

SUBCONTRACTOR AGREEMENT

This Supply Agreement (the "Agreement"), entered into on _____, 20__ (the "Effective Date"), is by and between **J&R DESIGN SYSTEMS, INC.** ("J&R"), a Michigan corporation, with offices at 3075 South Commerce Road, Walled Lake, Michigan 48390, and _____ ("Supplier"), a _____ corporation, with offices at _____. J&R and Supplier are sometimes collectively referred to herein as the "Parties" or individually as a "Party".

AGREEMENT

1.0 PRODUCTS AND SERVICES

1.1 Manufacture of Products. Upon written order from J&R delivered to Supplier requesting Supplier to manufacture the Products and stating the proposed quantity, delivery location, any special conditions thereof that might affect the manufacturing of the Products, shipping instructions, and the requested delivery date (each, a "Purchase Order") therefor and pursuant to the terms and conditions of this Agreement, Supplier agrees to manufacture and sell the Products ordered by J&R in accordance with the Customer Contracts, this Agreement, the "Specifications" which has been made available to the supplier at time of bid and any Purchase Order(s) issued in connection herewith. Supplier shall make no change to the manufacturing process without the prior written consent of J&R.

1.2 Performance of the Services. Upon written order from J&R delivered to Supplier requesting Supplier to perform labor and/or Services and stating the location, construction schedule, any special conditions that might affect the performance of the services, and the completion date (each, a "Purchase Order") therefor and pursuant to the terms and conditions of this Agreement, Supplier shall perform the Services in accordance with the terms and conditions of the Customer Contracts, this Agreement, the "Specifications" which has been made available to the supplier at time of bid and any Purchase Order(s) issued in connection herewith.

1.3 Purchase Orders. All purchases and sales between J&R and Supplier shall be initiated by J&R's issuance of written Purchase Orders sent via overnight delivery, facsimile or email. The acceptance by Supplier of a Purchase Order shall be indicated by written acknowledgment thereof by Supplier. In the event of a conflict between the terms and conditions of any Purchase Order and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall control as to such conflict, unless the Parties agree in writing that the terms and conditions of a particular Purchase Order shall supersede a particular term or condition of this Agreement.

1.4 Delivery and Shipping. Supplier shall ship the Products to the destination listed on the Purchase Order packaged for shipment as provided in the Purchase Order.

1.5 Insurance and Risk of Loss. Supplier shall bear the risk of loss with respect to any lost, damaged or defective Products until its obligations under this Agreement are satisfied in the discretion of J&R. Supplier shall be responsible for and shall bear any cost to protect the Products or secure them from damage. Supplier shall, at its expense, take out and maintain insurance in amounts at least equal to those set forth in Section 5.1 covering all risks of loss or damage to the Products. Such insurance shall name J&R as an additional insured or a loss payee.

1.6 Inspection By J&R or J&R's Customer.

(a) All Products manufactured and delivered by Supplier shall be subject to inspection by J&R and the Customer of J&R.

(b) Within a reasonable time after receipt of the Products and prior to payment for the same, J&R or Customer shall have the right, but not the obligation, to inspect the Products for damage incurred during shipping and for conformity with the Customer Contracts, this Agreement, the Specifications and the Purchase Order. Products received prior to inspection shall not be deemed accepted until J&R has run adequate tests to determine whether the Products conform to the Specifications and the terms of this Agreement, the Customer Contracts and the Purchase Order. Use of a portion of the Products for testing shall not constitute acceptance of the Products. If at any time J&R or Customer determines that the Products are non-conforming, defective, or damaged, in whole or in part, J&R shall have the right to reject such Products and may at its option require that Supplier replace such Products at Supplier's sole cost and expense.

(c) All materials and manufacturing utilized by Supplier in the production of Products shall be subject to periodic inspection and testing by J&R or Customer at all times and places. No inspection or testing shall be deemed to be an approval or admission by J&R or Customer that the inspected Products (or any related work-in-process or other physical inventory) fulfill the terms of this Agreement.

2.0 PURCHASE PRICE

2.1 Purchase Price. The prices to be paid for the **Products and/or Services** provided hereunder shall be determined in accordance with the Purchase Orders issued by J&R in connection with the same.

