmental Authority with jurisdiction over Manufacturer's manufacture or Customer's marketing and distribution of Product to inspect all areas of the Facility utilized by Manufacturer in the manufacture, testing, packaging, storage and shipment of Products sold under this Agreement, and will reasonably cooperate with such Governmental Authorities. Manufacturer will notify Customer as soon as is reasonably practicable after it receives notice of an inspection if it relates to any Product. In the event of any such inspection by any Governmental

Authority (including an inspection by an agency or organization appointed by any Governmental Authority), Manufacturer shall contact Customer to inform Customer of such inspection and of any material non-conformity which may impact the fit, form or function or the regulatory status of any of the Products supplied to Customer.

8.4 Complaints

Communications. Customer shall be responsible for handling and addressing all Complaints and customer communications (including general inquiries) concerning any Product. In the event Manufacturer receives or becomes aware of a Complaint or communication about any Product, Manufacturer shall promptly notify Customer and refer such Complaint or communication, and any relevant information or documentation obtained with respect thereto, to Customer. Customer shall be responsible for communicating with customers regarding any Complaint about any Product, unless otherwise agreed upon by both Parties during a specific complaint investigation. Each Party shall provide the other Party with the telephone numbers and names of contacts for this purpose. Customer shall be responsible for investigating any Complaint about the Products, implementing any corrective action where necessary, and responding directly to the customer about its complaint, and, to the extent a complaint is determined to relate to a defect or non-conformity in a Product supplied hereunder, Manufacturer shall bear all costs associated therewith. Manufacturer shall cooperate with Customer in connection with any complaint investigation and promptly respond to Customer's requests for information or provide such other assistance as Customer may reasonably request, at Customer's expense.

9. Indemnification

9.1 Manufacturer Indemnification

Subject to the provisions of Section 9.3, Manufacturer shall defend, indemnify and hold harmless Customer and its Representatives and their permitted successors and assigns with respect to any liability, damage, loss or expenses (including reasonable attorneys' fees and court costs) relating to third party claims (collectively, "Losses") arising out of, relating to, or resulting from: (a) any breach or default by Manufacturer of any representation, warranty or covenant of Manufacturer contained in this Agreement, but not including the express warranties provided in Section 5.1(a)(i) (the remedies for which are expressly limited to those set forth in Section 4.3(b), except in the case of fraud, gross negligence or willful misconduct on the part of Manufacturer); (b) Manufacturer's failure to comply with the express warranties provided in Section 5.1(a)(i) and (ii), solely to the extent the subject of a third party claim for personal injury or death; or (c) the fraud, gross negligence or willful misconduct of Manufacturer in the course of the performance of its obligations hereunder.

9.2 Customer Indemnification

Subject to the provisions of Section 9.3, Customer shall defend, indemnify and hold harmless Manufacturer and its Representatives and their permitted successors and assigns with respect to all Losses arising out of, relating to, or resulting from: (a) any breach or default by Customer of any representation, warranty or covenant of Customer contained in this Agreement; (b) the gross negligence, willful misconduct or fraud of Customer in connection with this Agreement; or (c) the use, sale, import, export or exploitation of the Products, except for such indemnification obligations of the Manufacturer under Section 10.1.

9.3 Procedure

Promptly after receipt of written notice of the assertion or the commencement of a third party claim asserted against a Party for which the other Party has an indemnification obligation under this Article 9, the indemnified Party shall provide the indemnifying Party with written notice describing an indemnification claim ("Claim") in reasonable detail in light of the circumstances then known and then providing the indemnifying Party with further notices to keep it reasonably informed with respect thereto; provided, however, that failure of the indemnified Party to provide timely notice or to keep the indemnifying Party reasonably informed as provided herein shall not relieve the indemnifying Party of its obligations hereunder except to the extent that the indemnified Party is materially prejudiced thereby. If any proceeding shall be commenced against any indemnified Party by a third party, the indemnifying Party shall be entitled to participate in such Claim and assume the defense thereof with counsel reasonably satisfactory to the indemnified Party, at the indemnifying Party's sole cost and expense, and the indemnifying Party shall reasonably cooperate with the indemnifying Party, at the indemnifying Party's sole cost and expense, in the defense of any Claim and shall be entitled to participate in any proceeding at its expense, and the indemnifying Party shall not settle such proceeding without the indemnified Party's prior written consent (which consent shall not be unreasonably withheld or delayed), except such consent shall not be required in the case of any settlement that includes a full and unconditional release of the indemnified Party by the plaintiff or claimant from all liability with respect to the matters that are subject to such Claim. The indemnified Party may participate in the defense of any claim with counsel reasonably acceptable to the indemnifying Party, at the indemnified Party's own expense.

