**SUPPLIER AGREEMENT**

THIS SUPPLIER AGREEMENT (this “Agreement”) is entered into as of the \_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 202\_\_ (the “Effective Date”) by and between White Cap Supply Holdings, LLC (“White Cap”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Supplier”). White Cap and Supplier are hereinafter referred to individually as a “Party” and collectively as the “Parties”. The Parties, intending to be legally bound, agree as follows:

**1.0 Orders; Acceptance of Order**

1.1 Supplier agrees to sell to White Cap the products listed in Exhibit “A” attached hereto and made a part hereof, or as otherwise agreed between the Parties. The prices of such products shall be as set forth in each purchase order (“Order”) between the Parties.

1.2 Every Order, whether written, faxed, or electronically transmitted to Supplier, is subject to all terms and conditions contained in this Agreement. Further, this Agreement shall apply to all purchases made by White Cap, whether such purchases are for resale, rental, redistribution, or internal use.

1.3 Each Order shall be deemed accepted by Supplier if any shipment of products is made under the Order or if Supplier otherwise acknowledges the Order otherwise. Neither additional nor different terms, nor the furnishing by Supplier of additional documents containing different terms, shall modify the Order unless specifically agreed to in writing by an authorized agent of White Cap. Any such additional or different terms are rejected by White Cap, and White Cap’s failure to object specifically to such additional or different terms will not be a waiver of the terms of this Agreement. There shall be no changes or modifications to any Order unless expressly agreed to in writing by an authorized agent of White Cap. Time is of the essence of each Order.

1.4 In no instance will White Cap be liable to Supplier in excess of the actual Order price, less applicable discounts and/or other deductions, and no interest or other charges including freight charges, shall be recognized or paid by White Cap upon any such Order or a resulting invoice, whether claimed by reason of late payment or otherwise.

**2.0 Title and Risk of Loss; Acceptance of Products**

Unless otherwise provided in any Order, all Orders will be deemed “Prepaid, FOB destination” (as defined in the Georgia Uniform Commercial Code) or “DDP” (as defined in Incoterms 2000) White Cap’s specified facility, and shall be delivered through White Cap’s core carrier program. Consequently, in such circumstances, no liability for shipping, insuring, or paying duty on the products will be incurred by White Cap, and risk of loss shall not pass to White Cap, until legal title passes upon acceptance of the products by White Cap at the designated final destination, provided that the products are delivered in good condition.

**3.0 Warranties, Representations, Covenants, and Guarantees**

Supplier represents, warrants, covenants, and/or guarantees the following to White Cap, and agrees that such representations, warranties, covenants, and/or guarantees are true and correct at the time Supplier and White Cap enter into this Agreement and will be true and correct for a period of 12 months after delivery of products under an Order; provided, however, that the foregoing shall not be deemed to limit any product warranty of longer duration:

3.1 All products comply with all applicable federal, state, and local laws, codes (including building codes), statutes, ordinances, rules, regulations, and requirements of the country of origin, the country of transit, or any applicable country or jurisdiction, as well as orders of any governmental or regulatory authority (each, a “Law”, and collectively, the “Laws”). Any changes to the products hereafter made by Supplier shall comply with all applicable Laws.

3.2 All products will be furnished in accordance with the terms and conditions of this Agreement and any Order and will be of the quality, form, fit, function, size and dimensions ordered under the Order; all products will be new products of the latest design or model and in conformity with all plans, specifications, performance standards, drawings, control samples, and other data incorporated as part of an Order; all products will be of good quality, merchantable, free and clear of liens and encumbrances, and free from all defects in material and workmanship and shall be fit and appropriate for their intended purposes; the design, manufacture, labels, packaging, instructions, disclaimers, and warnings concerning all products will comply with the terms and conditions of this Agreement and all applicable Laws; and no product shall infringe any actual or alleged patent, design, trade name, trademark, copyright, trade secret, or any right or entitlement of any third party. The foregoing warranties, representations, and guarantees to White Cap shall pass to all persons purchasing or using the products (whether purchased from White Cap or from any third party to which White Cap sells the products or otherwise.

3.3 White Cap need not inspect products or packaging before sale, and Supplier’s warranties shall survive any inspection, installation, acceptance, or any payment by White Cap or its customers.

3.4 In addition to the foregoing, Supplier warrants, represents, covenants, and guarantees the following:

(a) If required by Law, the labels, packaging, instructions, and warnings accompanying Supplier’s products shall be multilingual and/or contain universally accepted pictographs and/or symbols, and the packaging shall include appropriate UPC bar coding;

(b) If required by Law, Supplier will supply White Cap with any and all instructions, warnings, and safety sheets for Supplier’s products;

(c) Every product shall conform to and comply with all applicable Laws and all applicable industry standards (including all language requirements) and any other testing laboratory approved by, or reasonably specified by, White Cap;

(d) Supplier shall provide, upon request and as promptly as practicable, certifications regarding the country of origin of all products supplied to White Cap.

