

DEALER AGREEMENT

This DEALER AGREEMENT ("Agreement") is entered into this _____[DATE] ("Effective Date") between *Thursday Pools LLC* ("MANUFACTURER"), an Indiana Limited Liability Company, having its principal place of business at *840 Commerce Parkway, Fortville* [ADDRESS], and _____[DEALER NAME] ("DEALER"), a _____[STATE] Limited Liability Company, having its principal place of business at _____ [ADDRESS].

RECITALS

Whereas, DEALER desires to purchase pools from the MANUFACTURER, sell and install the pools to the retail public; and

Whereas, MANUFACTURER desires to establish the DEALER as an authorized, DEALER for the sale of fiberglass pools; and

Whereas MANUFACTURER and DEALER desire to set forth the respective duties, obligations, and responsibilities of each in the sale of the fiberglass pools by DEALER; and

Whereas, MANUFACTURER has elected to enter into this Agreement with DEALER with confidence in DEALER's integrity and expressed intention to deal fairly with its Customers; and

Whereas, it is the expectation of each of the parties that by entering into this Agreement, and by the full and faithful observance and performance of its duties, obligations, and responsibilities, a mutually satisfactory relationship between them will be established and maintained;

AGREEMENT

NOW THEREFORE, in consideration of recitals and the covenants and conditions contained in this Agreement, the parties mutually agree as follows:

I. DEFINITIONS

- a. "Customer" shall mean a) any Person within the Territory and/or b) any Person to whom DEALER has sold Products as permitted under this Agreement.
- b. "Person" shall mean an individual, corporation, partnership, limited partnership, limited liability company, syndicate, person, trust, association, entity or government or political subdivision, agency or instrumentality of a government.
- c. "Products" shall mean all products of Thursday Pools LLC.
- d. "Sales Price" shall mean the price charged for Products in an order from DEALER.

- e. “Territory” shall mean the State of Indiana, United States of America or Canada.
- f. “Trademark” shall mean a trademark, service mark, logotype or symbol which has achieved common law trademark status in any jurisdiction and which identifies the products or services of a party or a third party, as the case may be.

II. SERVICES

- a. ***Agreement to Sell Pools.*** Within the bounds of the area of responsibility allocated to DEALER by MANUFACTURER, MANUFACTURER agrees to sell fiberglass pool(s), spas and wet decks to DEALER. DEALER agrees to purchase fiberglass pools, spas and wet decks from the MANUFACTURER as agreed to in this Agreement.
- b. ***Marketing Policies.*** DEALER will promote vigorously and effectively the sale of MANUFACTURER’s products through channels of distribution prevailing in DEALER’s primary marketing area in conformity with MANUFACTURER’s established marketing policies and programs. DEALER will use its best efforts to sell MANUFACTURER’s products.
- c. ***Intellectual Property Protection.***
 - i. The MANUFACTURER may obtain, at its own cost and in its own name, appropriate copyright and Trademark protection for its Products and/or the Trademarks and the DEALER agrees to cooperate with the MANUFACTURER in protecting such Trademarks.
 - ii. Trademarks shall include, but are not limited to, all “Thursday Pools” logos and design marks, and the “Thursday Pools” name and the phrase “Your weekend starts early with us.”
 - iii. The DEALER agrees that it shall not at any time apply for any registration of any copyright, Trademark or other designation that would affect the ownership of the Trademarks nor file any document with any governmental authority to take any action that would affect the ownership of the Trademarks.
 - iv. The DEALER agrees that it shall, at no time, use or authorize the use of any Trademark, trade name or other designation identical with or colorably similar to the Trademark.
 - v. The DEALER agrees to assist the MANUFACTURER in the enforcement of the MANUFACTURER’s rights in the Trademarks. With respect to any such claims and suits, the MANUFACTURER shall employ counsel of its own choice to direct the handling of the litigation and any settlement thereof. The MANUFACTURER shall be entitled to receive and retain all amounts awarded as damages, profits or otherwise in connection with such suits.

- d. ***DEALER Commitment to Customer.*** DEALER and MANUFACTURER agree that the DEALER cannot create any negative goodwill toward the Thursday Pool Brand Name. If the DEALER does create any negative goodwill toward the name then the MANUFACTURER has the right to perform work for the ultimate Customer in the spirit of preserving the goodwill of the Brand Name.
- e. ***Change of Design.*** MANUFACTURER shall have the right to change the design of its Products or processes at any time it is deemed necessary. MANUFACTURER is not to be held responsible for making such design changes on existing products.
- f. ***No Third Party.*** This Agreement is solely for the benefit of the parties hereto and no provision of this Agreement shall be deemed to confer upon third parties any remedy, claim, liability, reimbursement, cause of action or other right in excess of those existing without reference to this Agreement.

