EX-10  
 STANDARD MANUFACTURING AGREEMENT  
  
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Xxxxx Sports Turf, Inc., whose principal place of business is located  
at Minneapolis, Minnesota ("Xxxxx Delaware"); and Xxxxxx Xxxxx, an  
individual; and Xxxxx Sports Turf, Inc., a private corporation whose  
principal place of business is located at Rome, Georgia ("Xxxxx  
Georgia"); in their desire to formulate a strategic business  
relationship and to define their expectations regarding this  
relationship, hereby agree as follows:  
  
1. RECITALS  
  
1.1 This Agreement is intended by Xxxxx Georgia and Xxxxx Delaware to  
operate as a basic set of operating conditions regarding their  
respective business relationship. Product specific requirements along  
with specific business terms and conditions will be mutually agreed  
to and documented by an Addendum to this Agreement ("Product").  
  
1.2 It is the intent of the parties that this Agreement and its  
Addendum shall prevail over any agreements previously entered into by  
the parties. It is the intent of the parties that this Agreement and  
its Addendum shall also prevail over the terms and conditions of any  
purchase order, acknowledgment form or other instrument previously  
entered into.  
  
1.3 This Agreement may be executed in one or more counterparts, each  
of which will be deemed the original, but all of which will  
constitute but one and the same document. The parties agree this  
Agreement and its Addendum may not be modified except in writing and  
signed by all parties.  
  
2. TERM  
  
2.1 This Agreement shall commence on the effective date, May 14th  
2003, and shall continue for an initial term of ten (10) years. This  
Agreement shall automatically be renewed for successive one (1) year  
increments unless either party requests in writing, at least ninety  
(90) days prior to the anniversary date, that this Agreement not be  
so renewed.  
  
3. PRODUCT FORECAST  
  
3.1 Xxxxx Delaware will provide, if necessary, an annual twelve  
(12) month forecast.  
  
4. MATERIAL PROCUREMENT  
  
4.1 Xxxxx Georgia is authorized to purchase materials using  
standard purchasing practices in order to meet the forecasted  
requirements of Xxxxx Delaware.  
  
Xxxxx Delaware recognizes its financial responsibility for the  
material purchased by Xxxxx Georgia on behalf of Xxxxx Delaware.  
Xxxxx Delaware is responsible for material to the extent that (i)  
material is purchased by Avery Georgia to support the Product  
forecast; (ii) Avery Georgia exercises reasonable judgment in  
managing suppliers and lead times; (iii) Avery Georgia complies with  
Xxxxx Delaware cancellation instructions in a timely manner (cancels  
all open orders within one (1) week of receiving instructions).  
  
4.2 Xxxxx Delaware may revise or cancel a purchase order for  
Product and may also eliminate a component from a Product. If Xxxxx  
Delaware revises or cancels a purchase order ("Order"), or eliminates  
a component, or through revised forecast (downside) causes excess  
inventory, Xxxxx Georgia shall identify all potential liability of  
Xxxxx Delaware for material on order, material on hand, work in  
process, and finished goods. Xxxxx Georgia shall undertake  
commercially reasonable efforts to cancel all applicable component  
purchase orders and reduce component inventory through return for  
credit programs or allocate components for alternate programs to  
minimize charges to Xxxxx Delaware. Xxxxx Delaware agrees to  
compensate Xxxxx Georgia for costs incurred for finished goods  
(including profit); work in process (including labor performed);  
material on hand which could not be returned or used for other Xxxxx  
Delaware products or at other sites of Xxxxx Georgia; material on  
order which could not be canceled; applicable material suppliers'  
restocking or cancellation fees; and agreed upon Xxxxx Georgia  
handling charges.  
  
4.3 Xxxxx Georgia will report its inventory position to Xxxxx  
Delaware on a monthly basis, including the following data: quantity  
of raw material, work in process and any open orders that cannot be  
canceled due to supplier lead time.  
  
5. PURCHASE ORDERS AND PRICE REVIEWS  
  
5.1 Initial order placement will be an Order from Xxxxx Delaware to  
Avery Georgia issued electronically with facsimile copy as backup.  
  
