



Priority Agreement Inventory

MADE EFFECTIVE this day of , (the "Effective Date").

BETWEEN:

ATB FINANCIAL
previously Alberta Treasury Branches
(“ATB”)
-and-

(“Supplier”)
-and-

(“Dealer”)

RECITALS:

- A. The Supplier supplies inventory to or finances the acquisition of inventory by the Dealer secured by purchase money security interests in such inventory;
- B. The Dealer is or will become indebted to ATB and as security for such indebtedness has granted or will grant security interests to ATB in all its present and after acquired personal property;
- C. The Supplier and ATB have each registered financing statements in respect of their security interests in the Personal Property Registry for the Province of Alberta or intend to do so;
- D. The Supplier and ATB wish to determine the priority of their respective security interests by this agreement.

In consideration of the Recitals and of the agreements set out below, the parties agree that:

Definitions

- 1. Unless otherwise defined in this agreement, all terms used in this agreement which are defined in the Personal Property Security Act (“PPSA”) in effect in Alberta on the date of this agreement will have the meanings given to those terms in the PPSA.
- 2. In this agreement the following terms will have the following meanings:



- (a) "ATB Collateral" means all present and after acquired personal property of the Dealer excepting only the Supplier's priority interest in the Financed Inventory arising pursuant to this agreement;
- (b) "ATB Security" means any security, security agreement or security interest now or in the future held by ATB from the Dealer in respect of the present or future assets of the Dealer;
- (c) "Financed Inventory" means any inventory of the Dealer which is supplied or financed by the Supplier;
- (d) "Security" means collectively the ATB Security and the Supplier Security;
- (e) "Supplier Security" means any security, security agreement or security interest now or in the future held by the Supplier from the Dealer in respect of the Financed Inventory.

Consents

- 3. ATB consents to the creation and issuance by the Dealer to the Supplier of the Supplier Security and to the incurring by the Dealer of the indebtedness and obligations secured by it.
- 4. The Supplier consents to the creation and issuance by the Dealer to ATB of the ATB Security and to the incurring by the Dealer of the indebtedness and obligations secured by it.

Priorities

- 5. All perfected purchase money security interests granted by the Dealer to the Supplier in the Financed Inventory will have priority over any security interest that ATB now or hereafter has in the Financed Inventory.
- 6. All perfected security interests granted by the Dealer to ATB in the ATB Collateral will have priority over any security interest that the Supplier now or hereafter has in the ATB Collateral.
- 7. Subject to Section 8, the Supplier will be entitled, in priority to any security interest of ATB, to all proceeds and accounts of the Dealer arising out of the sale or lease by the Dealer of the Financed Inventory and against which the Supplier has a perfected purchase money security interest.
- 8. Notwithstanding Section 7:
 - (a) the Supplier will not be entitled to claim any proceeds (whether cash, instruments, accounts or in other form) that are deposited to any account of the Dealer held at any branch of ATB:
 - (i) unless they are specifically directed by the Dealer to be credited to a trust account for the benefit of the Supplier, or
 - (ii) except those received by ATB more than _____ business days after ATB has received notice pursuant to Section 9. The Supplier will not be entitled to claim any funds that ATB has paid out, or set aside to pay out, prior to receipt of such notice; and
 - (b) with respect to the proceeds of sale or lease of each item of Financed Inventory, the priority of the Supplier will not extend to any amount in excess of the amount actually owed to the Supplier under the purchase money security interest secured against that item of Financed Inventory.

