

PATENTS ONLY

04-30-2007



103400259

or of

ial

OFFICE OF PUBLIC RECORDS

APR 27 11:09

CHANGE BOOK

4-27-07

<p>1. Name of party or parties conveying an interest:</p> <p><b>Illinois Tool Works Inc a Delaware corporation 3600 West Lake Avenue Glenview, Illinois 60026</b></p>	<p>2. Name and address of party or parties receiving an interest:</p> <p>Name: Attwood Corporation a Delaware corporation 1016 N. Monroe Street Lowell, Michigan 49331</p>
<p>3. Description of the interest conveyed:</p> <p><input checked="" type="checkbox"/> Assignment <input type="checkbox"/> Merger <input type="checkbox"/> Change of Name <input type="checkbox"/> Security Agreement</p> <p>Execution Date: September 30, 2005</p>	<p>Other:</p>
<p>4. Application number(s) or patent number(s). Additional sheet attached? YES ___ NO <u>X</u></p> <p>A. Patent Application no.(s): 29/223,606 filed February 16, 2005</p>	<p>If the document is being filed together with a new application, the execution date of the application is:</p> <p>B. Patent no.(s):</p>
<p>5. Name and address of party to whom correspondence concerning this cover sheet should be mailed:</p> <p>Name: Mark G. Hanley Reg. No. 44,736 HANLEY, FLIGHT &amp; ZIMMERMAN, LLC 150 S. Wacker Drive, Suite 2100 Chicago, Illinois 60606</p>	<p>6. Number of applications and/or patents identified on this cover sheet: 1</p> <p>7. Amount of fee enclosed or authorized to be charged: \$40.00</p> <p>8. Any additional required fee may be charged, or any overpayment credited to our deposit account: 50-2455</p>

9. To the best of my knowledge and belief, the information contained on this cover sheet is true and correct and any copy submitted is a true copy of the original document. I hereby certify that this paper is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this date:

Date: 4.24.07

Mark G. Hanley  
Registration No.: 44,736

Total number of pages including cover sheet, attachments, and document: 15

04/27/2007 DBYRNE 00000112 29223606 40.00 QP

01 FC:8021

ASSIGNMENT AND LICENSE

**WHEREAS**, on even date herewith, ITW Dahti Technologies, a business unit of Illinois Tool Works Inc, a Delaware corporation, with an office located at 251 Industrial Drive, Rockford, Michigan 49341 ("Dahti") and Attwood Corporation, a Delaware corporation, with a principal office located at 1016 N. Monroe Street, Lowell, Michigan 49331 ("Attwood") entered into an Agreement (hereinafter, the "Agreement") associated with the manufacture and supply of certain components for use in marine seating applications (hereinafter, the "Goods");

**WHEREAS**, the parties have, either individually or jointly, developed new inventions as such pertain to the Goods;

**WHEREAS**, Attwood has filed U.S. Design Patent Application Numbers 29/223,606 and 29/223,607 on February 16, 2005, and a U.S. Utility Patent Application entitled "Modular Vehicle Seat Having Water-Permeable Seating Surfaces" on September 13, 2005 (Application Number 11/225,521, Attorney Docket Number 20108-10005) as such are associated with the Goods in which Dahti inventors are named (hereinafter, the "Patent Applications");

**WHEREAS**, Illinois Tool Works Inc., a Delaware corporation, with offices at 3600 West Lake Avenue, Glenview, Illinois 60026 ("ITW") owns and has sole rights to any inventions created by Dahti employees; and

**WHEREAS**, in consideration of the terms of the Agreement and for other good and valuable consideration, ITW is willing to assign its rights in the inventions associated with the Goods as set forth in the Patent Applications, in exchange for an irrevocable, royalty-free, worldwide license in all markets except the Market as defined in the Agreement.

**NOW, THEREFORE**, in consideration of One Dollar (\$1.00), the terms of the Agreement and other and good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ITW hereby assigns and transfers unto Attwood its rights, title and interest in the Patent Applications, an all foreign equivalents thereof, together with all rights to claim priority, and in and to all Letters Patents or similar legal protection obtained or to be obtained by such applications or any continuation, divisional, renewal or substitution thereof, or any legal equivalent thereof.

In exchange for the foregoing assignment, Attwood hereby grants to ITW, its divisions, subsidiaries, affiliates and successors a non-exclusive, irrevocable, worldwide, fully paid-up, royalty-free license to make, use, offer for sale, sell, market, distribute or otherwise dispose of products falling under the Patent Applications in all markets except the Market as defined in the Agreement.

Each party agrees that upon request of the other, and without further remuneration, to execute any and all papers desired by the other to fulfill the intent and purposes of the assignment and license set forth herein.

**EXECUTED** this 30<sup>TH</sup> day of September, 2005.

Attwood Corporation  
By: *Michael A. Folkerts*  
Name: MICHAEL A. FOLKERTS  
Title: SECRETARY

Illinois Tool Works Inc.  
By: *Daniel A. Clark*  
Name: DANIEL A. CLARK  
Title: BUS UNIT MGR; ITW-DAHTI

# AGREEMENT

This AGREEMENT is made and entered into as of the 1st day of January, 2005 (the "Effective Date") by and between ITW Dahti Technologies, a business unit of Illinois Tool Works Inc, a Delaware corporation, with an office located at 251 Industrial Drive, Rockford, Michigan 49341 ("Dahti") and Attwood Corporation, a Delaware corporation, with a principal office located at 1016 N. Monroe Street, Lowell, Michigan 49331 ("Attwood").

