

INDEMNITY AGREEMENT

This INDEMNITY AGREEMENT (this “Indemnity Agreement”), dated _____, 200____ is made by and between **MOTION INDUSTRIES, INC.**, a Delaware corporation (hereinafter “MOTION”) and _____, a _____ [state] corporation/ limited liability company/ partnership (*circle one*) (hereinafter “SUPPLIER”).

WHEREAS, MOTION, or its parent company and affiliated entities have purchased, or at some future time may purchase, goods and products (the “Products”) from SUPPLIER; and

WHEREAS, MOTION desires to be indemnified from, defended against, and held harmless from certain liability, losses, damages, costs, or expense which it may sustain or incur; and

WHEREAS, SUPPLIER has agreed to indemnify, defend, and hold MOTION harmless as herein provided;

NOW, THEREFORE, for and in consideration of the purchase by MOTION of goods and products from SUPPLIER and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending legally to be bound hereby, SUPPLIER and MOTION hereby agree as follows:

1. INDEMNIFICATION

SUPPLIER will protect, defend and indemnify MOTION, its parent company, divisions, subsidiaries and affiliated business entities and their respective employees, agents, officers, and directors (together, the “Indemnified Parties”) from and hold them harmless against all liability, losses, damages, costs or expenses of any nature, including without limitation, reasonable attorney’s fees, which they may at any time suffer, incur, or be required to pay resulting from or arising out of (i) any claim that the Products are defective, negligently designed or manufactured in any manner, or otherwise determined to be the cause of injury or death to persons, or damage to property, or both; (ii) any claim that the Products or the manufacture, sale or labeling of the Products fails to comply with any governmental requirement, or the labeling on any Products, or on or within the packaging for any Products (including any instructions or warnings thereon), is inadequate in any manner; (iii) any claim that the Products should have been recalled pursuant to any governmental requirement; (iv) SUPPLIER’s negligence or willful misconduct in supplying the Products; or (v) any claim, action, suit or proceeding by any person, firm, governmental agency or corporation resulting from or arising out of (i) through (iv) above. This indemnification shall not apply if and to the extent that such injury, death or damage is directly caused solely by any of the following: (a) failure on the part of MOTION to furnish instruction materials provided by SUPPLIER for inclusion in packages in which Products are sold; (b) sale of Products by MOTION without packaging where packaging is provided by SUPPLIER and where such packaging contains the required labeling and instructions on the use of the Product; (c) alteration of any Products by MOTION; (d) negligent installation or repair of Products by MOTION; or (e) willful misconduct of MOTION.

2. INTELLECTUAL PROPERTY INFRINGEMENT

SUPPLIER will protect, indemnify, defend and hold the Indemnified Parties harmless from and against all liability, losses, damages, costs or expenses which they may at any time suffer, incur or be required to pay by reason of any claim, action, suit, or proceeding that may be brought for damages or injunctive relief based upon any actual or alleged violation or infringement of any patent, trademark, copyright or other intellectual property right by any Product sold by SUPPLIER to MOTION. Should any Products become the subject of such a claim of infringement, MOTION shall permit SUPPLIER, at its option and expense, either to procure for MOTION the right to continue selling Products, to replace or modify Products so that they become non-infringing, or to require return of Products in exchange for full credit. SUPPLIER shall have no liability to MOTION with respect to any claim of infringement of any such

patent, trademark, copyright or other intellectual property right based solely upon (a) the combination by MOTION of Products sold by SUPPLIER with equipment or devices not sold by SUPPLIER; or (b) Products supplied according to a design other than that of SUPPLIER and which is required by MOTION.

3. **LEGAL ACTION**

MOTION will give SUPPLIER prompt notice of any claims, actions, suits, or proceedings instituted against MOTION with respect to the subject of the indemnity contained herein, and shall provide to SUPPLIER reasonable information and assistance in the defense thereof. SUPPLIER agrees at its own expense to defend against any such claims, actions, suits or proceedings, rightfully or wrongfully instituted with legal counsel reasonably acceptable to MOTION; provided, however, that SUPPLIER shall not settle any claim, action, suit or proceeding which imposes upon MOTION any obligation, or in any way prejudices the rights of MOTION, other than as set forth herein, without MOTION's written consent. SUPPLIER agrees to satisfy any and all judgments which may be rendered against the Indemnified Parties or SUPPLIER with respect thereto. Notwithstanding the foregoing, MOTION shall have the option to employ attorneys, at the sole cost and expense of SUPPLIER, to defend any claim, action, suit, or proceeding in the event SUPPLIER fails to assume such defense. SUPPLIER agrees to extend the terms of this indemnity to claims made against any party who has acquired any of the Products in the course of normal commercial sales, whether or not MOTION is the direct seller to such party.

