



Revision 3  
December 21, 2015

This document, together with any other document that incorporates this document by reference (the "Referencing Document"), constitutes the Agreement between the Parties.

## 1. BACKGROUND OF AGREEMENT

1-1. The Company designs, manufactures, markets and sells various light emitting diode ("LED") lighting products ("Company Products") in the United States and internationally.

1-2. The Company desires to obtain the services of Distributor/Dealer and Distributor/Dealer desires to provide services to the Company in accordance with the terms, conditions and covenants set forth in this Agreement. Accordingly, in consideration of the mutual covenants and undertakings set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

## 2. APPOINTMENT AND ACCEPTANCE

2-1. The Company hereby appoints Distributor/Dealer as one of the Company's Distributor/Dealers to solicit and distribute orders for Company Products.

2-2. Distributor/Dealer shall have the non-exclusive right to solicit and distribute orders for Company Products in the Territory as may be defined in the Referencing Document. If the Territory is not defined in the Referencing Document, the Territory shall be defined as the United States of America. Distributor/Dealer has no right to solicit or distribute orders for Company Products in any other geographic territory.

2-4. Distributor/Dealer hereby accepts its appointment hereunder.

## 3. TERM

3-1. This Agreement shall remain in effect for the Term as defined in the Referencing Document.

## 4. ORDERS AND PRICING

### 4-1. Distributor/Dealer's Pricing Schedule

Distributor's cost to purchase Company Products from Company shall be defined in the Referencing Document. Dealer's cost to purchase Company Products shall be defined by the respective Distributor. The Company shall have the right, at its sole discretion, to introduce new Company Products, modify the design or construction of any existing Company Products, or discontinue any or all of the existing Company Products at any time, without incurring any obligation or liability to Distributor/Dealer whatsoever.



#### 4-2. Purchase Orders

Distributor shall request a purchase of Company Products from Company by providing Company with a written purchase order for such products. Dealer shall request a purchase of Company Products from its Distributor. Such purchase order shall list a unit price for each part number requested and such unit price shall be consistent with the Distributor's Pricing Schedule for all Company Products to be purchased by Distributor. The purchase order shall include a requested ship date, a total purchase order price and any other information that may be helpful to Company in fulfilling the purchase order. In the event that Distributor's purchase order(s) do not conform to the terms of this Agreement, the terms of this Agreement shall take precedence and any such non-conforming terms of Distributor's purchase order shall be deemed null and void.

#### 4-3. Acceptance of Purchase Orders

Company shall provide written notice of Company's receipt and acceptance, or rejection, of Distributor's purchase orders within ten (10) days of receipt of such purchase orders ("P.O. Acceptance Period"). Unless seasonably rejected within the P.O. Acceptance Period, Company shall be deemed to accept each of Distributor's purchase orders and agrees to use best efforts to fulfill such orders during the course of performance of this Agreement.

#### 4-4. Cancellation/Deferral of Purchase Orders

Distributor may cancel or defer any purchase orders not previously accepted by Company. Accepted purchase orders may not be cancelled or deferred, except upon the approval of such a request by Company, which may be granted or denied in Company's sole discretion.

#### 4-5. Payment

Once each purchase order submitted by Distributor is accepted by Company, Distributor shall be obligated to tender payment to Company for the Purchase Price of any such purchase order and Company shall not be obligated to fulfill such purchase order until payment for such purchase order has been verified by Company. Tender of payment is sufficient when made in U.S. dollars by wire transfer or other reasonable method. Distributor shall be further obligated to tender payment to Company for all taxes, duties, transportation and other costs associated with such purchase order ("Product Costs"). In the event that any government entity in the Territory shall require the withholding of any sums, however designated in relation to such purchase order, such sums ("Government Costs") shall be payable by Distributor to Company. Company may, from time to time, separately bill Distributor for any Product Costs and Government Costs that may be incurred by Company.

