

**TOOLING CONSIGNMENT-BAILMENT CONTRACT AGREEMENT**

This Tooling Bailment Agreement (this “Agreement”), dated \_\_\_\_\_ (the “Effective Date”), is entered into by and between **BERGSTROM INC.**, a (corporation) incorporated under the laws of UNITED STATES OF AMERICA, and SUPPLIER NAME \_\_\_\_\_ organized under the laws of COUNTRY NAME (“Supplier”).

**WHEREAS:**

1. Bergstrom Inc. represents that its legal representatives have sufficient powers of attorney to execute this Agreement, which authority has not been revoked or modified in any manner whatsoever.
2. Supplier represents that its legal representative has sufficient powers of attorney to execute this Agreement, which authority has not been revoked or modified in any manner whatsoever.
3. Bergstrom Inc. designs, manufactures and sells Heavy Truck and commercial vehicles components, in particular HVAC Heater Ventilation Air Conditioning systems for Heavy Truck and commercial vehicles ON and OFF Road , and has considerable know-how in this area.
4. Supplier has expertise in the manufacturing, packaging and shipping of Plastic parts\_\_\_\_, Metal stamping Parts\_\_\_\_, Heat Exchanger Parts\_\_\_\_, Other Parts/ Processes \_\_\_\_ (Description \_\_\_\_\_).
5. Bergstrom Inc. and Supplier have entered into a business- commercial relationship whereby Supplier will manufacture and deliver parts (the “Products”) to Bergstrom Inc.
6. Bergstrom Inc. has to put in consignment – bailment to Supplier the tooling, more specifically described on Appendix(1) attached to this Agreement (the “Tooling”), to enable Supplier to manufacture and deliver the Products for Bergstrom Inc..

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE RECITALS AND THE MUTUAL PROMISES AND COVENANTS CONTAINED IN THIS AGREEMENT, THE PARTIES AGREE AS FOLLOWS:

**Article 1 PURPOSE**

- 1.1 Supplier has agreed to manufacture and deliver the Products to Bergstrom Inc.. Bergstrom Inc.has agreed to provide to Supplier the Tooling to assist Supplier in the manufacture and delivery of the Products for Bergstrom Inc.. The value of the Tooling (the “Tooling Value”) and the place where the Tooling will be installed (Tooling Location) is set forth on Exhibit 1.

	Bergstrom Inc.	Bergstrom Inc.	Supplier	Supplier
Initials	_____	_____	_____	_____

**Article 2      OWNERSHIP OF TOOLING**

- 2.1      The Tooling, together with any applicable intellectual property rights, including any idea, invention, concept, discovery, work of authorship, patent, copyright, trademark, trade secret, know-how or other intellectual property, of Bergstrom Inc., or Bergstrom Inc.'s customer (as the case may be), relating to the Tooling or the Products, will remain the property of Bergstrom Inc. or Bergstrom Inc.'s customer (as the case may be). Supplier shall have no right, title or interest in the Tooling. Supplier is expressly prohibited from pledging, encumbering, transferring or placing any liens on, the Tooling or otherwise disposing of the Tooling, without Bergstrom Inc.'s prior written consent. Furthermore, all additions, repairs or improvements made to the Tooling shall be owned by Bergstrom Inc. or Bergstrom Inc.'s customer (as the case may be).
- 2.2      Bergstrom Inc. eventually and based on the periodical tooling evaluations may share costs with Supplier for any modifications to the tool that would be necessary from time to time, in order for Supplier to manufacture the Products for Bergstrom Inc., provided, however, that Supplier uses its best efforts to minimize the costs associated with such modifications and provides to Bergstrom Inc. the correspondent justification in writing. All routine ( Maintenance Level 1) and scheduled ( Maintenance Level 2) and corrective ( Maintenance Level 3- caused by Supplier) maintenance costs are the sole responsibility of Supplier.
- 2.3      Supplier, in its capacity as consignee/ bailee of the Tooling, agrees to attach a metal label or metal tag on the Tooling bearing the marking "Property of Bergstrom Inc" or "**Property of (NAME OF CUSTOMER)**" (as the case may be) and the Identification number provided by the Finance Department of Bergstrom Inc, if one has not been previously attached or engraved. The label must indicate that the Tooling is non-transferable and not subject to any liens of any kind. Supplier shall notify Bergstrom Inc. immediately in writing, of any claim, demand, litigation, lien or action that affects or threatens to affect the Tooling.
- 2.4      Bergstrom Inc. may inspect the Tooling at the Tooling Location, or remove the Tooling for inspection, at any time, from time to time, without notice to Supplier.
- 2.5      Supplier may not move the Tooling from the Tooling Location without Bergstrom Inc.s prior written consent.