10. Confidential Information

10.1 Customer and Manufacturer Obligations

Each Party acknowledges that in the course of its obligations pursuant to this Agreement, it may obtain certain confidential or proprietary information ("Confidential Information"). Each Party hereby agrees that all such Confidential Information communicated to it by the other Party or its Representatives, whether before or after the date of this Agreement, shall be and was received in strict confidence, shall be used only for the purposes of the relationship set forth in this Agreement, and shall not be disclosed without the prior written consent of the other party, subject to the following limitations: Information will not be considered Confidential Information if, at the time of its disclosure: (i) it is or becomes publicly known through no wrongful act of the recipient; (ii) it is received from a third party without similar restrictions and without breach of this Agreement; (iii) it is independently developed by the recipient; or (iv) it is lawfully required to be disclosed to a government agency or is otherwise required to be disclosed by law. This provision shall not modify any rights or duties outlined in any Non-Disclosure Agreement signed by the Parties, and any conflict between this provision and any Non-Disclosure Agreement signed by the Parties shall be resolved in favor of the more restrictive agreement.

10.2 No Release; Return or Destruction

Each Party agrees (a) not to release or disclose, or permit to be released or disclosed, any Confidential Information of the other Party addressed in Section 10.1 to any other person, except its Representatives who need to know such confidential and proprietary information in their capacities as such (who shall be advised of their obligations hereunder with respect to such confidential and proprietary information) and except in compliance with Section 10.4. Without limiting the foregoing, when any such confidential and proprietary information is no longer needed for the purposes contemplated by this Agreement, each Party will promptly after

request of the other Party either return to the other Party all such confidential and proprietary information in a tangible form (including all copies thereof and all notes, extracts or summaries based thereon) or notify the other Party in writing that it has destroyed such information (and such copies thereof and such notes, extracts or summaries based thereon).

10.3 Privacy and Data Protection Laws

Each Party shall comply with all applicable state, federal and foreign privacy and data protection laws that are or that may in the future be applicable to the supply of the Products and provision of related services and manufacturing activities under this Agreement.

10.4 Disclosure Process

In the event that a Party or any of its Representatives either determines on the advice of its counsel that it is required to disclose any information pursuant to applicable law or receives any request or demand under lawful process or from any Governmental Authority to disclose or provide information of the other Party (or any of its Representatives) that is subject to the confidentiality provisions hereof, such Party shall notify the other Party (to the extent legally permitted) as promptly as practicable under the circumstances prior to disclosing or providing such information and shall cooperate, at the expense of the other Party, in seeking any appropriate protective order requested by the other Party. In the event that such other Party fails to receive such appropriate protective order in a timely manner and the Party receiving the request or demand reasonably determines that its failure to disclose or provide such information shall actually prejudice the Party receiving the request or demand, then the Party that received such request or demand may thereafter disclose or provide information to the extent required by such law (as so advised by its counsel) or by lawful process or such Governmental Authority and will exercise reasonable efforts to obtain assurance that confidential treatment will be accorded to such confidential and proprietary information, and the disclosing Party shall promptly provide the other Party with a copy of the information so disclosed, in the same form and format so disclosed, together with a list of all Persons to whom such information was disclosed, in each case to the extent legally permitted.

10.5 Injunctive Relief

It is understood and agreed that money damages may not be a sufficient remedy for any breach of this Article 10, and that the disclosing Party may be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach. Such remedy shall not be deemed to be the exclusive remedy for breach of this Article 10, but shall be in addition to all other remedies available at law or equity to the disclosing Party.

10.6 Separate Non-Disclosure Agreement

If Manufacturer has entered into a separate NDA with Customer, the terms of such NDA shall be incorporated herein and, in the event of any discrepancy between the NDA and this Section 10, the more restrictive term shall apply.

10.7 Survival

Subject to Section 10.4, the obligations in this Article 10 shall survive any expiration or termination of this Agreement.

11. Records; Inspection; Access To Facilities

11.1 Manufacturing Records

Manufacturer agrees to retain all applicable records relating to the manufacturing of Products for a period of not less than seven (7) years from the date of delivery of Product, or such longer period as may be required by applicable law. Manufacturer shall provide Customer with complete and accurate copies of such records, upon Customer's request and at Customer's expense.