WHEREAS, Dahti is engaged in the business of designing and manufacturing various products utilizing elastomeric mesh materials and associated technologies;

WHEREAS, Dahti utilizes proprietary unpatented and patented technologies in its design, manufacturing and assembly processes;

WHEREAS, Attwood is engaged in the business of designing marine seating, and is interested in certain marine seating applications that utilize elastomeric mesh materials, as described in Exhibit A (the "Products");

WHEREAS, Dahti is interested in designing and manufacturing certain components, as described in Exhibit A (the "Components"), for sale to Attwood for use in the Products; and

WHEREAS, the parties desire to enter into this Agreement to establish certain rights and obligations with the intent of bringing the Products to market.

NOW THEREFORE, in consideration of the premises, and the covenants and conditions set forth in this Agreement, the parties hereto agree as follows (words denoting the singular shall, where applicable, include the plural and vice versa):

## 1. General Intent of the Relationship.

During the term hereof and subject to the provisions below, Dahti hereby agrees that it shall not use or offer the right to others to use its proprietary technologies for use in the Products within the marine market (the "Market"), and Attwood hereby agrees that it shall not make for itself or have made by others Components in the Market. The parties acknowledge that the Market, for purposes of this Agreement, shall mean marine seating applications for all powerboats and sailboats, but shall exclude marine seating applications for personal watercraft, jet-powered boats, canoes, or kayaks.

## 2. Term.

This Agreement will become effective on the Effective Date and, unless earlier terminated as provided herein, will have a term of five (5) years (the "Term"). Thereafter, the Term of this Agreement shall be automatically extended by successive one (1) year increments unless (a) earlier terminated pursuant to the terms of this Agreement, or (b) either party gives the other written notice not less than six (6) months prior to the end of the then current Term that this

Agreement will terminate at the end of such Term. The Term shall also be extended as set forth in Section 5(c) hereof.

**3. Duties of Attwood.**

a. During the Term, Attwood shall use reasonable commercial efforts to sell, advertise and promote the sale of the Products containing Components. Attwood agrees to market the Products to all boat builders to which it would typically market such products, including competitors of the Brunswick Boat Group. In addition, Attwood agrees, upon Dahti's request and approval, to include the Dahti name, trademark, logo and other brand information on the Components and within Attwood promotional and/or technical seating literature (e.g., "Attwood's bucket seat incorporates ITW Dahti seating technology") pursuant to Section 7.

b. Attwood shall comply with all applicable laws and regulations regarding the design, manufacture, sale, promotion and marketing of the Products that incorporate the Components.

c. For so long as Dahti restricts itself from using or allowing others to use Dahti's proprietary technology in the Market in accordance with the provisions of this Agreement, Attwood shall not make for itself or obtain from others the Components for Products or Products.

**4. Duties of Dahti.**

a. Dahti shall use reasonable commercial efforts consistent with its other manufacturing obligations to timely manufacture and supply Attwood's orders for Components.

b. Dahti shall comply with all applicable laws and regulations regarding the design and manufacture of the Components.

c. Subject to the terms of Section 5 below, Dahti shall not develop Components for Products or Products for use in the Market for itself or any other customer during the Term of this agreement.

**5. Tooling, Development and Purchase Requirements.**

a. An exclusive arrangement shall apply in the contract years referenced below, so long as Attwood has taken the actions described below for such exclusivity to exist. If Attwood fails to meet the requirements set forth below, Dahti reserves the right to use or grant rights to others in its proprietary technology without restriction (including, but not limited to, within the Market).

Contract YearRequired Actions of Attwood

- 1 Completed tooling for a first marine seating Product incorporating Components
- 2 Begin a product development project for a second marine seating Product incorporating Components
- 3 Order from Dahti at least 10,000 Components, or purchase at least \$650,000.00 of Components (not including tooling) from Dahti beginning in contract year three (3) and before the beginning of contract year four (4). For purposes of this requirement, the term Components shall include any marine seating component that Dahti produces for Attwood, and shall not be limited to those listed on Exhibit A.
- 4 Order from Dahti at least an additional 15,000 Components, or purchase at least an additional \$1,000,000.00 of Components (not including tooling) from Dahti beginning in contract year four (4) and before the beginning of contract year five (5). For purposes of this requirement, the term Components shall include any marine seating component that Dahti produces for Attwood, and shall not be limited to those listed on Exhibit A.
- 5 Order from Dahti at least an additional 15,000 Components, or purchase at least an additional \$1,000,000.00 of Components (not including tooling) from Dahti beginning in contract year five (5) and before the end of contract year five. For purposes of this requirement, the term Components shall include any marine seating component that Dahti produces for Attwood, and shall not be limited to those listed on Exhibit A.

b. Dahti represents and warrants that it shall manufacture and/or deliver the amount of Components which Attwood is required to order or purchase pursuant to this Agreement.

c. Attwood shall not be deemed to have failed to order or purchase the amount of Components referenced in Section 5(a) above if Attwood orders or purchases less than such amounts due to any action, or inaction, of Dahti or its employees, agents or representatives (e.g., production difficulties, poor order fill rates, quality issues, etc.). In such event, the applicable exclusivity period will be extended for the period during which Dahti's action or inaction caused Attwood's failure to purchase the requirements in Section 5(a), but for no greater

than a total of one (1) year and new targets for the subsequent year shall be agreed upon by the parties.

d. Attwood shall own all tooling for which it purchases pursuant to a separate agreement between the parties.