**4.0 Indemnification**

4.1 Supplier shall indemnify, defend, and hold White Cap (which for purposes of Sections 4 and 5 of this Agreement shall include any associates of White Cap and White Cap’s directors, officers, employees, and agents) harmless from and against any and all claims, lawsuits, judgments, losses, recalls, civil penalties or actions, costs, liabilities, damages, and expenses (including attorneys’ and accountants’ fees and expenses) by any person, corporation, government, governmental agency, class, or any other entity whatsoever, arising from and/or in any way relating to any: acts or omissions of Supplier, its employees and agents, contractors, subcontractors, and/or any other persons for whose conduct it may be or is alleged to be legally responsible; products provided by Supplier hereunder or the use thereof; disputes regarding Supplier’s product warranties, guarantees, covenants, or representations, any breach thereof, and/or the breach of any applicable Law or otherwise; disputes regarding infringement of any patent, design, trade name, trademark, copyright, trade secrets, or any other right or entitlement of any third party; any environmental, property, and/or toxic tort claim, lawsuit, judgment, loss, civil penalty, or action; and claims against White Cap by an employee of Supplier regarding a workers’ compensation matter. This agreement to indemnify, defend, and hold harmless White Cap applies irrespective of any negligence by White Cap, except to the extent finally determined in legal proceedings that the loss resulted from the sole fault or gross negligence of White Cap.

4.2 If Supplier fails to assume its defense and indemnity obligations hereunder within 10 days after notice of any claim, White Cap shall have the right, but not the obligation, to proceed with its own defense and thereafter to require Supplier to reimburse and indemnify White Cap for any and all losses, costs, and expenses (including attorneys’ and accountants’ fees and expenses) incurred by White Cap in connection with such matter.

4.3 Supplier’s agreement to defend, indemnify, and hold White Cap harmless under the terms of this Section 4 is independent of and in addition to Supplier’s agreement to procure insurance as required in Section 5 below. Supplier’s insurer’s position regarding insurance coverage for White Cap as an additional insured does not in any way modify or limit Supplier’s agreement to defend, indemnify, and hold White Cap harmless as required in this Section 4.

**5.0 Insurance**

Supplier shall procure and maintain commercial general liability insurance including products liability, completed operations, and contractual liability coverage, all on an occurrence basis, with limits of not less than the amounts specified in the Insurance Approval Request Form attached hereto as Exhibit “B” and made a part hereof for property damage and bodily injury or death. A broad form endorsement shall be maintained in said insurance policy with White Cap, its parent, affiliates, and subsidiaries (collectively, the “White Cap Entities”) listed as additional insureds, requiring Supplier’s insurance be the primary policy with respect to any loss. Supplier further agrees to forward a copy of this Agreement to its insurer, and as a condition precedent to White Cap’s obligations hereunder, to have delivered to White Cap by Supplier’s insurer a current certificate of insurance, including renewals before the expiration of the then-current coverage, showing the coverage required by this provision, as well as a copy of the broad form endorsement evidencing the White Cap Entities’ status as additional insureds. Supplier further agrees that upon notice of a claim against any of the White Cap Entities involving any product sold to White Cap by Supplier, Supplier will immediately notify all insurance carriers that issued policies to Supplier listing the White Cap Entities as additional insureds of said claim. Thereafter, Supplier agrees to keep White Cap fully informed of all activity, including, but not limited to, providing White Cap with all correspondence and action taken with regard to any claim by any insurance carrier. Additionally, Supplier and its insurer shall provide to White Cap 30 days’ prior written notice of any non-renewal, cancellation, or other material change in coverage that may impair or otherwise affect White Cap’s rights thereunder. The furnishing of insurance hereunder shall not limit Supplier’s liability or indemnification obligations under this Agreement.

**6.0 Termination, Cancellation, and Returns**

6.1 White Cap reserves the right to terminate or cancel any Order in whole or in part at any time prior to shipment of the products (other than specially fabricated products) without incurring any liability.