11.2 Inspection

Subject to Manufacturer's consent (not to be unreasonably withheld), on an annual basis, or more frequently with reasonable cause, Manufacturer agrees to permit Customer, Customer's contract manufacturers acting on Customer's behalf and any Representatives to enter and inspect, upon at least fifteen (15) days' prior written notice and during normal business hours, the Facility that is used to manufacture, label, package, and store the Products to determine whether Manufacturer's manufacturing processing, labeling, packaging or storage of the Products conform with the applicable Specifications and otherwise comply with the requirements of this Agreement and applicable law; provided any such inspection does not unreasonably interfere with Manufacturer's continued operation of its business. The foregoing notice obligation shall be diminished to one (1) business day if the inspection is necessitated by a good faith concern related to Product quality or compliance with applicable laws where such shortened notice period may serve to mitigate immediate harm or damage to Customer or its end-users.

12. Termination; Transition Of Production

12.1 Termination on Account of Material Breach

Either Party may terminate this Agreement, in whole or in part, without liability, except for amounts due and payable hereunder as of the date of termination, in the event the other Party breaches any material provision of this Agreement and fails to cure such breach, if capable of being cured, within thirty (30) days after receipt of written notice (which notice shall specify in reasonable detail the nature of such breach). This right shall be in addition to any other remedies provided by law.

12.2 Termination on Account of Bankruptcy

This Agreement may be terminated immediately upon written notice by one Party to the other if the other Party becomes insolvent, makes an assignment for the benefit of creditors, has a receiver appointed for it or any of its assets, or files or has filed against it a petition, under the Bankruptcy Code of 1978, as amended, 11 U.S.C. § 101 et seq. (or bankruptcy law of another country), or under any insolvency laws providing for the relief of debtors, where such petition, assignment or similar proceeding is not dismissed within ninety (90) days following its filing.

12.3 Customer's Right to Termination.

Customer may terminate this Agreement during the Term in whole or with respect only to certain Products at any time without cause upon sixty (60) days' prior written notice to Manufacturer; provided that, in connection with any such termination by convenience, Customer shall reimburse Manufacturer for any amounts due and payable hereunder as of the date of termination (including any costs and expenses reasonably incurred by Manufacturer in anticipation of this Agreement continuing for the duration of the Term)

12.4 Termination on Account of Change of Control

In the event that Manufacturer consummates a Change of Control, then Customer will have the right to terminate this Agreement immediately in response to the consummation of the Change of Control by Manufacturer, which right may be exercised by Customer in its sole discretion. Such termination right will be exercisable once the notice to Customer of the consummation of the Change of Control has been provided (which notice shall be provided promptly).

12.5 Survival

Article 1, Section 4.3(b), Article 5, Article 7, Article 8, Article 9, Article 10, Section 11.1, and Article 13 shall survive the expiration or termination of this Agreement in each case in accordance with their respective terms. In no event shall Manufacturer's obligation to supply Products under this Agreement extend beyond the Term.

13. Miscellaneous

13.1 Successors; Assigns

Manufacturer may not assign, transfer, or subcontract this Agreement or a Purchase Order or any right or obligation thereunder, without Customer's express written consent, which may be withheld for any reason. Any purported assignment, transfer, or subcontract without such consent will be void and ineffective. Customer may assign this Agreement to any affiliate or related to a Change of Control without the consent of Manufacturer.

13.2 Relationship of the Parties

In performing their respective obligations hereunder, each of the Parties will operate as, and have the status of, an independent contractor and will not act as or be an agent, partner, co-venturer or employee of the other Party. Neither Party shall represent itself to be, or otherwise conduct itself as, an agent of the other Party and nothing contained in this Agreement shall be construed to give either Party the power to direct or control the day-to-day activities of the other or create or assume any obligation on behalf of the other. This Agreement does not create a partnership or joint venture between the Parties.

13.3 Governing Law

The rights and obligations of the Parties shall be governed by, and this Agreement shall be interpreted, construed and enforced in accordance with, the laws of the State of Colorado, excluding its conflict of laws rules to the extent such rules would apply the law of another jurisdiction.

13.4 Disputes and Attorneys' Fees/Arbitration

In the event of any controversy or claim arising out of or relating to this Agreement, or the breach thereof, the Parties shall first attempt to settle the dispute by informal mediation between the executives and/or officers of the Parties and their respective legal counsel. If settlement is not reached via informal mediation, any unresolved controversy or claim shall be settled by arbitration administered by JAMS, Inc. (or other mediation and arbitration service by mutual written agreement of the Parties) under its Comprehensive Arbitration Rules & Procedures (or those of another mutually-agreed upon mediation and arbitration service, as applicable). The number of arbitrators shall be one, to be selected according to the JAMS Rules & Procedures (or those of another mutually-agreed upon mediation and arbitration service, as applicable). The place of arbitrations shall be Denver, Colorado, and all proceedings shall be subject to the laws of the State of Colorado. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The cost of the arbitration proceeding and any proceeding in court to confirm or to vacate any arbitration award, as applicable (including, without limitation, reasonable attorneys' fees and costs), shall be borne by the unsuccessful party, as determined by the arbitrator and/or court, and shall be awarded as part of the arbitrator's award and/or judgment. This Section shall survive the termination or cancellation of this Agreement.