## **6. Sale of Components to Attwood.**

a. Dahti shall sell and ship the Components to Attwood in response to written purchase orders submitted to Dahti. Each order shall specify the quantity of Components to be shipped and the shipment date.

b. All sales of Components to Attwood hereunder will be at the prices and subject to the delivery terms, payment terms and other conditions of sale set forth on Exhibit B, attached hereto and incorporated herein. The terms and conditions of sale set forth in Exhibit B may not be revised or amended except by the mutual written agreement of the parties.

c. All Components ordered pursuant to this Agreement will be subject to inspection by Attwood after their arrival at Attwood's facility. Attwood shall notify Dahti of any shortages in shipment or defects in the Components within thirty (30) days after the Components have arrived at Attwood's facility. All notices sent to Dahti hereunder shall describe in reasonable detail the defects or shortages identified by Attwood. At Dahti's option and at its expense, Attwood shall either return defective Components to Dahti for its inspection or permit Dahti to inspect such Components at Attwood's facility. Within two (2) weeks after Dahti has completed any inspection of the Components and its evaluation of Attwood's complaint, Dahti shall fill any shortages in shipment or replace any non-conforming Components. Components shall be returned only after coordinating their return with Dahti.

d. If Dahti discontinues to manufacture the Components for Attwood, Dahti shall allow Attwood to place one final order of Components setting forth reasonable quantities to meet its future support requirements as required by either governmental requirements or Attwood's internal customer support policies. Dahti agrees to manufacture and/or deliver Components to fulfill such final order completely, and sell such Components to Attwood at the same pricing levels as Dahti's then most recent prices.

## **7. Intellectual Property.**

a. Attwood shall use, at Dahti's request, all trademarks, logos or the like used by Dahti in connection with the Components and in connection with Attwood's advertising, promotion and sale of the Products wherein the Components are illustrated or described. Attwood shall furnish Dahti with copies of all advertising in which Dahti's marks are prominently displayed. If Dahti notifies Attwood that it objects to any such advertising, Attwood will discontinue use of the same as soon as is feasible under the circumstances. Attwood shall not use any marks or names of Dahti in any manner whatsoever without first receiving Dahti's prior written authorization and approval. Attwood shall not register or attempt to register any of

Dahti's trade names or trademarks or any confusingly similar names or marks. All goodwill associated with the use of Dahti's marks shall inure to the benefit of Dahti.

b. Except as may be set forth in another agreement signed by both parties:

(i) all drawings, know-how, designs, specifications, inventions, devices, developments, processes, copyrights, trademarks, patents and other information or intellectual property disclosed or otherwise provided by one party hereof to the other, and all rights therein (collectively, "Intellectual Property"), will remain the property of the disclosing or originating party and will further be subject to the confidentiality provisions of Section 8; (ii) neither party shall have any claim to, or ownership interest in, any Intellectual Property of the other party and such information, in whatever form and any copies thereof, shall be promptly returned to the disclosing or originating party upon written request from such party; and (iii) the parties acknowledge that no license or rights of any sort are granted to either party hereunder in respect of any Intellectual Property of the other party, other than Attwood's limited right to use the Components purchased from Dahti and Dahti's limited right to provide Components to Attwood for use in the Products.

c. Each party agrees to notify the other of any and all infringements of the other's Intellectual Property by another, to the extent such infringements are brought to the attention of the associated party.

## 8. Warranties.

a. Dahti warrants to Attwood that all Components purchased shall be free from defects in material and workmanship for a period of two (2) years from the date of Dahti's sale of the Components to Attwood.

b. Attwood shall promptly provide Dahti with information regarding any claim or defect in the Components. Dahti shall cooperate with Attwood (and Attwood's employees, agents and representatives) in, and be responsible for, resolving all warranty claims relating to the Components. Dahti shall promptly replace any defective Components at its own expense. In addition, Dahti shall timely provide Attwood with information regarding the status and resolution of all warranty claims concerning the Components.

c. Dahti's liability under this warranty is limited solely to claims relating to the Components.

d. EXCEPT AS SET FORTH ABOVE, SELLER MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE) WITH RESPECT TO ITS PRODUCTS OR SERVICES.

## 9. Confidentiality.

a. Each of Dahti and Attwood acknowledges and agrees that certain Confidential Information (as defined below) of the other party hereto may be disclosed by such party in order to permit the parties to perform their respective obligations under this Agreement. Dahti and Attwood each agree that the party receiving any Confidential Information from the other party shall not disclose such Confidential Information to any third person, or use it for any purpose other than to meet its obligations under this Agreement, except with the prior written consent of the party disclosing such Confidential Information. Each party further agrees to use the same degree of care to avoid publication or dissemination of any Confidential Information of the disclosing party as the receiving party employs with respect to its own Confidential Information, but at all times shall use at least reasonable care to protect against disclosure.

b. For purposes of this Agreement, a party's "Confidential Information" means any information, written or oral, of a secret, non-public or confidential nature which provides such party an opportunity to gain an advantage over its competitors, including, but not limited to, information related to research, development, drawings, know-how, designs, specifications, inventions, devices, manufacturing, assembly and other processes, purchasing, accounting, engineering, marketing, selling, customer lists, customer requirements, and the documentation thereof, including information supplied to the receiving party from outside sources. Notwithstanding the foregoing, "Confidential Information" shall not include information which: (i) was already in the public domain at the time of disclosure hereunder or thereafter becomes part of the public domain through no fault of the receiving party, (ii) was in the receiving party's possession prior to disclosure in connection with this Agreement, (iii) is rightfully received from a third party without restriction and without breach of this Agreement, or (iv) is independently developed by an employee or agent of the receiving party who have no knowledge of or access to such Confidential Information. Each party acknowledges that the other party may be engaged in ongoing development activities in areas related to the Products and/or Components and other areas, and that such activities, if any, may continue, subject to the provisions of this Agreement. Nothing contained in this Agreement is intended to prohibit such ongoing development activities or require the parties to enter into a transaction or business relationship regarding such activities, and the parties may enter into similar transactions with other third parties subject to the exclusivity provisions of this Agreement and the specific requirements in this Section 9 related to the protection of Confidential Information.