3.0 PAYMENT TERM

3.1 Payment. Supplier understands and agrees that J&R receives payment from the Customer for the **Products and/or Services** and other work performed by J&R only upon **Customer's full and final acceptance of the Products and/or the Paint System.** Accordingly,

J&R will pay Supplier the amount due hereunder within thirty (30) days after J&R's receipt of all monies due from the Customer to J&R.

4.0 TERM AND TERMINATION.

4.1 Term of this Agreement. This Agreement shall become effective on the Effective Date and shall continue in force until _____ completion, unless terminated earlier pursuant to Section 3.2.

4.2 Termination. This Agreement may be terminated only in accordance with the following:

(a) Either Party may terminate this Agreement if the other Party hereto becomes the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, which petition or proceeding is not dismissed with prejudice within sixty (60) days after filing.

(b) Either Party may terminate this Agreement if the other Party breaches any term or condition of this Agreement and fails to cure that breach within thirty (30) days after receiving written notice of the breach. In the event the breach is not cured within the period specified above after delivery of the notice, the non-breaching Party may terminate this Agreement in writing as of a date specified in the termination notice. The terminating Party shall have all rights and remedies available at law or equity as well as any other rights and remedies set forth in this Agreement.

(i) Supplier shall immediately deliver, at Supplier's cost, expense and liability, all of J&R's property in Supplier's possession, including without limitation, any parts, products and materials for the Paint System, in accordance with J&R's instructions;

5.0 WARRANTIES AND INDEMNIFICATION.

5.1 Supplier Representations and Warranties. Supplier represents and warrants as follows:

(a) That it has full power to enter into this Agreement, to carry out its respective obligations pursuant to this Agreement, and to grant the rights granted pursuant to this Agreement. Further, Supplier represents and warrants that it has obtained all corporate, third party, and governmental approvals necessary to enter into this Agreement and carry out the transaction contemplated hereby.

(b) Neither the execution and delivery of this Agreement nor the performance of its terms will conflict with, or result in a breach by Supplier of, or constitute a default under, any of the terms of any agreement to which Supplier is a party.

(c) Supplier warrants that the **Products and Services** shall (i) be free from all liens, charges or encumbrances; (ii) be free from defects in material and workmanship and shall conform to the Customer Contracts, the Purchase Order(s), this Agreement and the Specifications.

(d) Supplier warrants and represents that it shall **manufacture the Products and complete the Services** and otherwise perform its obligations under this Agreement (i) in accordance with generally accepted engineering, construction or technical practices and standards measured at the time of performance, and not according to later standards, and (ii) in accordance with the Customer Contracts, the Purchase Order(s), this Agreement and the Specifications.

(e) Supplier shall maintain at all times a workforce and manpower capability to J&R's satisfaction and sufficient to perform at a quality, quantity and time frame satisfactory to J&R.

(f) Supplier shall be responsible for the management and control of all procedures relating to the **manufacture of the Products and completion of the Services** in accordance with this Agreement and the Customer Contracts.

(g) At the time of the **manufacture of the Products and provision of the Services**, such performance shall be in accordance with all applicable Laws (including, without limitation, all applicable environmental laws, rules and regulations). For purposes of this Agreement, Laws shall mean all constitutions, laws, statutes, ordinances, rulings, regulations, orders, or similar pronouncements of any domestic or foreign entity or other political subdivision thereof.

(h) All materials, products and parts provided by J&R are the exclusive property of J&R, and Supplier (nor any party claiming by or through Supplier) has no interest or claim therein, and Supplier will not grant any security interest lien right or other encumbrance on or in any rights or property of J&R, and Supplier will complete the **manufacture of the Products and provision of the Services** free from any claim of any nature by a third party.

(i) Supplier shall immediately notify J&R in writing, and in no event later than 24 hours, after (A) any claim, lien or other encumbrance (or alleged encumbrance) on the materials, Products or Services is made, or (B) of any damage, tampering, destruction, loss, theft or other similar occurrence affecting or impacting the materials, Products or Service.

5.2 Term/Scope of Supplier's Representations and Warranties; J&R Remedies.

(a) The term and scope of Supplier's warranties, including applicable warranty periods, shall be the same as set forth in the Customer Contracts. Notwithstanding any provision of this Agreement or the Purchase Order(s) to the contrary, Supplier acknowledges and agrees that it has been provided with a copy of the Customer Contracts, has reviewed them and agrees to be bound thereby with respect to its performance under this Agreement.