4. **REMEDIES**

In the event SUPPLIER refuses to defend any claim, action, suit or proceeding, or refuses to satisfy any settlement or judgment pursuant to the terms of this Indemnity Agreement, MOTION shall be entitled to retain from payments otherwise due to SUPPLIER such amounts as shall be reasonably considered necessary to satisfy any claim, action, suit, or proceeding for damages that fall within SUPPLIER's indemnity obligations set forth herein, until such claim, action, suit, or proceeding has been settled and satisfactory evidence to such effect has been furnished to MOTION.

In any litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party will be awarded reasonable attorney fees, together with any costs and expenses, to resolve the dispute and to enforce the final judgment.

5. **LIABILITY INSURANCE**

During the term of the business relationship between SUPPLIER and MOTION, SUPPLIER will procure and maintain in full force and effect a product liability insurance policy or policies, naming MOTION as an additional named insured, covering all goods and products supplied to MOTION by SUPPLIER under this Indemnity Agreement. Such policy or policies shall be written by a reputable insurance company or companies in the amount of not less than \$5,000,000, or at the levels requested by MOTION if warranted by the nature or scope of the business relationship of the parties, and shall be on an occurrence basis. Such policy shall contain a requirement that MOTION will be notified of any proposed cancellation or modification at least thirty (30) days prior to the effective date of such cancellation or modification. Upon execution of this Agreement, and on an annual basis thereafter, SUPPLIER shall furnish to MOTION certificates of insurance evidencing compliance with the foregoing requirements. Maintenance of such insurance and the performance by SUPPLIER of its obligations under this paragraph shall not relieve SUPPLIER of liability under the indemnity set forth in this Indemnity Agreement.

6. **BENEFIT**

This Indemnity Agreement shall be binding upon and shall inure to the benefit of the parties, their legal representatives, successors and assigns.

7. **TERM; TERMINATION**

This Indemnity Agreement shall continue in full force and effect while SUPPLIER is selling any Products to MOTION. This Indemnity Agreement may be terminated by any party upon ninety (90) days written notice; provided, however, that such termination shall only be effective upon the simultaneous termination of any supply agreement or other supply arrangement between MOTION and SUPPLIER. Termination shall not relieve SUPPLIER from liability assumed hereunder prior to such termination.

8. **MISCELLANEOUS**

This Indemnity Agreement constitutes the entire agreement of the parties with respect to the matters hereto. The terms set forth in this Indemnity Agreement supersede, amend, alter and control any similar or related terms set forth in contracts, agreements or other documents or oral understandings. No related terms set forth in any contracts, agreements, invoices or purchase orders exchanged between the parties or their affiliates at any time will have any effect on the terms set forth in this Indemnity Agreement.

This Indemnity Agreement shall be governed by the laws of the State of Alabama, without regard to conflict of law principles. No amendment, waiver or modification of the provisions hereof shall be valid unless in writing and signed by the parties hereto and then only to the extent therein set forth. Each party agrees to perform all further acts and execute, acknowledge, and deliver any documents reasonably necessary, appropriate or desirable, to carry out the provisions of this Indemnity Agreement. Every covenant, term, and provision of this Indemnity Agreement shall be construed simply according to its fair meaning and not strictly for or against any party. If any one or more of the provisions of the Indemnity Agreement shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions of the Indemnity Agreement will not in any way be affected or impaired thereby. If any provision of this Indemnity Agreement is unenforceable for any reason whatsoever, such provision shall be appropriately limited and given effect to the extent that it may be enforceable. This Indemnity Agreement may be signed via facsimile and in one or more counterparts, each of which when executed shall be deemed an original, and all of which taken together shall constitute one and the same document.

Each party represents that the person executing this Indemnity Agreement has the power and authority to bind such party to the obligations herein.

[Signatures Appear on Next Page]

IN WITNESS WHEREOF, the parties hereto have executed this Indemnity Agreement the day and year first written above.

MOTION INDUSTRIES, INC.

By: _____
Name: _____
Title: _____

(Corporate Seal)

_____ (SUPPLIER)

By: _____
Name: _____
Title: _____

(Corporate Seal)