c. Each party acknowledges that breach of any of the provisions of this Section 9 may cause the other party hereto irreparable damage. Dahti and Attwood thus agree that, in addition to such other remedies as may be provided by this Agreement, or at law or in equity, Dahti or Attwood, as the case may be, shall be entitled to seek equitable and injunctive relief against the other party, without proof of actual damages or the posting of bond, in the event of a breach or threatened breach of any of the provisions of this Section 9.

d. The confidentiality obligations set forth in this Section 9 shall remain in effect during the Term of this Agreement and for three (3) years thereafter unless one of the exceptions in b. above applies. Notwithstanding the foregoing, on the termination or expiration of this Agreement, each party shall, at the request of the other party, destroy, and certify the destruction of, the other party's Confidential Information or return the same to the other party.



## 10. Indemnification.

a. Dahti hereby agrees to indemnify, defend and hold Attwood harmless from and against any and all claims, liabilities, damages (including but not limited to damages for bodily injury, wrongful death and property damages), fines, penalties, losses, costs and expenses (including attorneys' fees and all other costs of defense reasonably incurred) (collectively, "Losses") which may be asserted against Attwood or which Attwood may incur or become responsible for and arising out of or relating to: (i) the product warranty made by Dahti herein or product liability claims arising from use of the Components in accordance with Dahti's specifications for Components; (ii) the breach by Dahti of any covenant contained herein or the failure by Dahti to perform any of its obligations hereunder in accordance with the terms of this Agreement; or (iii) the possession, use, sale, or resale of the Components alone as provided by Dahti (but not in combination with the Products or any other goods not manufactured by Dahti, or if based on specifications not provided by Dahti), including infringement of intellectual property rights, misappropriation of trade secrets, and violation of privacy and publicity rights.

b. Attwood hereby agrees to indemnify, defend and hold Dahti harmless from and against any and all Losses which may be asserted against Dahti or which Dahti may incur or become responsible for and arising out of or relating to: (i) any product warranty or product liability claims associated with the Products, but not arising from use of the Components in accordance with Dahti's specifications for the Components; (ii) the breach by Attwood of any covenant contained herein or the failure by Attwood to perform any of its obligations hereunder in accordance with the terms of this Agreement; or (iii) the possession, use, sale or resale of the Products (except to the extent relating solely to Components supplied by Dahti), including infringement of intellectual property rights, misappropriation of trade secrets, and violation of private and publicity rights.

c. In the event that either party becomes aware of a matter for which it is entitled to indemnification hereunder, such party shall notify the indemnifying party of such matter as soon as is reasonably practicable by written notice, specifying the nature of the matter for which indemnification is claimed. The indemnifying party shall have the right to assume control of the defense of any suit or claim by any third party against the indemnified party; provided, however, that if the indemnifying party assumes control of the defense of any such suit or claim then (i) it shall not, without the prior written consent of the indemnified party, which consent shall not be unreasonably withheld or delayed, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding to which the indemnified party is a party, and (ii) it shall provide timely updates to the indemnified party regarding the status of such suit or claim. The indemnified party may also participate in its own defense, provided that it will be responsible for any duplicate additional expenses incurred with respect to participating in such defense.

d. Neither party will be liable to the other for any compensation, reimbursement, or damages on account of any loss of profits or prospective profits on anticipated sales, on commitments in connection with the business or goodwill of either party or otherwise for special, incidental, indirect or consequential damages by reason of the foregoing indemnities, termination of this Agreement in accordance with its terms, or for any other reason. Both party's

maximum liability under this Section 10 shall be \$1,000,000. The foregoing indemnities shall expire five years after the date of termination of this Agreement.

**11. Termination.**

a. The parties may mutually agree to terminate this Agreement at any time in writing.

b. Either party shall have the right to terminate this Agreement immediately upon the delivery of written notice in the event: (i) the other party hereto materially breaches or fails to perform any obligation imposed on such party under this Agreement and fails to cure such breach or failure within thirty (30) days after written notice of such breach or failure is given by the non-defaulting party; (ii) the other party hereto makes an assignment for the benefit of creditors, or files or has filed against it any bankruptcy or insolvency proceedings or has a receiver appointed for it due to insolvency; or (iii) customer complaints concerning Components (in the case of Dahti) and Products (in the case of Attwood) are at such a level that they jeopardize the goodwill associated with the other party's name and reputation.

c. Except as otherwise expressly provided herein, neither party shall be bound to the other after termination of this Agreement, except that this Section 11 and Sections 5(d), 6(d), 7, 8, 9 and 12 shall survive termination of this Agreement.

d. Termination will in no way affect any rights or obligations of the parties accruing or arising prior to the date of termination, including, without limitation, any obligations of the parties with respect to Components sold or delivered prior to the date of termination or either party's right to recover any damages sustained by reason of the breach of this Agreement by the other party. Notwithstanding the foregoing, however, Dahti shall have the right to cancel any unfilled orders accepted by Dahti before termination if Dahti terminates this Agreement pursuant to Section 11(b) above, and Attwood shall have the right to cancel any unfilled orders placed by Attwood before termination if Attwood terminates this Agreement pursuant to Section 11(b) above