(b) Supplier shall, in accordance with the Customer Contracts, at its sole cost and expense, repair and/or replace (or other remedy as set forth in the Customer Contracts) any (i) damaged or stolen materials, parts or products for the Paint System caused by Supplier's acts or omissions or which otherwise occurs while the same are under the control of Supplier, its employees, agents or representatives. The foregoing is in addition to Supplier's other obligations hereunder.

(c) Supplier shall be liable and responsible for all costs incurred by J&R (including costs for notification, replacement parts, labor, penalties, fines, and buy backs) as a result of any recall, service campaign or similar program initiated or which is otherwise required for compliance with any applicable law which are due to, caused by or otherwise attributable to (i) the **Services and Products**, (ii) Supplier's default hereunder or the Customer Contracts, (ii) its negligence or willful misconduct (or that of any employee, agent or representative thereof), (iii) its breach of any of its representations or warranties set forth in this Agreement or the Customer Contracts.

(d) Supplier's obligations under this Section shall survive the termination and/or expiration of this Agreement.

5.3 J&R's Representations, Warranties, and Covenants. J&R represents and warrants as follows:

(a) That it has full power to enter into this Agreement, to carry out its respective obligations pursuant to this Agreement, and to grant the rights granted pursuant to this Agreement. Further, J&R represents and warrants that it has obtained all corporate, third party, and governmental approvals necessary to enter into this Agreement and carry out the transaction contemplated thereby.

(b) Neither the execution and delivery of this Agreement nor the performance of its terms will conflict with, or result in a breach by J&R of, or constitute a default under, any of the terms of any agreement to which J&R is a party.

5.4 Indemnity by Supplier.

PROVISION OF SERVICES

(a) Supplier shall indemnify, hold harmless and defend J&R, Customer and their employees, agents, consultants, servants and representatives from and against any and all claims, damages, losses, liabilities and expenses, including reasonable attorney's fees and costs, of whatever nature, attributable to injury, sickness, disease or death, or to injury or destruction of property, including loss of use resulting therefrom, directly or indirectly, caused by or arising out of any action, omission or operation under this Agreement or the Customer Contracts, including the negligent acts or omissions of J&R, Customer and their employees, agents, servants and representatives, or in connection with the Services attributable in whole or in part to Supplier, any subcontractor, any materialmen, or any of their respective employees, agents, servants and representatives, or any other person; provided, however, that Supplier shall not be required to indemnify J&R, Customer or their employees, agents, servants and representatives hereunder for any such claims, damages, losses and liabilities, caused solely and exclusively by the negligence of J&R, Customer or their employees, agents, servants and representatives where such indemnification is contrary to law. It is the intent of the Parties that Supplier shall indemnify J&R, Customer and their employees, agents, servants and representatives to the fullest extent permitted by law. Without in any manner limiting the generality of the foregoing indemnity, the Supplier further agrees as follows:

(b) If corrective work is required or fines or legal costs are assessed against Customer or J&R by a government agency due to non-compliance by Supplier with any laws, regulations, environmental requirements or breach of any duty contained in this Agreement or the Customer Contracts, or if the Services of Supplier or the work at the Customer facility, or any part thereof, is stopped by order of a governmental agency due to the Supplier's non-compliance with any such laws, regulations or environmental requirements, or if Customer, the construction manager (if any) or J&R incur any loss or liability due to any breach or default by Supplier of its obligations, Supplier will indemnify and hold harmless Customer, the construction manager and J&R against any and all losses, liabilities, damages, claims, costs and reasonable attorney's fees and costs suffered or incurred on account of the failure of Supplier to comply therewith.

(c) Should Customer or J&R be joined as a party in any action or proceeding arising out of the violation or an alleged violation of the federal wage and hour law in the performance of this Agreement or the Customer Contracts, Supplier and any subcontractor or materialman violating or alleged to have violated such law, or using or introducing goods manufactured or alleged to have been manufactured in violation of the law, shall defend and hold harmless Customer and J&R in any such action or proceeding and pay and defray any damage, expense and cost of any description by reasons thereof, including reasonable attorneys fees and costs.

(d) In the event of any accident or occurrence resulting in injury, death, sickness or disease to persons or damage to property, Supplier shall immediately notify J&R and

Customer of the accident or occurrence and shall submit a written report within three (3) calendar days.