6.2 Without limiting the generality of Section 6.1 above, Supplier authorizes White Cap to cancel any Order in whole or in part, reject products, refuse to receive products, or return all or part of the products, paying only for any part retained at the pro-rated Order rate and returning the balance at Supplier’s expense without White Cap’s incurring any liability to Supplier if:

(a) Supplier breaches its express warranties, representations, covenants, or guarantees set forth in this Agreement;

(b) Products received are less than or greater than the quantity, weight, or volume provided for in the Order, or vary in any respect from the samples from which or specifications for which the Order was placed;

(c) Supplier (i) shall have delivered, or coordinated delivery of, the products to White Cap at a date and/or time that differs from an Order’s specified delivery date(s) and/or time(s), (ii) fails to comply with the shipping or invoicing instructions of an Order, or (iii) fails to comply with any of the terms or conditions of an Order;

(d) A claim is made that the sale, offer of sale, or the use of Supplier’s products by White Cap or its customers infringes or would infringe an alleged patent, design, trade name, trademark, copyright, trade secret, or similar entitlement of any third party; or

(e) Supplier files or is the subject of a petition in bankruptcy, becomes insolvent, makes an assignment or arrangement with or for the benefit of creditors, or a receiver or person acting in a similar capacity is appointed for Supplier or its property.

6.3 Notwithstanding the absence of an exception notation on a freight receipt or any other term set forth in a freight receipt, bill of lading, or other shipping document that may be executed upon the receipt of freight by White Cap, White Cap expressly retains its right to pursue a claim or charge-back with Supplier for shortage, damage, or other defect of delivered freight that comes to White Cap’s attention following the delivery of such freight.

**7.0 Payment; Invoices**

White Cap’s payment obligation shall arise only on the later of: (a) its receipt of products; and (b) its receipt of a complete and correct invoice from Supplier for such products. Payment terms measured from such date shall be 2% discount for payment in 30 days, and net payment required in 31 days.

**8.0 Miscellaneous Provisions**

8.1 All costs and expenses, including, but not limited to, attorneys’ fees, incurred by White Cap due to Supplier’s violations of or failure to follow any or all of the terms of an Order or this Agreement will be charged to Supplier. Supplier expressly agrees to reimburse White Cap for all such costs and expenses upon demand, and Supplier further agrees that, at White Cap’s option, White Cap may deduct such costs and expenses from any sum then or thereafter owing to Supplier by White Cap.

8.2 Any and all taxes, fees, imposts, or stamps required by federal, state, local, or other governmental authority in the selling, transferring, or transmitting of products to White Cap shall be paid and assumed by Supplier. If it is ever determined that any tax included in the price paid by White Cap was not required to be paid, Supplier agrees to refund promptly such amount to White Cap. Supplier will release, defend, indemnify, and hold White Cap harmless from and against any fines, penalties, costs (including attorneys’ fees and court costs), losses, damages, or liabilities arising from any breach of this Section 8.2 by Supplier.

8.3 No provisions of an Order or this Agreement shall be waived unless such waiver is in writing and signed by an authorized agent of the waiving Party. No failure on the part of either Party to exercise any of the rights and remedies granted hereunder or to insist upon strict compliance by the other Party, and no acceptance of full or partial performance during the continuance of such breach, and no custom or practice of the Parties at variance with the terms hereof, shall constitute a waiver of the right to demand exact compliance with the terms hereof. A waiver by either Party of any specific default shall not affect or impair the rights of said Party with respect to any delay or omission to exercise any rights arising from any other default. Supplier hereby waives use of the Statute of Frauds as a defense to any Order accepted under this Agreement.

8.4 White Cap shall not be bound by any assignment of any Order by Supplier unless White Cap has consented prior thereto in writing. White Cap may assign any Order hereunder to a present or future affiliated entity.

8.5 This Agreement and the business relationship between White Cap and Supplier shall be governed by and construed in accordance with the laws of that state of Georgia without regard to its conflict of laws provisions, and specifically excluding the UN Convention on Contracts for the International Sale of Goods. The Parties agree that any legal action arising under or related to this Agreement shall be brought in Cobb County, Georgia, and any right to object to such venue or to assert the inconvenience of such forum is hereby waived.

8.6 Except for changes in White Cap’s Ethics Guide, no changes or modifications to these SBA Terms and Conditions shall be permitted unless made in writing as an amendment hereto and signed by both Parties.

8.7 Supplier and White Cap are independent contractors for all purposes, and neither is a co-employer with the other; employees of the other Party for purposes of any federal or state law, including, but not limited to, labor laws, tax laws, workers compensation laws, or laws relating to master-servant liability; a joint venturer with the other Party; or an agent of the other Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

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| --- | --- |
| WHITE CAP SUPPLY HOLDINGS, LLCBy: Name: Title:  | [Vendor Name]By: Name: Title:  |

Exhibit “A”

Exhibit “B”

Insurance Approval Request Form

[to be attached]