### 5. RESPONSIBILITIES OF DISTRIBUTOR/DEALER

Distributor/Dealer shall satisfy the following responsibilities at all times during the Term of this Agreement, or Subsequent Term(s) of this Agreement:

A. Distributor/Dealer and/or its designated sales representatives shall conduct themselves in a manner consistent with the high image, reputation and credibility of the Company and Company Products, and shall engage in no activities which reflect adversely on the Company or Company Products;

B. Distributor/Dealer and/or its designated sales representatives shall use best efforts to solicit orders for Company Products and shall promote the sale of Company Products in a diligent and aggressive manner;



C. Distributor/Dealer at no time shall engage in any unfair trade practices with respect to the Company or Company Products, and shall make no false or misleading representations with respect to the Company or Company Products. Distributor/Dealer shall refrain from communicating any information with respect to guarantees or warranties regarding Company Products, except such as are expressly authorized by the Company or are set forth in the Company's literature or other promotional materials;

D. Distributor/Dealer shall not use the Company's trade names or trademarks or any names closely resembling same as part of Distributor/Dealer's corporate or business name, or in any manner which the Company, at its sole discretion, may consider misleading or otherwise objectionable;

E. Distributor/Dealer shall not have, nor shall Distributor/Dealer hold itself as having, any right, power or authority to create any contract or other obligation, either express or implied, on behalf of, in the name of, or otherwise binding on the Company; and

F. Distributor/Dealer shall comply with all applicable laws, rules and regulations that may be applicable in the Territory in performing its responsibilities hereunder.

## 6. RESPONSIBILITIES OF COMPANY

6-1. Company shall satisfy the following responsibilities at all times during the Term of this Agreement:

A. Company shall provide Company Products and related Company services that are reasonably competitive with those products and services offered by other sources with respect to quality, price and design concept. Company shall adequately support the sale of Company Products with such trade and consumer advertising and such other promotional assistance as is reasonably consistent with the standard in the industry.

B. Subject to Section 4-3 of this Agreement, Company shall accept Distributor purchase orders for Company Products and agrees to use best efforts to fulfill such orders during the Term of this Agreement.

## 7. RELATIONSHIP OF THE PARTIES

Distributor/Dealer at all times shall be considered an independent contractor with respect to its relationship with the Company. Nothing contained in this Agreement shall be deemed to create the relationships of employer and employee, master and servant, franchisor and franchisee, agent and principal, partnership or joint venture between the Parties.

## 8. DELIVERY

8-1 "Merchantability" means to pass without objection in trade under the terms of this Agreement; be fit for the ordinary purposes for which goods under this Agreement are used; run, within the variations permitted by this Agreement, of even kind, quality and quantity within each unit and among all units involved; and be adequately contained, packaged, and labeled as this Agreement may require.

8-2 Single Delivery

Delivery of Company Products from Company to Distributor shall not be tendered in lots, but rather shall



be tendered as a single delivery of all Company Products requested in Distributor purchase order. Notwithstanding the foregoing, Company may tender delivery of Company Products specified in multiple purchase orders, so long as the whole of each such order is tendered in such single delivery and so long as Company satisfies the delivery schedule of Section 8-4 without delay for each such order being fulfilled.

#### 8-3 Place for Delivery

Company shall tender Distributor delivery of all Company Products to a carrier selected by the Company as follows:

#### F.O.B.

JST Performance, LLC  
d/b/a Rigid Industries  
779 North Colorado Street  
Gilbert, Arizona 85233

Company shall bear the risk and expense of placing such Company Products in the possession of such a carrier and shall make a contract for their transportation, at Distributor's expense, with such a carrier as may be reasonable in the ordinary course of business. Distributor agrees that title to such Company Products and, therefore, liability for loss, damage, or any other form of conversion of Company Products, remains with Distributor throughout the time period that such goods are in the carrier's possession, including the time period before Distributor acceptance of Company Products.

#### 8-4 Delivery Schedule

Company shall tender delivery of all Company Products requested in one or more Distributor purchase order(s) within thirty (30) days from Company's verification of payment from Distributor for such purchase order(s).

#### 8-5 Receipt and Inspection by Distributor

Distributor shall provide written notice of receipt of all Company Products delivered to Distributor. Distributor shall inspect Company Products for conformance to Merchantability within ten (10) days of such receipt and shall provide written notice to Company of Distributor's acceptance, or rejection, of such received goods. Notwithstanding Company's express warranty of Merchantability of Company Products, Distributor shall be deemed to have waived such warranty of Merchantability and shall be deemed to have accepted such received goods, as is, if Distributor fails to provide written notice of rejection of such received goods within ten (10) days of such receipt.

#### 8.6 Rejection by Distributor

If received goods are rejected by Distributor, such rejected goods may be returned, but only after Distributor has supplied a list of stated non-conformance of such rejected goods and only after Company has been given a period of ninety (90) days ("Company's Cure Period") within which to either cure such non-conformance, whether by conforming tender or other means, or provide reasons why such goods should have been accepted as conforming goods.