III. TERM; TIME OF PERFORMANCE

- a. ***Territory.*** Unless agreed in writing by the MANUFACTURER and DEALER, the DEALER is not limited to sell within a specific territory and the MANUFACTURER does not provide exclusive sales territory to the DEALER.
- b. ***Term.*** This Agreement shall continue in full force and effect from and after the date as of which this Agreement is executed until terminated by either party.
- c. ***Renewal.*** MANUFACTURER shall have the right to renew this Agreement at the end of each calendar year.
- d. ***Relationship of the Parties.*** During the term of this Agreement, the relation between MANUFACTURER and DEALER is that of vendor and vendee. DEALER its agents and employees shall, under no circumstances, be deemed agents or representatives of MANUFACTURER. DEALER will not modify any of MANUFACTURER's products without written permission from MANUFACTURER. Neither DEALER nor MANUFACTURER shall have any right to enter into any contract or commitment in the name of, or on behalf of the other, or to bind the other in any respect whatsoever or create any liability for the other in any respect.
- e. ***Termination without Advance Notice.***
 - i. While it is the desire of MANUFACTURER to establish lasting arrangements with DEALERS, it is recognized that certain conditions may arise in which it is impracticable for this Agreement to continue in effect. In the interest of friendly relations between MANUFACTURER and DEALER, it is important that the circumstances be set forth so they may be thoroughly understood by both parties to this Agreement. Accordingly, it is agreed that this Agreement shall terminate on the expiration of the terms of this Agreement, or immediately by its own force without notice from either party in the event of:

1. An attempted assignment of this Agreement by DEALER without MANUFACTURER's written consent;
 2. An assignment by DEALER for the benefit of creditors;
 3. The admitted insolvency of DEALER;
 4. The institution of voluntary or involuntary proceedings by or against DEALER in bankruptcy or under insolvency laws or for corporate reorganization, or for a receivership or for the dissolution of DEALER;
 5. The admitted insolvency of any member of DEALER if a partnership;
 6. The discontinuance of DEALER's distribution and resale in DEALER's sales and service area of the fiberglass pools;
 7. In case DEALER or any of DEALER's officers or managers shall convert any property or embezzle any money either of third parties or of DEALER in the case of officers or managers; or
 8. In case DEALER fails to secure a dealer's license or a renewal in those states requiring dealer's licenses, or in case DEALER's license is revoked or suspended.
 9. DEALER does not fulfill one or more of the requirements in Section "Duties of DEALER".
- ii. Termination under this section shall not impose any liability on MANUFACTURER under the provision of this Agreement. It is further agreed by DEALER that DEALER will immediately advise MANUFACTURER in writing of the occurrence of any event specified in this Section. MANUFACTURER or DEALER may terminate this Agreement immediately by delivering to the other party written notice of termination if the other party violates or fails to comply with any term or provision of this Agreement for which termination is not otherwise specifically provided for in this section.
- f. ***Termination by Notice.*** It is also recognized that certain other conditions may arise under which either party may desire to terminate this Agreement by giving reasonable notice to the other party. Accordingly, this Agreement may be terminated at any time on not less than one days' written notice by MANUFACTURER or on not less than one days' written notice by DEALER, but either of these periods may be reduced by mutual written consent of DEALER and MANUFACTURER.
- g. ***Termination-Sums Due MANUFACTURER.*** On termination of this Agreement, DEALER will immediately pay to MANUFACTURER all sums due MANUFACTURER at the time of the termination.
- h. ***Termination –Unfilled Orders.*** MANUFACTURER may at its discretion decide to fill any unfilled orders for the DEALER. DEALER agrees that any orders will be paid in full prior to loading for shipping.
- i. ***Termination-Promotional Materials, Signs, Names, Trademarks, & Trade Names.***
- i. On termination of this Agreement, DEALER agrees that DEALER will immediately discontinue the use of names, Trademarks, signs, stationeries, advertising or anything else that might make it appear that DEALER is still

handling MANUFACTURER's Products. It is recognized by MANUFACTURER and DEALER that the prompt discontinuance of the use of any signs, names, Trademarks, stationery, advertising, and the like, will be beneficial to both MANUFACTURER and DEALER on termination of this Agreement.

- ii. DEALER agrees to return all color chip samples, models, literature, DEALER packages, points of sale items, any advertising or promotional items to MANUFACTURER within ten (10) days or MANUFACTURER will bill DEALER for the items.