(e) In claims against any person or entity indemnified under this Section 4.4 by an employee of Supplier, any subcontractor of Supplier, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 4.4 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Supplier or a subcontractor of Supplier. At the time of Supplier's final application for payment, Supplier shall identify in writing to J&R and Customer any outstanding claims, actual or threatened, known to Supplier, by any subcontractor or materialman at any tier, including but not limited to any claim for equitable adjustment or equitable compensation based on purported delay, acceleration, or other changes (or refusal to change) in scheduling, deadlines, or milestones; lack of access; stacking of trades; impact claims, labor inefficiencies; loss of productivity; or any conduct or omissions of J&R or Customer. For any claims except those based solely on J&R's or Customer's conduct or omissions, and for any and all claims not specifically identified by Supplier to J&R as provided herein, Supplier shall indemnify, hold harmless, and defend J&R and Customer and their employees, agents, servants, and representatives from and against any and all such claims, damages, losses, liabilities, and expenses, including reasonable attorney's fees and costs, of whatever nature, arising from or purporting to arise from the conduct or omissions of J&R or Customer. This indemnification shall not be exclusive of any other right of indemnification, contribution, setoff, credit, or apportionment J&R may otherwise have. It is the intent of the Parties that Supplier shall indemnify J&R, Customer and their employees, agents, servants and representatives to the fullest extent permitted by law.

(f) Supplier shall pay all costs, damages, losses, liabilities, and expenses incurred by J&R or Customer in the enforcement of this Agreement, including reasonable attorney's fees.

(g) It is expressly understood and agreed that the Supplier's obligations to indemnify, hold harmless and defend J&R, Customer and the other indemnitees hereunder shall survive the completion or earlier termination of performance under this Agreement and/or the Customer Contracts.

MANUFACTURE OF PRODUCTS

(a) Supplier shall indemnify, defend and hold harmless J&R, Customer and their respective directors, officers, agents, representatives and employees (collectively, the "Indemnified Parties") against any and all claims, losses, liabilities, settlements, damages (including consequential and incidental damages) and expenses (including, but not limited to, interest, penalties, reasonable fees of attorneys and other professionals), which may arise directly or indirectly, in whole or in part, from any claims that may be raised in connection with or arising from the manufacture of the Products hereunder, including without limitation, (i) Supplier's breach of this Agreement or any representations or warranties contained herein, (ii) any recall campaign instituted by Customer or a governmental agency which includes the

Products, (iii) any products liability action brought for on account of personal injury, death or property damage caused by or resulting from the manufacture, construction, design, formulation, preparation, assembly, labeling or testing of the Products, (iv) the negligence or willful misconduct of Supplier or its agents, affiliates or representatives, (v) non-compliance with any legal or manufacturing requirements, or (vi) claims by third parties for infringement of intellectual property rights related to the Products.

(b) Supplier hereby releases the Indemnified Parties from any and all manner of liability whatsoever, whether it be in law or in equity, as to any kind and all kinds of damages, which shall include, but not be limited to, personal injury and damage to personal property, resulting to Supplier, its agents, servants or employees in the performance by Supplier under this Agreement.

(c) In the event of any such claim described in this Section, Supplier agrees to notify J&R promptly of the claim and permit J&R, at Supplier's sole cost and expense, to assume control of the defense thereof with counsel of J&R's choosing, and Supplier shall cooperate with J&R in such defense at Supplier's expense.

(d) This indemnification shall not be exclusive of any other right of indemnification, contribution, setoff, credit, or apportionment J&R may otherwise have. It is the intent of the Parties that Supplier shall indemnify J&R, Customer and their employees, agents, servants and representatives to the fullest extent permitted by law.

(e) Supplier shall pay all costs, damages, losses, liabilities, and expenses incurred by J&R or Customer in the enforcement of this Agreement, including reasonable attorney's fees.

(f) It is expressly understood and agreed that the Supplier's obligations to indemnify, hold harmless and defend J&R, Customer and the other Indemnified Parties hereunder shall survive the completion or earlier termination of performance under this Agreement and/or the Customer Contracts.