**Article 3      TERM AND TERMINATION**

- 3.1      The term of this Agreement is equal to the length of time for which Supplier continues to manufacture and supply the Products to Bergstrom Inc. and shall expire at such time as either: i) supply agreement or purchase order to supply Products to Bergstrom Inc. is terminated; ii) Supplier no longer needs to use the Tooling to manufacture the Products; iii) Bergstrom Inc. provides

	Bergstrom Inc.	Bergstrom Inc.	Supplier	Supplier
Initials	_____	_____	_____	_____

Supplier with fifteen (15) business days prior written notice of termination of this Agreement; whichever occurs first.

- 3.2
- This Agreement may be terminated by any non-breaching party without the need of prior judicial resolution, should the other party fail to fulfill or perform any one or more duties, obligations or responsibilities hereunder, which failure or breach is not cured within fifteen (15) business days after receipt of a notice from the non-breaching party.
- 3.3
- Upon termination of this Agreement, Supplier shall return the Tooling, in good working condition, disregarding ordinary wear and tear resulting from the proper use thereof, by delivering it packed and ready for shipment to such place or carrier as Bergstrom Inc. may specify, at Supplier's own costs and expenses.
- 3.4
- No indemnity or compensation will be paid to Supplier if Bergstrom Inc. terminates this Agreement in accordance with Articles 3.1 and 3.2 and takes back the Tooling.
- 3.5
- In case Supplier delays or refuses to return the Tooling to Bergstrom Inc., Supplier shall pay to Bergstrom Inc. 1% of the Tooling Value as contractual penalty for each day of delay until Bergstrom Inc. has taken possession of the Tooling. All costs and expenses including, but not limited to attorney fees, shipping, labor, etc., incurred by Bergstrom Inc. in its efforts to repossess the Tooling shall be covered by Supplier.
- 3.6
- The termination of this Agreement will not relieve any Party from their respective indemnity obligations derived from this Agreement.

Article 4

**USE OF THE TOOLING**

- 4.1
- Supplier agrees to use the Tooling exclusively for the manufacturing of the Products and in accordance with any additional agreements relating to the Products that may exist between the parties. Supplier will not use the Tooling for any purpose outside of this Agreement or for the manufacturing of the Products for third parties.
- 4.2
- Supplier shall not manufacture tooling identical or similar to the Tooling (by use of Bergstrom Inc. technical information, reverse engineering or any other method).
- 4.3
- Supplier agrees that it will be solely responsible for all costs and expenses associated with the misuse, unauthorized modification, disassembly or destruction of the Tooling. Such costs are not limited to the repair or replacement or the Tooling Value, but may include all damages and lost profits suffered by Bergstrom Inc. derived from such misuse, unauthorized modification, disassembly or destruction of the Tooling.

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Initials	_____	_____	_____	_____

**Article 5        MAINTENANCE OF THE TOOLING**

5.1                Supplier shall keep the Tooling in good working order by making all necessary routine, scheduled or emergency maintenance ( Exhibit 2 ) at Supplier's sole cost, including insurance and any other related expenses

1) **Maintenance Level 1:** Daily or every production run general inspection, cavities-cores and parting line cleaning, lubrication, antirust protection, reparation of fluid leaks, reparation of electrical malfunctions or other basic tasks.

2) **Maintenance Level 2:** Preventive Maintenance (PM) scheduled by number of shots or period of time to help to keep the tool in good working conditions and to anticipate/eliminate any risk of failure or malfunction while it is working, including but not limited to: tool disassembly, cooling lines de-scaling, service or replacement of mechanical, pneumatic, hydraulic or electrical parts or subsystems such as pins, ejectors, springs, fittings, bolts, locks, date wheels, hot runner system parts, centering rings, o-rings, seals, electrical wiring, switches or connectors, pneumatic or hydraulic hoses, devices such as cylinders or others, cleaning of all vents or overflows, HD greasing or other necessary.

3) **Maintenance Level 3:** Corrective maintenance, repairs or activities executed with the purpose of not only to keep the mold in a working condition but to replace or recover the damaged, worn or obsolete parts or subsystems such as cavities, cores, sliders, inserts or others.

No alterations, additions or improvements to the Tooling should be made without Bergstrom Inc.'s prior written consent. All additions or improvements made to the Tooling shall belong to Bergstrom Inc.

