

FACTORING AGREEMENT

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OOOOO

FACTORING AGREEMENT entered into in the City of, Province of
(insert name of province), Canada.

BETWEEN: V1 (name of individual), (occupation), domiciled and
residing at (insert civic number and street name), in the City of
..... (insert name of city), Province of (insert name of
province), (postal code);

OR

V2 (corporate or business name), a legal person duly incorporated
pursuant to the Act (name of statute under which the corporation was
incorporated), having its principal place of business at (insert civic
number and street name), in the City of (insert name of city), Province of
..... (insert name of province), (postal code);

OR

V3 (corporate or business name), a legal person duly incorporated
pursuant to the Act (name of statute under which the corporation was
incorporated), having its head or registered office at (insert civic number
and street name), in the City of (insert name of city), Province of
..... (insert name of province), (postal code), represented by
..... (name of representative), its (title of representative),
duly authorized for the purposes hereof;

OR

V4 (corporate or business name), a legal person, duly incorporated
pursuant to the Act (name of statute under which the corporation was
incorporated), having its head or registered office at (insert civic number
and street name), in the City of (insert name of city), Province of
..... (insert name of province), (postal code), and duly
registered under number (.....) in accordance with (insert
name of statute pursuant to which the entity is registered), represented by
(name of representative), its (title of representative), duly authorized for
the purposes hereof as he/she so declares [or as indicated in the resolution of the [sole
director or board of directors]];

HEREINAFTER REFERRED TO AS “MERCHANT”;

AND: (identification of FACTOR);

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| MERCHANT | FACTOR |
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HEREINAFTER REFERRED TO AS “FACTOR”;
HEREINAFTER COLLECTIVELY REFERRED TO AS THE “PARTIES”.

RECITALS [WITNESSETH]

THE PARTIES MAKE THE FOLLOWING REPRESENTATIONS:

MERCHANT operates a business (*description of the activities of the company*) which, in the course of its activities, sells products and services to its clientele;

MERCHANT, in order to finance its activities, requires working capital credit;

FACTOR is engaged in the business of granting working capital credit to manufacturing businesses in exchange for the assignment of customer accounts generated by the latter;

MERCHANT wishes to assign its customer accounts to FACTOR which agrees in exchange to grant working capital credit to MERCHANT;

The PARTIES wish to set out in writing the terms of their agreement regarding such purpose;

It is the intent of the PARTIES that their agreement be construed as a contract by mutual agreement.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

0.00 INTERPRETATION

0.01 Terminology

Unless otherwise indicated, capitalized words and expressions appearing in the Agreement shall be interpreted or construed as follows:

0.01.01 Activities

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| MERCHANT | FACTOR |
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means (identify business sector) of MERCHANT;

0.01.02 Agreement

means this agreement including its recitals and schedules, any related or ancillary agreement or document identified therein, as well as any amendment made thereto from time to time by the PARTIES in compliance with Section 12.05; the terms “herein”, “hereof”, “hereto”, “herewith”, “hereunder”, “hereby” and other similar terms, when used in the Agreement, shall generally refer to the agreement as a whole rather than to a specific part thereof, unless otherwise indicated in the text;

0.01.03 Approved Customer Account

means a Customer Account:

- (a) which, along with all other Customer Accounts of a Debtor, is within the Authorized Limit set for such Debtor, or which was approved by FACTOR in compliance with the provisions hereof; and
- (b) in relation to which MERCHANT has complied with all of its obligations regarding the supply of goods, materials or services; and
- (c) which is not listed in Schedule 0.01.21 hereof;

0.01.04 Associate of MERCHANT

means a replacement, a director, a shareholder or an employee of MERCHANT;

0.01.05 Authorized Limit

means the maximum amount of overdue Customer Accounts allowed to a Debtor which FACTOR undertakes to purchase pursuant hereto and which FACTOR may establish from time to time at its sole discretion. If no such limit has been established by FACTOR, there is no authorized limit;

0.01.06 Bank Day

means all days during which financial institutions are open for business;

0.01.07 Breach

means any misrepresentation, inaccuracy, error, omission, non-compliance, infringement, failure, claim or other circumstance relating to a representation, warranty, covenant, obligation or other provision of the Agreement leading to:

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| MERCHANT | FACTOR |
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- (a) any infringement of the Agreement; or
- (b) any claim by any Person or other occurrence or circumstance which (i) is inconsistent with a covenant, obligation or other provision of the Agreement and (ii) causes damage to such Person;

0.01.08 Buyback

means the obligation of MERCHANT to proceed with the buyback of a Customer Account, at FACTOR’s request, as provided in Subsection 9.05.08 of the Agreement;

0.01.09 Change in Control

means, in relation to any PARTY to the Agreement whose legal status is that of a business corporation, any one of the following events:

the direct or indirect acquisition by any Person or entity of securities of such a corporation representing more than FIFTY PERCENT (50%) of the corporation’s voting rights;

- (a) an agreement for the sale or disposition of all or substantially all of such a corporation’s assets;
- (d) a reorganization of such corporation leading to an assignment of a PARTY’s rights in the Agreement to a related Person;
- (e) a merger of such a corporation; or
- (f) the approval by the shareholders of such a corporation of a plan for its complete liquidation;