13.5 Entire Agreement

This Agreement, together with any Non-Disclosure Agreement entered into by the Parties and including the other documents, exhibits, schedules and agreements specifically referred to herein, constitutes the entire agreement between and among the Parties hereto with regard to the subject matter hereof, and supersedes all prior agreements and understandings with regard to such subject matter.

13.6 Amendment, Waivers and Consents

This Agreement shall not be changed or modified, in whole or in part, except by supplemental agreement or amendment signed by the Parties. Any Party may waive compliance by any other Party with any of the covenants or conditions of this Agreement, but no waiver shall be binding unless executed in writing by the Party making the waiver. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Any consent under this Agreement shall be in writing and shall be effective only to the extent specifically set forth in such writing.

13.7 Notices

Unless otherwise specifically provided in this Agreement, all notices required or permitted under this Agreement will be in writing, and will be deemed effective when actually delivered to the following addresses by personal delivery, overnight courier or registered mail return receipt requested:

If to Customer	If to Manufacturer

13.8 Force Majeure Events

(a) Neither Manufacturer nor Customer shall be liable for loss, damage, detention, delay or failure to perform resulting from any cause whatsoever beyond its reasonable control or resulting from a force majeure ("Force Majeure Event"), including earthquake, fire, flood, infectious diseases, public health developments, epidemics and pandemics and the effects of any quarantine restrictions or other measures taken by a Governmental Authority or any other person in response thereto, strike or lockout (other than a strike or lockout involving Manufacturer's own employees), actions of a civil or military authority, insurrection, war, embargo, an act of terrorism and container or transportation shortage. Delivery Dates for Product shall be extended to the extent of any delays resulting from the foregoing or similar causes. The Party so affected shall give prompt notice to the other Party of such cause, and shall take whatever reasonable steps are necessary to relieve the effect of such cause as rapidly as reasonably possible. Notwithstanding the foregoing, nothing in this Section 13.8 shall relieve Customer of its obligation to pay for Product received from Manufacturer and accepted by Customer pursuant to this Agreement.

(b) In addition to and not in lieu of the terms and conditions above, if a Force Majeure event causes a shortage of Raw Materials or a shortage of Product, Manufacturer shall equitably allocate such Raw Materials or Product among all of Manufacturer's requirements with respect to such Raw Materials or Products, based on, where applicable, both parties' usage for the twelve (12)-month period prior to such Force Majeure event.

13.9 Interpretation

Except as otherwise explicitly specified to the contrary, (a) references to a Section, means a Section of this Agreement, unless another agreement is specified, (b) the word "including" (in its various forms) means "including without limitation," (c) words in the singular or plural form include the plural and singular form, respectively, and (d) the headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

13.10 Rules of Construction

The Parties acknowledge that each Party has read and negotiated the language used in this Agreement. The Parties agree that, because all Parties participated in negotiating and drafting this Agreement, no rule of construction shall apply to this Agreement which construes ambiguous language in favor of or against any Party by reason of that Party's role in drafting this Agreement.

13.11 Severability

If any provision of this Agreement, as applied to either Party or to any circumstance, is declared by a court of competent jurisdiction or arbitrator to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision.

13.12 Rights of Parties

Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties and their respective successors and permitted assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third person to any Party, nor shall any provision give any third person any right of subrogation or action over or against any Party.

13.13 Counterparts

This Agreement may be signed in any number of counterparts, including facsimile copies thereof or electronic scan copies thereof delivered by electronic mail, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

13.14 No Licenses

Nothing in this Agreement shall be construed as a grant by Manufacturer of any right or license whatsoever to Customer under any patent, patent application or other proprietary right now or hereafter owned or controlled by the Customer except to the extent required for Manufacturer to perform its obligations hereunder.

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate by their authorized representatives, with each Party retaining a copy.

[_____], Customer

[_____], Manufacturer

By: _____

By: _____

Print Name: [_____]

Print Name: [_____]

Title: [_____]

Title: [_____]

Date: [____ / ____ / ____]

Date: [____ / ____ / ____]