#### 8.7 Returns

All Company Products rejected by Distributor/Dealer may only be returned subsequent to Distributor/Dealer's retrieval of a Return Material Authorization (RMA) number, which may be retrieved from Company's warranty claims department. Distributor/Dealer shall return any such rejected goods in their original shipping cartons with the RMA number prominently displayed on the outside of such shipping



cartons. Company may refuse to accept any such returned goods that do not bear an authorized RMA number.

Company shall have the right to inspect and cure such returned goods during Company's Cure Period. Upon seasonable return of rejected goods and upon Company's acceptance of Distributor/Dealer's rejection, title to such rejected goods shall transfer from Distributor/Dealer to Company.

## 9. WARRANTY

9-1 "Defects" or "Defective" means defects in material and workmanship of Company Products not caused by neglect, abuse, misuse, unauthorized repair or installation, or disassembly of Company Products.

9-2 Company warrants to Distributor/Dealer that Company Products will be free from Defects in accordance with Company's warranty policy found at <http://www.rigidindustries.com/about/warranty>. All Company Products returned to Distributor/Dealer by Distributor/Dealer's end-user customers as being purportedly Defective ("Returned Products") shall be returned to Company, at Distributor/Dealer's expense, for inspection by Company's warranty claims department. Warranty may be voided, at Company's sole discretion, if Returned Products are found to be used in an application for which the Returned Products were not intended, modified without Company's written approval and/or subjected to unusual physical or electrical stress.

## 10. CONFIDENTIAL INFORMATION

10-1 During the Term of this Agreement, it is contemplated that each Party may disclose to the other or may develop during the course of performance of this Agreement proprietary information. All information disclosed by a Party to the other that is identified as confidential at the time of disclosure and all information developed during performance under this Agreement shall be "Confidential Information."

Each Party shall retain the other Party's Confidential Information in confidence and not disclose any such Confidential Information to a third party without the prior written consent of the Party providing such information and shall use the other Party's Confidential Information only for the purposes of this Agreement, which obligation shall terminate five (5) years after the termination of this Agreement or addendum(s) thereto.

10-2 The obligations of confidentiality shall not apply to Confidential Information which the receiving Party can show by documentary evidence:

- A. was known to the receiving Party or generally known to the public prior to its disclosure hereunder;
- B. subsequently becomes known to the public by some means other than a breach of this Agreement; or
- C. is subsequently disclosed to the receiving Party by a third party having a lawful right to make such disclosure.

10-3 Specific aspects or details of Confidential Information shall not be deemed to be within the public domain merely because the Confidential Information is embraced by general disclosures in the public



domain. In addition, any combination of Confidential Information shall not be considered in the public domain merely because individual elements thereof are in the public domain unless the combination and its principles are in the public domain.

## 11. INTELLECTUAL PROPERTY

### 11-1 Background Rights

The Company retains ownership of all information and materials in its possession as of the Effective Date and of any intellectual property rights therein (“Background Rights”).

### 11-2 No Implied License

None of the rights granted to Distributor/Dealer by Company pursuant to this Agreement shall be construed as providing a license of any sort for the discovery, development, manufacture, use, sale, offer for sale, export, and/or import of Company Products or any future products developed by the Company unless otherwise provided by this Agreement.

### 11-3 Collaboration Rights

All conceptions, ideas, innovations, discoveries, inventions, compositions, biological material, and methods, whether or not patentable or susceptible to any other form of legal protection, that are made or derived by the Company and/or the Distributor/Dealer during performance under this Agreement and all rights therein shall be owned by the Company.

### 11-4 License to Intellectual Property

Company hereby grants to Distributor/Dealer, a revocable, world-wide, fully paid, royalty-free, non-exclusive license to the extent that Company has the power to so grant, to use Company’s copyright-protected material, including the content displayed on Company’s website and Company Product documentation (“Copyright Material”), and Company’s registered and/or non-registered trademarks, trade names and Company logos (“Trademarks”), during the Term of this Agreement, or Subsequent Term(s) of this Agreement.