**12. Miscellaneous Provisions.**

a. Neither party shall be liable for any failure to perform its obligations hereunder if (and during such time as) such failure is due to causes beyond the reasonable control of the affected party, including, but not limited to, acts of God, fires, floods, accidents, strikes or other labor disputes, wars, government actions or inability to obtain material, equipment or transportation. However, if either party is unable to perform because of causes beyond its reasonable control it shall provide notice to the other party of such inability as promptly as is feasible under the circumstances.

b. All notices and other communications required or permitted under this Agreement shall be in writing and may be given by personal delivery, certified or registered mail, return receipt requested, postage prepaid, telex or telecopier addressed to the party required or entitled to receive same at its address set forth above, or to such other address as it shall

designate by like notice to the other party. The effective date of any such notice or other communication shall be the date on which it is received by the addressee. Notwithstanding anything herein to the contrary, if actual written notice is received, regardless of the means of transmittal, such notice shall be deemed to be acceptable and effective as proper notice under this Section 12(b).

c. This Agreement, including all Exhibits attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof. No modification, amendment, waiver or release of any provision of this Agreement or of any right, obligation, claim or cause of action arising under this Agreement or any purchase order shall be valid or binding for any purpose unless in writing and duly executed by the party against whom the same is sought to be asserted.

d. The failure of either party hereto at any time to require performance by the other party of any provisions of this Agreement shall not affect the right of such party to require performance of that provision, and any waiver by either party of any breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right under this Agreement.

e. Neither party may assign or otherwise transfer this Agreement, or its rights or obligations under this Agreement, without the other party's prior written consent; except that, either party may assign this Agreement, and/or its rights and obligations under this Agreement, to any of its affiliates, including parent companies, divisions, subsidiaries, and the successors of each ("Affiliate") without the consent of the other. A change in control, except to an Affiliate, shall constitute an assignment requiring the other party's consent. For purposes of this Agreement, a change in control shall include a transfer to a non-Affiliate of fifty percent (50%) or more of the ownership of a party, a transfer to a non-Affiliate of fifty percent (50%) or more of the voting rights of a party, and/or a change in a majority of the officers or directors of a party (unless such officers or directors are employees of an Affiliate of the party). Subject to the foregoing, this Agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

f. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

g. Titles and paragraph headings contained in this Agreement are solely for the convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Agreement.

h. Except as otherwise expressly provided in this Agreement, all rights and remedies provided by this Agreement, or existing at law or in equity, shall be cumulative of all other rights and remedies, and shall not be exclusive of each other. No delay or omission by a party in the exercise of any right or remedy shall waive that right or remedy, and the pursuit of one right or remedy shall in no way operate as an exclusive election or otherwise preclude or limit either party from pursuing any other or additional right or remedy.

i. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Illinois, without regard to conflicts of law principles.

j. The parties shall negotiate in good faith in order to resolve any disputes relating to this Agreement. If the parties are unable to resolve their dispute within thirty (30) days, then senior executives of each party shall meet in person to further negotiate during the next fifteen (15) day period. Any disputes that the parties are unable to resolve (other than actions for contribution or indemnity with respect to court actions involving third parties) shall be subject to mediation in the State of Illinois (U.S.A.) under the mediation rules of the American Arbitration Association ("AAA"). There shall be one neutral mediator. If the dispute has not been settled by mediation within 3 months after written notice of mediation is tendered by one party to another, either party may resort to litigation in the state or federal courts of the State of Illinois, which shall have exclusive jurisdiction of matters arising from this Agreement.

k. Neither party may deduct from any payment due to the other party, or setoff against any claim by the other party, any amount which is due to such party for any reason by the other party, including without limitation, related to a breach of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives on the date or dates indicated below, effective as of the day and year first written above.

"Dahti"

"Attwood"

ITW DAHTI

ATTWOOD CORPORATION

By: Daniel A. Clark

By: Michael A. Folkerts

Name: DANIEL A. CLARK

Name: MICHAEL A. FOLKERTS

Its: BUS. UNIT MGR

Its: SECRETARY

Date: 9-30-05

Date: 10-3-05

# **EXHIBIT A**

## **PRODUCTS**

**Bucket seat, for use in the Market, utilizing elastomeric mesh.**

## **COMPONENTS**

- Seat Cushion Sub-assy (consisting of one structural frame and one fabric carrier) including elastomeric mesh for use in the Products
- Backrest Sub-assy (consisting of one structural frame and one fabric carrier) including elastomeric mesh for use in the Products

## **EXHIBIT B**

### **PRICE AND OTHER TERMS AND CONDITIONS OF SALE**

1. The initial price for the Components will be based on past quotations submitted by Dahti and approved by Attwood. Dahti may modify prices at any time, upon six month's prior written notice to Attwood.
2. All freight will be paid by Attwood.
3. The credit terms will be net 30 days.
4. There shall be a four (4) week lead time on all purchase orders related to the Components for standard Products.
5. See Dahti's attached general terms and conditions of sale, which are incorporated herein.