0.01.10 Confidential Information

means any commercial, technical, scientific, financial, legal, personal or other information disclosed by a PARTY relating to the disclosing PARTY’s business activities, strategies or opportunities, intellectual property, suppliers, customers, financial condition or employees which, at the time of disclosure, is designated as confidential, is disclosed in confidence, or would be understood by the receiving PARTY, exercising reasonable business judgment, to be confidential, but excludes:

information known to the receiving PARTY before the date on which it is received;

- (a) information known by the public or available to the public before the date on which it is received;

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| MERCHANT | FACTOR |
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- (b) information which becomes known by or available to the public after the date on which it is received and which does not result from a breach of confidentiality on the part of the receiving PARTY;
- (c) information received at any time by a Person not bound to one of the PARTIES by an undertaking of confidentiality with regard to such information;
- (d) information independently produced by the receiving PARTY;
- (e) personal information provided by an individual when such information is being used for the purpose for which it has been previously disclosed or any other purpose permitted by Law;

0.01.11 Customer Account

means any account receivable by MERCHANT pursuant to an Agreement entered into by a Debtor and MERCHANT for the supply of goods, material, services or any combination thereof;

0.01.12 Debtor

means a Person to whom MERCHANT supplies goods, material or services;

0.01.13 Delivery

means,

- (a) in the case of a sales contract for the delivery of goods or material, the delivery of goods or material to the Debtor or to the agent of the Debtor, as specified in Sections 1717 and following of the *Civil Code of Quebec*;
- (b) in the case of a service contract, the performance of such service; or
- (c) in the case of a sales contract for delivery of goods or material and for services, the last act performed, be it the delivery of goods or material or the performance of services provided for in the contract;

0.01.14 Encumber or Encumbrance

encumber means to create or grant an encumbrance and encumbrance means a legal cause of preference, a dismemberment of ownership rights, an ownership modality, a restriction on the right to sell or a security interest;

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| MERCHANT | FACTOR |
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0.01.15 Event of Default

refers to any of the following events:

if a PARTY fails to make any of the payments (of principal or interest) according to the timetable set and if it fails to cure such default within (.....) days following receipt of notice to such effect;

- (a) if any of the security mentioned in the Agreement is reduced in value, forfeited or expires before the obligation it guarantees is performed;
- (b) if a PARTY, in its interim or annual financial statements, does not show a working capital having a ratio of at least 1:1;
- (c) if the operations of a PARTY are interrupted for any reason whatsoever during (.....) consecutive days or more;
- (d) if a PARTY assigns its property for the benefit of its creditors or involuntarily liquidates its property;
- (e) if a PARTY becomes insolvent or if a petition in bankruptcy is instituted against it and a final judgment is handed down confirming its bankruptcy;
- (f) if a PARTY sells, assigns or transfers its rights in the Agreement, in whole or in part, without having obtained the prior written consent of
- (g) if a PARTY does not comply with one or more of its undertakings pursuant to the Agreement or to any ancillary agreement and such default is not cured within (.....) following receipt of a notice of default from
- (h) if a PARTY (or any of its Subsidiaries) is subject to a Change in Control;

0.01.16 Force Majeure

means any event beyond the control of a PARTY which could not have been reasonably foreseen and against which it could not have protected itself such as, without limiting the generality of the foregoing, natural disasters, epidemics, fires, accidents, acts of war (whether declared or not), insurrections, riots, acts of terrorism, wildcat strikes, partial or total work stoppages or slowdowns, lock-outs, changes in market conditions, power or communications breakdowns, interventions by civil or military authorities, compliance with any orders of governmental authorities, courts or tribunals or public authorities;

0.01.17 Fundamental Provisions

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| MERCHANT | FACTOR |
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means, in the opinion of the PARTIES, Parts of the Agreement;

0.01.18 Law

means a federal, provincial, state, municipal or foreign law, any regulation, ordinance, code, guideline, policy, or rule of civil or common law, any trade amendment thereto and any judicial or administrative order, consent, decree or judgment and may also include an international treaty or trade agreement, and any reference to a repealed statute shall be deemed to be a reference to such a statute and its related regulations as they existed prior to said statute being repealed;

0.01.19 Legal Entity

means a company created pursuant to the *Company Act* or a corporation created pursuant to the *Canadian Business Corporations Act*;

0.01.20 Legal Representatives

means, in respect of each PARTY and, as the case may be, its authorized assignee, when a natural person, the executors or administrators of his estate, his legal heirs, legatees, successors or mandataries and, when a legal person, its directors, officers, shareholders, members, employees and representatives;

0.01.21 Non-approved Customer Accounts

means any Customer Account which is not an Approved Customer Account or which is listed in Schedule 0.01.21 hereof;

0.01.22 PARTY

refers to a signing party to the Agreement and includes its Legal Representatives;

0.01.23 Person

means, as the case may be, a natural person, partnership, joint-stock company, business corporation, cooperative, association, labour union, trust or any other organization whether incorporated or unincorporated, or any public authority of foreign, federal, provincial, territorial or municipal jurisdiction which is not a party to the Agreement, and includes their Legal Representatives;

0.01.24 Prime Rate

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| MERCHANT | FACTOR |
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