

HOLD HARMLESS AND OPT-OUT AGREEMENT

This Hold Harmless and Opt-Out Agreement (this “Agreement”) is entered into as of the date noted below by and between VIP Rubber Company (“VIP”), on the one hand, and _____ (“Company”), on the other hand, both of whom may be referred to herein jointly as “Parties” or individually as “Party”.

RECITALS

A. California has adopted certain laws commonly known as Proposition 65 which impose certain mandates and prohibitions, some of which pertain to providing written notice to consumers if products manufactured or fabricated contain any chemicals identified by the State of California to cause cancer or reproductive deformities (hereinafter, “Prop. 65”).

B. VIP intends to comply with all aspects of Prop. 65 with respect to its products that are sold or distributed within California. Thus, all such VIP products will bear the statutory warning.

C. Likewise, VIP is intent upon accommodating those companies, retailers, producers, packagers, importers, suppliers and distributors that receive or sell its products but that will not hereafter be doing business within the state of California, such as the Company. As a result, such products will not bear the Prop. 65 warning.

D. To memorialize this accommodation and further, to ensure that VIP is not exposed to Prop. 65 liability by and through the activities of the Company, it is the mutual desire of the Parties to enter into this Agreement consistent with the terms specified herein.

AGREEMENTS

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the Parties agree as follows:

1. Incorporation. The Recitals set forth above are incorporated herein and accepted as true and correct.

2. VIP Products. The Company wishes to receive VIP products without Prop 65 warnings, which request Company has confirmed in writing.

3. Hold Harmless. For valuable consideration, receipt of which is acknowledged, Company agrees to defend, indemnify and hold harmless VIP and its respective affiliates, agents, members, officers, managers, employees, successors and assigns from any and all liabilities, obligations, losses, costs or damages (individually, a “Loss”, and collectively,

“Losses”) and reasonable attorneys’ and accountants’ expenses, court costs and all other reasonable out-of-pocket expenses (individually, an “Expense”, and collectively, “Expenses”) incurred by VIP or its respective affiliates, agents, officers, employees, successors and assigns in connection with or arising from any Prop. 65 proceeding or litigation, whether private or non-private, regardless of the time when same is initiated, to the extents it originates in whole or in part from VIP products sold or distributed by Company in California.

4. Notice of Claim. If VIP believes that it has suffered or incurred any Loss or Expense for which it is indemnified hereunder, it shall so notify the Company promptly in writing describing such Loss or Expense, the amount thereof, if known, the method of computation of such Loss or Expense.

5. Third-Party Claims. Promptly upon receipt of a claim or notice associated with any action by any third-Party, VIP shall notify the Company in writing of the commencement or threat thereof (but the failure so to notify Company shall not relieve it of any liability which it may have hereunder except to the extent that it has been prejudiced in any material respect of such failure or delay). In case any such action is brought against VIP, it shall notify Company of the commencement thereof, and Company will be entitled to participate herein. In the event of the foregoing, VIP shall have the right to employ its counsel in any such case wherein the potential penalty, liability and attorney fees, collectively, may equal or exceed \$500,000.00. In such circumstances, Company shall pay all attorney fees and costs associated therewith directly to counsel chosen by VIP. Conversely, to the extent that potential liability to VIP of any such action or proceeding is, in the aggregate, less than \$500,000.00, Company shall be entitled to select counsel that will provide the defense therein. Notwithstanding anything to the contrary, Company shall be liable for any settlement of any claim referenced herein.

6. Release. In consideration of receipt of the VIP products without Prop. 65 warnings (which goods are not to be sold or distributed in California), the Company does hereby absolutely and fully and forever release and discharge VIP and its agents, employees, representatives, successors, heirs and lawyers, from any and all claims, causes of action, arbitrations, requests for proceedings, debts, guarantee, waivers, liabilities, demands, obligations, costs, expenses, damages, and liens of every kind whatsoever, whether known or unknown, suspected or unsuspected, fixed or contingent, which Company now has or may hereafter have against VIP by reason of any matter, cause or thing whatsoever existing or arising out of any Prop. 65 violation, enforcement or proceeding, regardless of other litigation instituted.

7. 1542 Release. Company acknowledges and agrees that the releases set forth in paragraph 6 of the Agreement are general releases and they expressly waive and release any and all claims which exist as of this date, but which Company does not know or suspect to

exist, whether through oversight, error, negligence or otherwise and which, if known, would materially affect its decision whether to enter into this Agreement. Company further acknowledges that it has read and is familiar with Section 1542 of the Civil Code of the State of California, and that it waives all rights thereunder. The said Civil Code Section provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

8. Miscellaneous Terms. In addition to the foregoing, the Parties agree to the following provisions:

a. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective heirs and successors and any assigns.

b. The Parties acknowledge and agree that they have read the Agreement before execution of this Agreement and that they have executed this Agreement with the consent and upon the advice of independent counsel.

c. This Agreement is the product of negotiation and preparation by and among the Parties and their respective attorneys. This Agreement shall not be deemed prepared or drafted by one Party or another, or its attorneys, and will be construed accordingly.

d. The Parties agree to execute any and all documents necessary or reasonably convenient to carry out the terms of the agreements set forth herein.

e. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereon, and in such instance this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

f. This Agreement constitutes a single integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as specifically set forth in this Agreement. All prior discussions and negotiations have been and are merged and integrated into and are superseded by this Agreement.

g. This Agreement represents a compromise and settlement of disputed claims and shall not, for any purpose, be construed as an admission of liability or responsibility on the part of either of the Parties.

h. Other than to enforce this Agreement or take actions required hereunder, the terms of this Agreement shall be confidential and shall not be disclosed by either of the Parties to anyone other than to their attorneys, accountants or tax professionals except and unless a court of competent jurisdiction enters an order requiring disclosure. In the event a court is requested to order a Party to disclose the contents of this Agreement, the other Party shall be given a written notice of same and the existence of this confidentiality provision shall be made known to such court and to all persons to whom the terms of this Agreement are disclosed pursuant to court order, and all reasonable efforts shall be taken to maintain the confidentiality of the terms of this Agreement.

i. This Agreement shall be construed in accordance with, and shall be governed by, the laws of the State of California.

j. This Agreement may be executed and delivered in two or more counterparts, each of which when so executed and delivered shall be an original, but such counterparts together shall constitute one or the same instrument and document. Further, a facsimile signature shall be deemed to be the same as an original signature.

VIP RUBBER COMPANY

DATED: _____ By: _____
Signature

Print Name and Title

COMPANY

DATED: _____ By: _____
Signature

Print Name and Title