## ITW AIM COMPONENTS/DAHTI TECHNOLOGIES ("ITW") TERMS AND CONDITIONS OF SALE

1. **Acceptance.** The following terms and conditions of sale are applicable to all sales of Products or Services, and all quotations, order acknowledgements, and invoices from ITW AIM Components/Dahli Technologies a division of Illinois Tool Works Inc., ("Seller") and to all Purchase Orders from Seller's customers ("Purchasers") and are the only terms and conditions applicable to the sale of Seller's Products or Services, except those relating solely to prices, quantities, delivery schedules, terms of payment, invoicing, shipping instructions, or descriptions of the products set forth in Purchaser's Purchase Orders (collectively, "Purchase Order Terms"). Purchase Orders, if accepted by Seller, are accepted subject to the terms and conditions set forth herein. SELLER HEREBY REJECTS ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS PROPOSED BY PURCHASER, WHETHER OR NOT CONTAINED IN ANY OF PURCHASER'S BUSINESS FORMS OR IN PURCHASER'S WEBSITE, AND SUCH ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS SHALL BE VOID AND OF NO EFFECT UNLESS SPECIFICALLY AGREED TO BY SELLER IN WRITING. Purchaser's acceptance of Products or Services ("Products or Services") called for in said Purchase Order shall constitute its acceptance of the following terms and conditions of sale (this "Agreement") Any changes to these terms and conditions must be in writing and signed by Seller.

2. **Quotations.** Quotations are only valid in writing and for 30 days from the date of the quotation unless otherwise notified. All quotations by Seller are subject to change or withdrawal without prior notice to Purchaser unless otherwise specifically stated in the quotation. Quotations are made subject to approval by Seller of Purchaser's credit. Seller shall have no obligation to sell or deliver Products or Services covered by Seller's quotation unless and until Seller issues an order acknowledgement form or upon the shipment of Products or commencement of Services by Seller.

3. **Prices.** Prices are in U.S. Dollars and are subject to change without notice. Time of payment is of the essence. All orders are accepted subject to Seller's price in effect at time of shipment.

4. **Terms of Payment.** The inspection rights granted to Purchaser will not affect or alter the payment terms or the timing of Purchaser's payment obligations. Under no circumstances will Purchaser have a right of set-off. Unless otherwise expressly agreed to by Seller in writing, terms of payment are 30 days net from the date of Seller's invoice. No discount shall be allowed on transportation charges. Purchaser agrees to pay interest on overdue invoices at the rate of 1 1/4 % per month, but not higher than the highest rate permitted by law. If Purchaser fails to make any payment as required, Purchaser agrees to indemnify Seller for all costs and expenses, including reasonable attorney fees, court costs, and associated expenses incurred by Seller.

5. **Credit Approval.** All shipments to be made hereunder shall at all times be subject to the approval of Seller's credit department. Seller may invoice Purchaser and recover for each shipment made pursuant to this Agreement as a separate transaction without regard to any other order or agreement with Seller, or, if, in Seller's sole judgment, the financial responsibility of Purchaser is or becomes unsatisfactory, then Seller may, at its option and without prejudice to any of its other remedies, (a) defer or decline to make any shipments hereunder except upon receipt of satisfactory security or cash payments in advance, and/or (b) terminate all Purchase Orders of Purchaser.

6. **Cancellation.** Once Seller has either accepted a Purchase Order or has begun taking actions with respect to such Purchase Order, such Purchase Order cannot be canceled, terminated or modified by Purchaser in whole or in part except with Seller's consent in writing and then only upon terms and conditions to be agreed upon which shall include protection of Seller against all losses. Purchaser shall indemnify Seller for any costs incurred, including material and labor costs, in connection with any Purchase Order that Purchaser desires to cancel, terminate or modify.

7. **Inspection / Non-Conforming Shipments.** Seller grants Purchaser the right to inspect Products for a period of fifteen (15) business days immediately following delivery ("inspection period"). Purchaser must notify Seller of any Products that do not conform to the terms applicable to their sale within the inspection period, and afford Seller a reasonable opportunity to inspect such Products and cure any nonconformity. If Purchaser fails to provide Seller with notice of nonconformity within the inspection period, Purchaser shall be deemed to have accepted the Products. Purchaser will have no right to return any Product without Seller's prior written authorization. Any return authorized by Seller must be made in accordance with Seller's return policies then in effect and must be accompanied by a Returned Goods Authorization ("RGA") from Seller. Purchaser will be responsible for all costs and expenses associated with any returns of Products and will bear the risk of loss or damage of such Products, unless Seller agrees otherwise in writing or determines that the Products do not conform to the applicable terms of sale. Seller, in its sole discretion may reject any return of Product not approved by Seller in accordance with this paragraph or otherwise not returned in accordance with Seller's then current return policies.

8. **Title / Risk of Loss / Delivery.** Unless other arrangements are made in writing, Seller anticipates use of common carriers for transport of Products. Unless specifically otherwise provided in Seller's invoice, the carrier, and its cost, will be paid directly by the Purchaser to the carrier. All Products shall be shipped F.O.B. Seller's plant and shall become the property of Purchaser upon delivery to the carrier. Purchaser shall assume all risk and liability for loss, damage, or destruction, as well as the results of any use or misuse by third parties who may acquire or use the Products illicitly after the delivery to the carrier. Unless mutually agreed upon, shipping dates are approximate and are based upon prompt receipt of all necessary information. Seller reserves the right to ship items in a single or multiple shipments.

9. **Damage.** Purchaser shall notify Seller and the delivering carrier within fifteen (15) business days from date of receipt of Products, of any damage or shortage, and afford Seller a reasonable opportunity to inspect the Products. Any loss occasioned by damage or shrinkage in transit will be for Purchaser's account and claims for such loss shall be made solely against the carrier.

10. **Quantities.** Unless otherwise agreed in writing, any variation in quantities shipped over or under the quantities ordered (not to exceed 10%) shall constitute compliance with Purchaser's Order and the stated price per item will continue to apply.