IV. DUTIES OF DEALER

- a. Maintain all necessary business licenses.
- b. Use DEALER's best efforts to promote and expand the sale of the product.
- c. Maintain an adequate business location, together with sufficient area for inventory storage.
- d. Maintain the necessary equipment to install the fiberglass pools in a safe and high quality manner.
- e. Comply with all applicable laws and regulations at the Local, State and Federal level.
- f. Provide to Manufacturer a name and address for each pool installed to receive the Transferrable Limited Warranty.
- g. Provide to each purchaser of a pool a copy of the Limited Transferable Warranty.
- h. Provide adequate access to the delivery site to allow a safe and appropriate unloading.
- i. Provide all necessary Federal and State building permits, licenses and fees to provide a safe and appropriate installation of the pool.
- j. Provide the insurance requirements as described in the Agreement.
- k. Protect the pool designs from any copying of any kind.
- l. Provide a quality installation to ensure the positive goodwill of the Brand Name.

V. PAYMENT & DELIVERY

- a. ***Terms Of Payment.***
 - i. DEALER agrees to pay MANUFACTURER one hundred percent (100%) of the full price of the Pool before the Pool will be shipped or loaded onto a trailer for shipping.
 - ii. DEALER agrees to pay the shipping costs before the Pool is unloaded.

- iii. MANUFACTURER has the right to collect for attorney fees and/or collection fees if it must hire additional services to collect on any unpaid amounts due.
 - iv. Terms of payment may be updated from time to time. For full details of Terms of sale see the "STANDARD TERMS AND CONDITIONS OF SALE" attached hereto as Exhibit "A".
- b. ***Sale Price Of Pools.*** DEALER agrees to pay the Sales Price as published by the MANUFACTURER from time to time. The MANUFACTURER agrees to make every attempt possible to limit the Sales Price increases to once a year. This price increase should occur at the beginning of each calendar year in order to minimize the disturbance to the DEALERs sales teams. The DEALER and MANUFACTURER agree that the MANUFACTURER may offer specials during the year in order to help or assist the DEALERs to promote the fiberglass pool Products. DEALER will have thirty (30) days to lock in any orders at a previous price when a new price list is published.
- c. ***Taxes/Duty/Import Fees.*** DEALER and MANUFACTURER agree that appropriate sales taxes, duties, import fees or any other taxes or cost above the Sales Price will be charged to the DEALER and paid by the DEALER upon the same terms as described in the Payment Terms section unless the DEALER provides the appropriate documentation for an exemption. Terms of Taxes/Duty/Import Fees may be updated from time to time.
- d. ***Delivery. All terms are F.O.B. MANUFACTURER's plant.*** MANUFACTURER has no obligation to deliver or unload any product. DEALER must provide its own shipping. If MANUFACTURER provides deliver of the product there will be an appropriate charge, however the DEALER is still responsible to provide a safe and appropriate unloading of the product. MANUFACTURER does require that Load and Unload Inspection Reports must be signed. Terms of Delivery may be updated from time to time.

VI. INSURANCE

- a. DEALER shall maintain during this Agreement insurance policies for the coverages specified below issued by companies licensed in their territory. Before receiving product from MANUFACTURER, DEALER shall furnish MANUFACTURER with certificates of insurance evidencing the coverages, conditions, and limits required by this Agreement to the address specified in the first paragraph and repeated here for convenience:

Thursday Pools LLC
840 Commerce Pkwy
Fortville, IN 46040
Attn: Risk Management (877) 929-7665

- b. The insurance policies, except Workers' Compensation and Professional Liability, shall be endorsed to Thursday Pools LLC its agents officers, officials employees, and volunteers as additional insureds with the following language:

Thursday Pools LLC, its agents, officers, officials, employees and volunteers are hereby names as additional insureds as their interest may appear.

- c. If any insurance policies are written on a "claim made" basis, coverage shall extend for two years past completion and acceptance of the DEALER's work or services and must be evidenced by annual certificates of insurance. The insurance policies shall be endorsed stating that they shall not expire, be cancelled, suspended, voided or materially changed without thirty (30) days written notice by certified mail to the Thursday Pools LLC Risk Manager. The DEALER's insurance must be primary, and any insurance or self-insurance maintained by the MANUFACTURER shall not contribute to it.
- d. If any part of the DEALER's installation is subcontracted, these insurance requirements also apply to all subcontractors. The following coverage is required:
 - i. Commercial General Liability insurance with a limit of not less than one million dollars (\$1,000,000.00) per occurrence for bodily injury, property damage, personal injury, Products and completed operations, and blanket contractual coverage, including but not limited to, the liability assumed under the indemnification provisions of this Agreement.
- e. Workers' Compensation insurance with limits statutorily required by any Federal or state law.