5.2                Supplier will compile an evaluation report of the general condition of the tooling every six or twelve months depending on the complexity of the tool and submit said report to Bergstrom Inc. ( Exhibit 3) The report shall include details of the functionality and physical condition of the Tooling and of any necessary repairs within the next six (6) month period as well as a forecast for a projected end-of-tool life. The supplier is required to provide an annual report of the tool condition and the total number of parts produced (including scrap and setup). Bergstrom Inc. eventually and based on the periodical tooling evaluations may share costs with Supplier for any modifications to the tool that would be necessary from time to time, in order for Supplier to manufacture the Products for Bergstrom Inc., provided, however, that Supplier uses its best efforts to minimize the costs associated with such modifications and provides to Bergstrom Inc. the correspondent justification in writing. Any situation or problem likely to seriously disturb the Tooling's production capacity must be notified to Bergstrom Inc. within 24 hours.

**Article 6        RESPONSIBILITY AND INSURANCE**

6.1                Supplier shall at all times bear the entire risk of loss, theft, damage or destruction of the Product from any cause whatsoever.

- 6.2 During the term hereof, Supplier shall acquire or be covered and maintain a casualty insurance from an authorized insurance company to cover the Tooling against theft, loss or deterioration in an amount at least equal to the Tooling Value. The corresponding policy must name Bergstrom Inc.as loss payee.
- 6.3 During the term hereof, supplier shall acquire or to be covered and maintain a casualty and liability policy from an authorized insurance company insuring Supplier against any and all liability for all damages, either to person or property or otherwise, which may have resulted from or in connection with the condition, use or operation of the Tooling. The limits and insurer must be satisfactory to Bergstrom Inc.
- 6.4 Supplier agrees to defend, indemnify and hold harmless Bergstrom Inc. for any claims brought by a third party regarding any liability or damages, either to person or property or otherwise, resulting from the possession or use of the Tooling by Supplier, or of its lack of skill in using the Tooling, or any other reason related to the Tooling.

**Article 7** **TAXES**

Supplier shall be responsible for any state and local property taxes assessed on Tooling. In order to fulfill its responsibility with respect to state and local property taxes on Tooling, Supplier will include such Tooling on its own property rendition forms and pay property taxes on such tooling as if it were owned by Supplier. Bergstrom Inc. will cooperate with Supplier in obtaining any necessary approvals and exemptions as may be required and allowed by state or local authorities. Supplier shall comply with all applicable valuation and reporting rules for such Tooling, including the use of valid non-standard valuations as may be appropriate to accurately reflect the true value of the tooling and legally minimize property tax liabilities. Supplier shall pay all taxes assessed on the Tooling directly to the appropriate authorities in a timely manner. Supplier shall be responsible for all personal property tax audits and other inquires by the state and local taxing authorities concerning the Tooling. Supplier shall perform the foregoing activities at its own cost and will indemnify Bergstrom Inc. for any taxes, penalties, interest, legal fees, or other costs incurred by Bergstrom Inc. as a result of Supplier's failure to properly perform these activities. As owner of the Tooling, Bergstrom Inc. is entitled to all federal and state income and franchise tax credits applicable to such tooling investment.

**Article 8** **INDEMNITY**

Supplier covenants and agrees to indemnify and hold Bergstrom Inc., its subsidiaries and affiliates and each of their respective officers, directors, shareholders, employees, harmless from and against any loss, expense, damage or injury suffered or sustained by such persons by reason of (a) the inaccuracy or breach of any representation, warranty, covenant or agreement of Supplier contained under this Agreement, or (b) any acts, omissions or

	Bergstrom Inc.	Bergstrom Inc.	Supplier	Supplier
Initials	_____	_____	_____	_____

alleged acts or omissions by Supplier and/or Supplier's employees or agents or (c) otherwise arising out of or related to Supplier's performance under this Contract - Agreement. The indemnity provided for hereunder shall include, but not be limited to, any judgment, award, settlement, reasonable attorneys' and similar advisors' fees, penalties, fines, and such other costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim.

**Article 9      NON-ASSIGNMENT OR TRANSFER**

- 9.1            This Agreement and the rights and obligations under this Agreement, both in whole or in part, are not assignable and not delegable and shall not be transferred, directly or indirectly by the parties without written permission from the other party, except that Bergstrom Inc. may transfer, assign or delegate to a Bergstrom Inc. Affiliate without written permission from Supplier. For the purposes of this Section it shall be considered as a Bergstrom Inc. Affiliate any entity which, directly or indirectly, controls Bergstrom Inc., is controlled by Bergstrom Inc., or is under common control with Bergstrom Inc., where "control" means the ownership of more than 50% of the voting rights, for so long as such control exists.
- 9.2            For the Tooling, irrespective of its location Supplier is and will remain solely liable to Bergstrom Inc.. Tooling Location at any Supplier's subcontractors shall not be considered as an assignment of any right or obligation under this Agreement. Supplier shall ensure that its subcontractor will act in conformance with all provisions of this Agreement.