11. **Warranty.** SELLER WARRANTS ONLY THAT THE PRODUCTS OR SERVICES SOLD HEREUNDER (A) WILL CONFORM TO THE DESCRIPTION, SPECIFICATIONS, AND/OR FACE HEREOF, (B) WILL BE CONVEYED FREE AND CLEAR OF ANY LIEN, SECURITY INTEREST OR ENCUMBRANCE CREATED BY SELLER OR ANY PARTY CLAIMING BY, THROUGH OR UNDER SELLER, AND (C) WILL BE FREE FROM SUBSTANTIAL DEFECTS IN MATERIAL AND WORKMANSHIP UNDER NORMAL USE GIVEN PROPER INSTALLATION AND MAINTENANCE FOR A PERIOD OF SIX (6) MONTHS FROM THE DATE OF DELIVERY TO THE CARRIER.

SELLER SHALL HAVE THE RIGHT EITHER TO REPLACE OR REPAIR ANY DEFECTIVE PRODUCTS, TO REFUND THE PURCHASE PRICE UPON RETURN OF THE PRODUCTS OR TO GRANT A REASONABLE ALLOWANCE ON ACCOUNT OF SUCH DEFECTS, AND SELLER'S LIABILITY AND PURCHASER'S EXCLUSIVE REMEDY FOR DEFECTIVE PRODUCTS SHALL BE LIMITED SOLELY TO REPLACEMENT, REPAIR, REFUND OR ALLOWANCE AS SELLER MAY ELECT.

SELLER SHALL BE GIVEN A REASONABLE OPPORTUNITY TO INVESTIGATE ALL CLAIMS AND NO PRODUCTS SHALL BE RETURNED TO SELLER UNTIL AFTER INSPECTION AND APPROVAL BY SELLER AND RECEIPT BY PURCHASER OF A RGA.

12. **Disclaimer of Further Warranties.** EXCEPT AS SET FORTH ABOVE, SELLER MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE) WITH RESPECT TO ITS PRODUCTS OR SERVICES.

13. **Limitation of Liability and Remedies.** SELLER SHALL NOT BE LIABLE, AND PURCHASER WAIVES ALL CLAIMS AGAINST SELLER, FOR INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR COMMERCIAL LOSSES, WHETHER OR NOT BASED UPON SELLER'S NEGLIGENCE OR BREACH OF WARRANTY OR STRICT LIABILITY IN TORT OR ANY OTHER CAUSE OF ACTION. SELLER WILL NOT BE LIABLE TO PURCHASER FOR ANY LOSS, DAMAGE, OR INJURY TO PERSONS OR PROPERTY RESULTING FROM THE HANDLING, STORAGE, TRANSPORTATION, RESALE, OR USE OF ITS PRODUCTS IN MANUFACTURING PROCESSES, OR IN COMBINATION WITH OTHER SUBSTANCES, OR OTHERWISE. IN NO EVENT WILL SELLER'S LIABILITY UNDER THIS AGREEMENT OR IN CONNECTION WITH THE SALE OF PRODUCTS BY SELLER EXCEED THE PURCHASE PRICE OF THE SPECIFIC PRODUCTS OR SERVICES AS TO WHICH THE CLAIM IS MADE.

14. **Inventory.** Except as provided in Sections 7 and 11 hereof, Seller will neither accept return of Product, nor be responsible for its destruction.

15. **Technical Data.** All physical properties, statements and recommendations are either based on the tests or experience that Seller believes to be reliable, but they are not guaranteed.

16. **Product Use.** Purchaser is solely responsible for determining whether any Product is fit for a particular purpose and suitable for Purchaser's method of application. Accordingly, and due to the nature and manner of use of Seller's Products, Seller is not responsible for the results or consequences of use, misuse or application of its Products by anyone.

17. **Tooling / Molds / Dies.** Unless otherwise agreed in writing signed by Seller, all material, equipment, facilities, and special tooling, (which term includes but is not limited to tools, jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment, and manufacturing aids and replacements thereof), used in the manufacture of the Products covered by any Purchase Order shall remain the property of Seller. Any material, tooling, or equipment furnished to Seller by Purchaser shall be and remain the personal property of Purchaser with the title to and right of possession remaining in Purchaser.

18. **Taxes.** Purchaser shall pay to Seller, in addition to the purchase price, the amount of all fees, duties, licenses, tariffs, and all sales, use, privilege, occupation, excise, or other taxes, federal, state, local or foreign, which Seller is required to pay or collect in connection with the Products or Services sold to Purchaser. Failure by the Seller to collect any such fees or taxes shall not affect Purchaser's obligations hereunder and Purchaser shall fully defend, indemnify and hold harmless Seller with respect to such tax obligations.

19. **Ownership of Intellectual Property.** All drawings, know-how, designs, specifications, inventions, devices, developments, processes, copyrights and other information or Intellectual Property disclosed or otherwise provided to Purchaser by Seller and all rights therein (collectively, "Intellectual Property") will remain the property of Seller and will be kept confidential by Purchaser in accordance with these terms and conditions. Purchaser shall have no claim to, nor ownership interest in, any Intellectual Property and such information, in whatever form and any copies thereof, shall be promptly returned to Seller upon written request from Seller. Purchaser acknowledges that no license or rights of any sort are granted to Purchaser hereunder in respect of any Intellectual Property.

20. **Confidential Information.** All information furnished or made available by Seller to Purchaser in connection with the subject matter of this Agreement or of Purchaser's Purchase Order shall be held in confidence by the Purchaser. Purchaser agrees not to use such information or disclose such information to others without Seller's prior written consent. The obligations in this paragraph will not apply to any information which (a) at the time of disclosure was or thereafter becomes, generally available to the public by publication or otherwise through no breach by the Purchaser of any obligation herein, (b) the Purchaser can show by written records was in the Purchaser's possession prior to disclosure by Seller, or (c) is legally made available to the Purchaser by or through a third party having no direct or indirect confidentiality obligation to Seller with respect to such information.