### 11-5 Use of Licensed Intellectual Property

#### A. Trademarks

Whenever Distributor/Dealer uses any of the Trademarks, the Trademarks shall be displayed in accordance with the specifications and directions furnished by the Company to the Distributor/Dealer from time to time. For the use of non-registered Trademarks, Distributor/Dealer shall designate such use by annotating such Trademarks using the “TM” subscript. For the use of registered Trademarks, Distributor/Dealer shall designate such use by annotating such Trademarks using the “®” superscript. Distributor/Dealer shall clearly indicate Company’s ownership of the Trademarks whenever and wherever the Trademarks are used by the Distributor/Dealer.

Distributor/Dealer acknowledges the Company’s exclusive right, title and interest in the Trademarks and will not at any time do, or cause to be done, any act or thing contesting or in any way impairing or tending to impair any part of such right, title and interest. Specifically, but without limitation, Distributor/Dealer shall at no time adopt or use any word or mark that is likely to be similar to or confusing with the Trademarks. Distributor/Dealer shall not in any manner represent that it has ownership of the Trademarks and





Distributor/Dealer acknowledges that use of the Trademarks will not create in the Distributor/Dealer's favor any right, title

or interest in or to the Trademarks, but all uses of the Trademarks by Distributor/Dealer, including any goodwill generated by such use, will inure to the benefit of the Company. Company may, at its sole discretion, file trademark registration applications and obtain trademark registrations for the Trademarks in the Territory.

#### B. Copyright

Distributor/Dealer shall obtain prior written approval from Company to use any Copyright Material or derivative works thereof, including, but not limited to, the use of Company's website material or derivative works thereof. Distributor/Dealer shall provide to Company any and all information that may result from Distributor/Dealer's use of Copyright Material or derivative works thereof, including but not limited to, statistical information that may be associated with Distributor/Dealer's website, such as website page hits, sales leads generation and any other information that may be deemed relevant at Company's sole discretion.

## 12. APPLICABLE LAW, FORUM SELECTION AND CONSENT TO JURISDICTION

This Agreement shall be governed and construed in all respects in accordance with the laws of the state of Arizona exclusive of its conflict of laws principles. Any litigation instituted by Distributor/Dealer against the Company pertaining to any breach or termination of this Agreement, or pertaining in any other manner to this Agreement, must be filed by Distributor/Dealer before a court of competent jurisdiction in Arizona and Distributor/Dealer hereby consents irrevocably to the jurisdiction of the Arizona courts over its person. Service of process may be made upon Distributor/Dealer as provided by Arizona law, or shall be considered effective if sent by Certified or Registered Mail, Return Receipt Requested, Postage Prepaid.

## 13. REPRESENTATIONS

13-1 Each Party hereby represents and warrants to the other Party that it has full authority and power to enter into this Agreement and to grant the rights, covenants, and licenses specified herein, that it has secured any and all necessary approvals, permits, or consents deemed necessary or advisable for the consummation of the transactions contemplated hereby, that it is not a party to and shall not become a party to any agreement with another that is inconsistent with this Agreement, and that upon execution by the Party of this Agreement shall immediately be a valid and binding obligation of the Party, enforceable in accordance with its terms.

13-2 Nothing in this Agreement shall be construed as:

A. a warranty or representation as to the validity, enforceability, or scope of any patent or patent application;

B. a warranty or representation that anything made, used, sold, or otherwise disposed of pursuant to this Agreement is or shall be free from infringement of patents or other intangible rights of third parties;



C. a requirement that either Party shall file any patent application, secure any patent, or maintain any patent in force;

D. an obligation to bring or prosecute actions or suits against third parties for infringement of any patent;

E. an obligation to furnish any manufacturing or technical information except as specifically provided herein;

F. granting any right to use in any way the name of, or any trademark of, Company except as specifically provided herein; or

G. granting by implication, estoppel, or otherwise, any license or right under patents, patent applications, trademarks, trade secrets, know-how, copyrights, or other intangible rights of Company except as specifically provided herein.

13-3 IN NO EVENT SHALL COMPANY'S TOTAL LIABILITY HEREUNDER EXCEED THAT AMOUNT PAID TO COMPANY BY DISTRIBUTOR/DEALER FOR COMPANY PRODUCTS. COMPANY HEREBY RENOUNCES ANY AND ALL WARRANTIES, GUARANTEES, OBLIGATIONS, LIABILITIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO COMPANY PRODUCTS, AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF FITNESS FOR ANY PURPOSE AND (a) ANY OBLIGATION, RIGHT, LIABILITY, CLAIM, OR REMEDY FOR (1) LOSS OF USE, REVENUE, OR PROFIT OR ANY OTHER DAMAGES, (2) INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS, AND (3) INCIDENTAL OR CONSEQUENTIAL DAMAGES.