9. It is intended and agreed that ATB will operate the accounts of the Dealer held at ATB in the ordinary course free of any proceeds claim by the Supplier until ATB receives written notice from the Supplier that the Dealer is in default and the Supplier intends to enforce its security against the Dealer, whereupon subsection 8(a)(ii) will apply.
10. The priorities established in this agreement will apply in all circumstances regardless of:
 - (a) the respective dates of execution, attachment, registration or perfection of the Security or the security interests created thereby;
 - (b) the dates of advances of loans or extensions of credit made to the Dealer by ATB or the Supplier;
 - (c) the date of default by the Dealer under any of the Security, the dates of crystallization of any floating charges held by either ATB or the Supplier, the date of the appointment of a receiver, or the taking of any other steps to realize under any of the Security;
 - (d) the date of delivery of any inventory by the Supplier to the Dealer;
 - (e) any priority granted by any principle of law or any statute, including without limitation the Banks and the Banking Law Revision Act (Canada) or the PPSA.
11. If any of the Security is found by a court of competent jurisdiction to be unenforceable or invalid, the foregoing priority provisions will not apply to such Security to the extent that it is found to be unenforceable or invalid.
12. Any insurance proceeds received by any of the parties in respect of any collateral charged by the Security will be dealt with according to the preceding provisions of this agreement as though such insurance proceeds were paid or payable as proceeds of realization of the collateral for which they compensate.
13. If either ATB or the Supplier realize upon their security and in so doing receive money to which the other is entitled pursuant to this agreement, then such money will be held in trust for the other and paid over to the other on demand as long as and to the extent that the Dealer is then indebted to such party.

Notices

14. Any notice required or permitted to be given pursuant to this agreement will be in writing addressed to the parties as follows:

TO ATB:
Attention:
Fax No.:
Telephone No.:

TO the Supplier:
Attention:
Fax No.:
Telephone No.:

TO the Dealer:
Attention:
Fax No.:
Telephone No.:

Notices may be sent by fax or may be delivered during the business hours of the intended recipient. Notices will be deemed to have been received on the first business day following receipt on the fax machine of the recipient or on the date of delivery. Any party may change its delivery address by written notice to the other parties sent in the manner provided above.

General

15. As long as any of the indebtedness of the Dealer remains outstanding, the Dealer will stand possessed of its assets so charged for ATB and the Supplier in accordance with their respective interests and priorities as herein set out. The Dealer consents to ATB and the Supplier advising each other of the particulars of the indebtedness of the Dealer to each and exchanging any other financial information they deem relevant. Neither ATB nor the Supplier will have or incur any liability to the Dealer for providing such information, nor for any direct or indirect consequences resulting from doing so.
16. The Parties will do all things necessary from time to time to give full effect to this agreement. No consent of the Dealer will be necessary to any amendment of the terms of this agreement by ATB and the Supplier.
17. This agreement may be terminated by either ATB or the Supplier at any time on ten days written notice. Such termination will not effect a termination of this agreement with respect to any existing loans or advances made to the Dealer by either ATB or the Supplier or the security interests of either of them in any assets of the Dealer obtained prior to the effective date of such termination. Termination of this agreement by the Supplier may be treated by ATB as a notice under Section 9, in which case the provisions of Subsection 8(a)(ii) will apply to any money or instruments received by ATB prior to or after the effective date of such termination.
18. Upon termination of this agreement by the Supplier pursuant to Section 17 or upon receipt of notice from the Supplier pursuant to Section 9 ATB may, at its option, do any one or more of the following:
 - (a) treat such event as an event of default entitling ATB to immediately terminate any or all credit facilities of the Dealer, including any revolving line of credit, and to refuse to make any further advances on any such facilities;
 - (b) demand immediate payment of all amounts owed to ATB by the Dealer;
 - (c) refuse to pay cheques on or otherwise permit withdrawals from any of the Dealer's accounts with ATB;
 - (d) deal with any credit balances in any of the Dealer's accounts in such manner as ATB in its sole discretion thinks fit;
 - (e) take any such steps as ATB thinks fit in order to comply with the terms of this agreement.
19. This agreement may be executed in counterpart. Each counterpart when executed will be deemed to be an original and all counterparts together will constitute one agreement, to be effective as of the Effective Date.
20. This agreement will be interpreted in accordance with the laws of the Province of Alberta and the courts of Alberta will have jurisdiction over any dispute related to it.



This agreement may be executed electronically; this agreement may be delivered by email, facsimile or other functionally-equivalent means.

Executed as of the Effective Date.

ATB

By its authorized representative

ATB

By its authorized representative

SUPPLIER:

Per: _____

Per: _____

SIGNED in the presence of:

DEALER:

Per: _____

Witness:

Per: _____