21. **Infringement and Indemnification.** (a) Except as set forth below, Seller agrees to defend, indemnify and hold the Purchaser harmless against any claims, costs, damages, liability and expenses resulting from actual trademark, or copyright infringement, misappropriation of confidential information, or violation of any other Intellectual Property right, domestic or foreign, that may arise from the sale of Product that is owned by Seller and that pertains to the subject matter of this Agreement (provided that Product is not modified in any way by the Purchaser or any other party, and that the Product is used in the manner intended by Seller). If a suit or claim results in any injunction or any other order that would prevent Seller from supplying any part or Product falling under this Agreement, or if the result of such a suit or claim would, in the reasonable opinion of Seller, otherwise cause Seller to be unable to supply such parts or Products, Seller shall have the right, at its option, if it so chooses, to do one or more of the following: (i) secure an appropriate license to permit Seller to continue supplying said parts or Products to Purchaser; (ii) modify the appropriate part or Product so that it becomes non-infringing; (iii) replace the appropriate part or Product with a non-infringing but practically equivalent part or Product; or (iv) if the Seller cannot reasonably accomplish the actions specified in subparagraphs (i) - (iii), then in Seller's sole discretion, Seller may discontinue selling the part or Product without any further liability to Purchaser. (b) Purchaser agrees to defend, indemnify and hold Seller harmless against any claims, costs, damages, liability and expenses resulting from actual or alleged patent, trademark, or copyright infringement, misappropriation of confidential information, or violation of any other Intellectual Property right, domestic or foreign, that may arise from the making, using or selling of any part or Product or using any process that is owned by the Purchaser or is designed or specified by the Purchaser and that pertains to the subject matter of this Agreement. (c) If any claim is made by a third party on the basis of which indemnification may be sought under this paragraph, the party entitled to indemnification (the "Indemnified Party") shall give written notice of such claim to the party liable for such indemnification (the "Indemnifying Party") promptly after the Indemnified Party has actual notice of such claim. The Indemnifying Party shall have the right to defend and/or settle such claim at its expense, provided that it does so diligently and in good faith. The Indemnified Party shall cooperate with such defense and/or settlement and shall have the right to participate in (but not to control) such defense and/or settlement at its expense. No settlement shall be entered into unless the Indemnified Party shall be released from all liability for such claim.

22. **Force Majeure.** Seller shall not be liable for failure to perform or delay in performance or delivery of any Products or Services due to (a) fires, floods, strikes, or other labor disputes, accidents, sabotage, terrorism, war, riots, acts of precedence or priorities granted at the request or for the benefit, directly or indirectly, of any federal, state or local government or any subdivision or agency thereof, delays in transportation or lack of transportation facilities, restrictions imposed by federal, state or local laws, rules or regulations; or (b) any other cause beyond the control of Seller. In the event of the occurrence of any of the foregoing, the time for performance shall be extended for such time as may be reasonably necessary to enable Seller to perform. Seller may, during any period of shortage due to any of the above circumstances, allocate its available supply of Products or Services among itself and its Purchasers in such manner as Seller, in its judgment, deems fair and equitable.

23. **Assignment and Delegation.** No assignment of any rights or interest or delegation of any obligation or duty of Purchaser under these terms and conditions, Seller's quotation, order acknowledgement, or invoice, or Purchaser's Purchase Order may be made without the prior written consent of Seller. Any attempted assignment or delegation will be wholly void and totally ineffective for all purposes.

24. **Integration Clause.** These terms and conditions, together with Seller's quotation, order acknowledgement and invoice to a Purchase Order accepted by Seller, constitute the entire contract of sale and purchase between Seller and Purchaser with respect to the Products covered by this Agreement, and supersede any prior agreements, understandings, representations and quotations with respect thereto. No modification hereof shall be of any force or effect unless in writing and signed by the party claiming to be bound thereby.

25. **Waiver.** No failure of Seller to insist upon strict compliance by Purchaser with these terms and conditions or to exercise any right accruing from any default of Purchaser shall impair Seller's rights in case Purchaser's default continues or in case of any subsequent default by Purchaser. Waiver by Seller of any breach by Purchaser of these terms and conditions shall not be construed as a waiver of any other existing or future breach.

26. **Limitation of Actions.** Notwithstanding any contrary statute of limitations, any cause of action for any alleged breach of these terms and conditions by Seller shall be barred unless commenced by Purchaser within one (1) year from the accrual of such cause of action.

27. **Litigation Costs.** If any litigation or arbitration is commenced between Seller and Purchaser concerning any provision of this Agreement, the party prevailing in the litigation or arbitration is entitled, in addition to such other relief that is granted, to a reasonable sum as and for their attorney's fees in such litigation or arbitration, provided that if each party prevails in part, such fees shall be allocated in such manner as the court or arbitrator shall determine to be equitable in view of the relative merits and amounts of the parties' claims.

28. **Choice of Law.** Any dispute arising out of or related to this Agreement, shall be governed by and construed according to the laws of the State of Illinois and litigated exclusively in a state or federal court located in Cook County, Illinois. The parties hereby agree to the exclusive jurisdiction and venue of such courts.

29. **Jury Waiver.** The parties hereto expressly release and waive any and all rights to a jury trial and consent to have any dispute heard solely by a Court of competent jurisdiction.

30. **Severability.** If any provision herein shall be held to be unlawful or unenforceable, the remaining provisions herein shall remain in full force and effect.

PATENT

RECORDED: 04/27/2007

REEL: 019232 FRAME: 0283