6.0 SILICON FREE PROJECT

6.1 Silicone Free. All Products and Services provided shall be 100% **SILICONE_FREE**. Notwithstanding any provision of the Customer Contracts, this Agreement or the Purchase Order(s) to the contrary, all Products shall be manufactured and assembled without the use of silicone or graphite. This prohibition, includes, but is not limited to, all equipment, components, gaskets, seals, lubricants, sealants, cleaning compounds, chemicals, primers or finished paints used in connection with the Products. If for any reason the Products cannot be manufactured and assembled without the use of silicone or graphite in conformance with this Section, then Supplier shall immediately notify J&R of that fact in writing within 24 hours of Supplier's determination of the same. Each Product manufactured or assembled pursuant to this Agreement shall be delivered with a certificate signed by an authorized representative of

Supplier which states that the "Products were manufactured and assembled 100% free from the use of silicone or graphite." Supplier's delivery of such certificate shall be a condition of payment hereunder.

7.0 INSURANCE.

7.1 Insurance. Supplier agrees to carry full insurance coverage for all activities reasonably connected with this Agreement in amounts and of types reasonably acceptable to J&R and in **strict** compliance with the Customer Contracts. Other than the workers' compensation policy, each insurance policy required hereunder shall name J&R and Customer as additional insureds/loss payees. All policies shall contain a provision whereby the Supplier agrees not to cancel or materially alter this coverage without at least thirty (30) days prior written notice to J&R. J&R shall not be liable for any premium associated with any such insurance policies. Supplier shall furnish J&R with Certificates of Insurance evidencing the above coverage within five (5) business days after signing this Agreement.

8.0 INTELLECTUAL PROPERTY RIGHTS

8.1 Intellectual Property Rights.

(a) J&R shall retain its rights in its J&R Intellectual Property made available, used or otherwise involved in Supplier's performance under this Agreement. For the purposes hereof, "J&R Intellectual Property" means all of J&R's patents, utility models, design rights, copyrights (including any right in computer software), license rights, database rights or topography rights (whether or not any of these are registered and including applications for registrations of any such thing) and any trade secrets, know-how or any right or form of protection of a similar nature or having equivalent or similar effect to any of those which may subsist anywhere in the world, as well as all trademarks, service marks, trade dress, trade or business name, and no license or other right to use is granted to Supplier other than the limited right to **[manufacture the Products / install the Paint System into the Customer facility]** in accordance with the terms of the Agreement.

(b) All J&R drawings, specifications, "J&R Intellectual Property" and Confidential Information owned by J&R shall remain the exclusive property of J&R, and Supplier shall use such property only for the purpose of performing under this Agreement for the benefit of J&R and fulfilling Supplier's obligations to J&R under this Agreement.

9.0 MISCELLANEOUS.

9.1 Force Majeure. In the event of any condition or contingency, existing or future, which is beyond the reasonable control and without the fault or negligence of either Party

("Event of Force Majeure") which prevents or delays a Party from performing hereunder, each Party shall be entitled to an appropriate and reasonable extension of time for performance. Events of Force Majeure shall include, without limitation, Acts of God, fire, floods, transport delays, labor disputes, and interference by military or civil authorities. If an Event of Force Majeure occurs, the Party whose performance is affected shall take reasonable measures to mitigate and minimize the effect of such Event and to continue with the performance of its obligations under this Agreement.

9.2 Entire Agreement. The terms and conditions herein contained constitute the entire agreement between the parties with respect to the subject matter of this Agreement and supersede any previous agreements and understandings, whether oral or written, between the parties hereto with respect to the subject matter hereof; except as stated in this Agreement, there are no other agreements, understandings, representations, or promises between the parties with respect to the subject matter of this Agreements.

9.3 Governing Law and Venue. This Agreement and any matters hereunder shall be governed by and construed in accordance with the internal laws of the State of Michigan, excluding its conflict of law rules. The parties hereto hereby consent to the exclusive jurisdiction and venue of the state and federal courts of Michigan situated in and nearest to Oakland County, Michigan with respect to the resolution of any suit, action or proceeding hereunder. In any such suit, action or proceeding, the non-prevailing Party shall pay to the prevailing Party all reasonable attorneys' and expenses incurred by the prevailing Party in such suit, action or proceeding. For purposes of the immediately preceding sentence, "attorneys' fees" shall include, without limitation: fees for services relating to the claim or dispute rendered prior to litigation (including investigation); at both trial and appellate levels; after judgment in seeking to obtain any execution or enforcement thereof; and in connection with any bankruptcy or similar proceeding.

The Parties hereto have caused this Supply Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

J&R:

SUPPLIER:

J&R DESIGN SYSTEMS, INC.,
a Michigan corporation

a _____ corporation

BY: _____
Its: _____

By: _____

Its: _____