VII. WARRANTIES AND REPRESENTATIONS

- a. **General.** DEALER represents and warrants as follows: (i) DEALER is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization; (ii) DEALER has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement; (iii) this Agreement constitutes the valid and legally binding obligation of DEALER enforceable in accordance with its terms and conditions (subject to applicable bankruptcy laws and laws generally affecting the rights of creditors); (iv) DEALER's execution and deliver of this Agreement and DEALER's performance of the services will not (1) violate any provision of the charter, bylaws or other governing document of DEALER, or (2) conflict with, result in a breach of, or constitute a default under any other Agreement or arrangement or any law, regulation, order or decree by which DEALER is bound.
- b. **Non-Infringement.** DEALER represents and warrants as follows: (i) DEALER has the right to make disclosure and use thereof without liability to others; and (ii) no portion thereof infringes, violates, or misappropriates the intellectual property rights of others.

- c. **Product Warranty.** MANUFACTURER maintains and publishes its standard Transferrable Limited Warranty. MANUFACTURER makes no other representation or warranties as to its Products except as described in the Transferrable Limited Warranty published by the MANUFACTURER as Form # 7.2.3-6 (or latest rev #).
- i. Please note: it is the DEALER's responsibility to provide this warranty to the Customer and to inform the Customer that their warranty is not valid until their pool is paid in full and the proper information (Customer name address and contact information) has been submitted to and received by the MANUFACTURER.
- d. **Effect on Existing Warranties.** Neither this Agreement nor the services provided under this Agreement shall be deemed to invalidate or otherwise adversely affect any existing warranties, if any, provided by DEALER, whether under this Agreement or any other Agreement with MANUFACTURER, with respect to equipment, goods or services previously provided by DEALER to MANUFACTURER.
- e. **Force Majeure.** The parties will not be responsible for failure to perform any part of this Agreement or for any delay in the performance of any part of this Agreement, directly or indirectly resulting from or contributed to by any foreign or domestic embargoes, seizures, act of God, strikes, labor disputes, vendor problems, insurrections, wars and/or continuance of war, or the adoption or enactment of any law, ordinance, regulation, ruling or order directly or indirectly interfering with production, delivery or other contingencies beyond their control. This section does not affect the payment obligations of either party under this Agreement.
- f. **Notices.** Any notice, consent or approval required or permitted under this Agreement shall be in writing, and shall be delivered (i) personally by hand, (ii) by certified mail, postage prepaid, with return receipt requested, or (iii) by facsimile or e-mail with confirmation of transmission, to the parties as follows:

If to MANUFACTURER:

Thursday Pools LLC
840 Commerce Pkwy
Fortville, IN 46040

Either party may change the Person(s) and/or address(es) designated above effective ten (10) days following delivery of notice of such change(s). Notice given shall be deemed effective on the date delivered, if by hand, on the date deposited in the U.S. Mail properly addressed, if by mail, or on the date of transmission, if by facsimile or e-mail.

- g. ***Housekeeping.*** DEALER will take reasonable precautions for safety of, and will provide protection to prevent damage, injury or loss to DEALER agents and to other Persons who may be affected by the performance of services; to materials used in the performance of services and any tangible deliverables resulting from the performance of the services, whether in storage on or off site, under care, custody or control of DEALER or DEALER agents; and to other property at DEALER's facility or adjacent thereto.

VIII. LIMITATION OF LIABILITY

LIMITATION OF LIABILITY. IN NO EVENT SHALL MANUFACTURER BE LIABLE TO DEALER OR TO ANY OTHER PERSON OR ENTITY WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT, UNDER ANY EQUITY, COMMON LAW, TORT, CONTRACT, ESTOPPEL, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY, FOR ANY (A) INCIDENTAL, SPECIAL, CONSEQUENTIAL OR INDIRECT DAMAGES OR (B) DAMAGES RESULTING FROM LOSS OF SALE, BUSINESS, PROFITS, DATA, OPPORTUNITY OR GOODWILL, EVEN IF THE REMEDIES PROVIDED FOR IN THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE AND EVEN IF MANUFACTURER HAS BEEN ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING DAMAGES.