**Article 10     CONFIDENTIALITY**

- 10.1           It shall be considered as "Confidential Information" i) all technical information, know-how, pricing, patents, concepts, ideas, trade secrets, plans, formulas, drawings, designs, processes, procedures, inventions, specifications, prototypes, samples, parts, customer lists, financial data, and manufacturing techniques, software products (ii) any and all other information, data and materials disclosed by Bergstrom Inc. or its affiliates to the Supplier from time to time, whether in writing or orally; (iii) and any representations of any of the foregoing.
- 10.2           Supplier shall not at any time, directly or indirectly, reproduce, disclose, divulge, disseminate, publish, reveal or otherwise make known any Confidential Information to any third party.
- Supplier agrees that the Confidential Information received under this Agreement shall be used solely for the purposes of Tooling use or Products manufacture and supply.
- 10.2           This requirement of confidentiality shall be maintained for the duration of this Agreement and for a period of five (5) years thereafter or until five (5) years after Supplier ceases to be a supplier of Bergstrom Inc. whichever occurs later; except that the Supplier's obligations with respect to information that

	Bergstrom Inc.	Bergstrom Inc.	Supplier	Supplier
Initials	_____	_____	_____	_____

constitutes trade secrets will continue until the information no longer constitutes trade secrets.

**Article 11     APPLICABLE LAW - JURISDICTION**

The construction, validity and performance of this Agreement shall be governed by the governing Laws of the United States of America, The State of Illinois, and / or other described hereafter

Any dispute related to this Agreement or to its signature, interpretation or validity shall be settled, if possible, by amicable discussion between the parties. If the parties are unable to find an amicable solution, any such dispute shall be submitted to the Courts of Law of the United States of America, The State of Illinois , and / or other described hereafter

, waiving to any other jurisdiction that may be applicable to either of Parties because of their present or future legal addresses or any other reason whatsoever. The relationship between Bergstrom Inc. and Supplier, including all purchase orders, supply agreements, long-term agreements and this Agreement will be governed by the Bergstrom Inc. Purchasing Terms and Conditions for the United States of America, as in effect from time to time (the “Terms and Conditions”); however, in the event of any inconsistencies between the Terms and Conditions and this Agreement, the provisions of this Agreement shall prevail.

**Article 12     RELATIONSHIP OF PARTIES**

The relationship between the parties is that of independent contractors. Neither party is granted any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of the other party or to bind the other party in any manner. Neither party shall represent to others that the relationship between them is other than as stated above.

**Article 13     AMENDMENTS**

This Agreement cannot be amended, modified or supplemented in any respect except by a subsequent written agreement entered into by both parties.

**Article 14     NOTICES**

Notices required or permitted under the Agreement shall be effective if given in writing, written in English, sent by registered letter via an internationally recognized air courier or by facsimile confirmed by registered letter via an internationally recognized air courier, addressed as follows; unless otherwise specified in the

Bergstrom Inc.	Bergstrom Inc.	Supplier	Supplier
Initials	_____	_____	_____

Agreement, notices shall be effective from the date of receipt of facsimile or in the event a facsimile is not received, eight (8) business days after the service of the registered letter.

**If to the SUPPLIER:**

Company: \_\_\_\_\_  
 Attention to: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Fax: \_\_\_\_\_

**If to BERGSTROM INC.:**

**Bergstrom Inc.**  
 2390 Blackhawk Road  
 P.O. Box 6007  
 Rockford, IL 61125  
 Phone: 815-874-7821  
 Fax: 815-874-2144

Attention: Purchasing Director/ Purchasing VP/ Company Officer

Any party may change the address to which such communication is to be sent by notice to the other party as provided in this Contract Agreement.

**Article 15      NO IMPLIED WAIVER**

The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver of either party of a breach of any provision of this Agreement constitute a waiver of any succeeding breach of the same or any other provision.

**Article 16      SEVERABILITY**

In the event that one or more clauses of this Agreement are found to be unenforceable, illegal or contrary to public policy by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect except for any unenforceable or illegal provisions.

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IN WITNESS WHEREOF, Bergstrom Inc. and Supplier have executed this Tooling Consignment /Bailment Contract Agreement as of the Effective Date.

BERGSTROM INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Legal Representative

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Legal Representative

SUPPLIER

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Legal Representative

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Legal Representative

Initials

Bergstrom Inc.

Bergstrom Inc.

Supplier

Supplier