#### 13-4 Indemnification

Notwithstanding the foregoing, the Parties hereby indemnify each other as follows:

A. Company shall hold Distributor/Dealer harmless from and shall indemnify Distributor/Dealer for any claim, liability, loss, cost expense or damage, including litigation costs and attorney's fees, which is in any manner caused by Company's performance pursuant to the Agreement;

B. Distributor/Dealer shall hold Company harmless from and shall indemnify Company for any claim, liability, loss, cost expense or damage, including litigation costs and attorney's fees, which is in any manner caused by Distributor/Dealer's performance pursuant to the Agreement.

#### 14. MISCELLANEOUS

14-1. Distributor/Dealer may not assign, transfer or sell all or any of its rights under this Agreement or addendum(s) thereto (or delegate all or any of its obligations hereunder), without the prior written consent of the Company. If a sale or other transfer of Distributor/Dealer's business is contemplated (whether by transfer of stock, assets or otherwise), Distributor/Dealer shall notify the Company in writing no less than thirty (30) days prior to effecting such transfer, but such notice shall not obligate the Company in any manner. The Company may assign this Agreement only to a parent, subsidiary or affiliated firm or to another entity in connection with the sale or other transfer of all or substantially all of its business assets.





Subject to these restrictions, the provisions of this Agreement or addendum(s) thereto, shall be binding upon and shall inure

to the benefit of the Parties, their successors and permitted assigns.

14-2. The waiver by either Party of any of its rights or any breaches of the other Party under this Agreement, or addendum(s) thereto, in a particular instance shall not be construed as a waiver of the same or different rights or breaches in subsequent instances. All remedies, rights, undertakings and obligations hereunder shall be cumulative, and none shall operate as a limitation of any other remedy, right, undertaking or obligation hereunder.

14-3. All notices and demands of any kind which either the Company or Distributor/Dealer may be required or desire to serve upon the other under the terms of this Agreement, or addendum(s) thereto, shall be in writing and shall be served by personal delivery, by mail, by courier or by email, at the addresses as may be designated hereafter by the parties in writing. If by personal or electronic delivery, service shall be deemed complete upon such delivery. If by mail or courier, service shall be deemed complete upon mailing or placement with courier.

14-4. In the event that any of the provisions of this Agreement, or addendum(s) thereto, or the application of any such provisions to the Parties hereto with respect to their obligations hereunder shall be held by a court of competent jurisdiction to be unlawful or unenforceable, the remaining portions of this Agreement, or addendum(s) thereto, shall remain in full force and effect and shall not be invalidated or impaired in any manner.

14-5. Each party to this Agreement acknowledges that no written or oral representations, inducements, promises or agreements have been made which are not embodied herein. IT IS THE INTENTION AND DESIRE OF THE PARTIES THAT THIS AGREEMENT NOT BE SUBJECT TO IMPLIED COVENANTS OF ANY KIND. Except as otherwise provided in this Agreement, this Agreement may not be amended, modified or supplemented, except by a written instrument signed by both Parties hereto.

14-6. This Agreement may be executed in multiple counterparts, each of which may be deemed enforceable without production of the others.

14-7. Except for the obligation to pay money properly due and owing, either Party shall be excused from any delay or failure in performance hereunder caused by reason of any occurrence or contingency beyond its control, including, but not limited to, an act of God, earthquake, labor disputes, riots, war, civil insurrection, expropriation, novelty of product manufacture or other unanticipated manufacturing problems, governmental requirements, inability to secure materials on a timely basis, and transportation difficulties. The obligations and rights of the Party so excused shall be extended on a day-to-day basis for the time period equal to the period of such excusable delay. In order to obtain a suspension under this section, the Party delayed shall send written notice of the delay and the reason therefore to the other Party within seven (7) days from the time the party delayed knew of the cause of such delay.

## 15. COMPLIANCE WITH LAW



Distributor/Dealer hereby represents and warrants that, as of the date of this Agreement, no consent, approval or authorization of, or designation, declaration or filing with, any governmental authority in the Territory, which has not been made or obtained by Distributor/Dealer prior to the Effective Date, is required in connection with the valid execution, performance and delivery of this Agreement. Alternatively, if any such actions are required, Distributor/Dealer agrees to use its best efforts to obtain such consent, approval or authorization and agrees to comply with all applicable laws in its performance under this Agreement