IX. INDEMNIFICATION

INDEMNIFICATION: DEALER SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND MANUFACTURER, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND/OR MEMBERS, OR AT DEALER'S OPTION TO SETTLE, ANY THIRD PARTY CLAIM, SUIT OR PROCEEDING BROUGHT AGAINST MANUFACTURER, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND/OR MEMBERS TO THE EXTENT SUCH CLAIM, SUIT OR PROCEEDING THAT IS BASED UPON OR ARISING IN CONNECTION WITH ANY OF THE FOLLOWING: (I) ALLEGATIONS THAT USE OF ANY OF THE POOLS CAUSE INJURY TO ANYONE, WHETHER SOUNDING IN NEGLIGENCE, CONTRACT OR WARRANTY; (II) IS RELATED TO A BREACH OF THIS AGREEMENT BY DEALER; (III) ANY NEGLIGENT ACT OR OMISSION OR WILLFUL MISCONDUCT OF DEALER (INCLUDING DEALER'S AGENTS); (III) ANY CLAIM OF LIEN OR STOP NOTICE RIGHT ASSERTED BY ANY OF DEALER'S SUBCONTRACTORS; (IV) A CLAIM THAT THE SERVICES PERFORMED UNDER THIS AGREEMENT, OR THE RESULTS THEREOF, INFRINGE A PATENT, COPYRIGHT, TRADEMARK, VIOLATE A TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHT; AND (V) ANY CLAIMS ARISING FROM THE SOLE, JOINT, CONCURRENT OR CONTRIBUTING NEGLIGENCE OF DEALER RELATING TO THE DESIGN, CONSTRUCTION, INSTALLATION PERFORMANCE OR USE OF THE POOLS. DEALER FURTHER AGREES TO INDEMNIFY MANUFACTURER, ITS OFFICER, DIRECTORS, AND SHAREHOLDERS AGAINST ANY AND ALL DAMAGES, COSTS AND EXPENSES (INCLUDING LEGAL FEES) THAT A COURT AWARDS IN A FINAL JUDGMENT AGAINST MANUFACTURER, ITS OFFICERS, DIRECTORS,

EMPLOYEES, AGENTS, AND/OR MEMBERS UNDER ANY SUCH CLAIM OR ACTION. NOTHING HEREIN SHALL RESTRICT THE RIGHT OF MANUFACTURER TO PARTICIPATE IN A CLAIM, ACTION OR PROCEEDING THROUGH ITS OWN COUNSEL AND AT ITS OWN EXPENSE.

X. GENERAL PROVISIONS

- a. ***Governing Law; Severability.*** This Agreement will be governed by and construed in accordance with the laws of the State of Indiana excluding that body of law pertaining to conflict of laws. Any suit arising out of this Agreement, at law or in equity, shall be brought in a state or federal court in Indiana, the jurisdiction of which state or federal court includes Hancock County, Indiana, provided that such court has jurisdiction over the subject matter of the suit. Each Party consents to personal jurisdiction in the above courts. DEALER further consents to such venue as MANUFACTURER selects in any of such courts. If any provision of this Agreement is for any reason found to be unenforceable, the remainder of this Agreement will continue in full force and effect.
- b. ***Binding Effect; Assignment.*** This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and assigns; provided, that DEALER may not assign or otherwise transfer this Agreement, or any rights or obligations hereunder, without the prior written consent of MANUFACTURER.
- c. ***Complete Understanding; Modification.*** This Agreement constitutes the complete and exclusive understanding and Agreement of the parties and supersedes all prior understandings and Agreements, whether written or oral, with respect to the subject matter hereof. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by the parties hereto.
- d. ***Multiple Counterparts.*** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and together shall constitute the same document. Facsimile signatures shall be effective in all respects.
- e. ***Waivers.*** No waiver, express or implied, by either party of any breach of any term, condition or obligation of this Agreement shall be construed as a waiver of any subsequent breach of any term, condition or obligation of this Agreement of the same or similar nature.
- f. ***Gratuities.*** Each party warrants that it has not offered or given and will not offer to give any gratuity to any employee, agent or representative of the other party.
- g. ***Construction and Interpretation.*** The various section headings, titles and captions contained in this Agreement and the sections and subsections thereof are inserted for purposes of identification and convenience of reference only, are not a part of the Agreement and shall have no effect upon the meaning, construction or interpretation of this Agreement or any portion thereof. Further, if any provision, or portion thereof, of this Agreement is capable of multiple constructions, one or more of which would render

the provision, or portion thereof, void and the other of which would render the provision, or portion thereof, valid, then the provision, or portion thereof, shall have the meaning which renders it valid.

The following parties authorize that that they have the proper authority to represent their entity and agree to be bound by this Agreement by signing below and including their appropriate title.

MANUFACTURER

BY _____
Printed _____
Title _____
Date _____

DEALER

BY _____
Printed _____
Title _____
Date _____
Email _____
Website _____

----- ***BEST COMPANY CONTACT*** -----

NAME: _____ TITLE: _____
OFFICE: (_____) _____ - _____ MOBILE: (_____) _____ - _____
EMAIL: _____