Avery Georgia will provide notice to Xxxxx Delaware of Order  
acceptance and scheduled shipment date.  
  
5.2 Xxxxx Delaware may issue specific Orders to Avery Georgia,  
which will be identified as "high priority" at time of Order  
placement. Avery Georgia's on-time delivery performance of "high  
priority" Products will be taken into consideration by the parties  
during quarterly price reviews.  
  
5.3 In the event Xxxxx Delaware issues Orders in excess of  
forecasts, Xxxxx Georgia will use commercially reasonable efforts to  
recover and replenish inventory levels. Expediting costs for such  
Orders will be agreed upon prior to Order placement. Avery Georgia  
will provide Xxxxx Delaware with "what-if" shortages results.  
  
5.4 Avery Georgia and Xxxxx Delaware will meet every three (3)  
months during the term of this Agreement to review safety stock  
levels, pricing and to determine whether any price adjustment is required.  
  
5.5 If volumes fall below production rate, Xxxxx Georgia and Xxxxx  
Delaware agree to review the causes. If the volumes have dropped due  
to the end of Product life, Xxxxx Georgia and Xxxxx Delaware agree to  
develop their end-of-life support strategy. If the low volumes are  
only temporary, Avery Georgia and Xxxxx Delaware will discuss what,  
if any, fixed program costs are required to maintain the production.  
  
6. DELIVERY  
  
6.1 Avery Georgia will target on-time delivery, defined as shipment  
of Product by Avery Georgia within a window except as provided above.  
  
Each configuration order received from Xxxxx Delaware will include  
the date on which the Product is to be delivered to either Xxxxx  
Delaware or their designated Xxxxx Delaware location.  
  
6.2 The FOB point is Rome, Georgia.  
  
6.3 Xxxxx Georgia and Xxxxx Delaware shall agree to delivery schedule  
flexibility requirements specific to the Product as documented in the  
Addendum.  
  
6.4 Upon learning of any potential delivery delays, Avery Georgia  
will notify Xxxxx Delaware as to the cause and extent of such delay.  
  
6.5 If Avery Georgia fails to make deliveries at the specified time  
and such failure is caused by Xxxxx Georgia, Xxxxx Georgia will, at  
no additional cost to Xxxxx Delaware, employ accelerated measures  
such as material expediting fees, premium transportation costs, or  
labor overtime required to meet the specified delivery schedule or  
minimize the lateness of deliveries.  
  
6.6 Should Avery Delaware require Xxxxx Georgia to undertake export  
activity on behalf of Xxxxx Delaware, Xxxxx Delaware agrees to submit  
requested export information to Avery Georgia pursuant to Xxxxx  
Guidelines for Xxxxx Delaware-Driven Export Shipments as provided in  
the Addendum.  
  
7. PAYMENT TERMS  
  
7.1 Avery Georgia and Xxxxx Delaware agree to payment terms of  
payment upon Order.  
  
7.2 Currency will be in U.S. dollars unless specifically negotiated  
and reflected in the Addendum.  
  
7.3 Until the purchase price and all other charges payable to Xxxxx  
Georgia have been received in full, Xxxxx Georgia retains and Xxxxx  
Delaware grants to Avery Georgia a security interest in the Products  
delivered to Xxxxx Delaware and any proceeds there from.  
  
8. QUALITY  
  
Omitted.  
  
9. ENGINEERING CHANGES  
  
9.1 Xxxxx Delaware may, upon advance written notice to Xxxxx, submit  
engineering changes for incorporation into the Product. It is  
important that this notification include documentation of the change  
to effectively support an investigation of the impact of the  
engineering change. Xxxxx Georgia will make a reasonable effort to  
review the engineering change and report to Xxxxx Delaware. If any  
such change affects the price, delivery, or quality performance of  
said Product, an equitable adjustment will be negotiated between  
Avery Georgia and Xxxxx Delaware prior to implementation of the change.  
  
9.2 Avery Georgia agrees not to undertake significant process  
changes, design changes, or process step discontinuance affecting  
electrical performance and/or mechanical form and fit without prior  
written notification and concurrence of Xxxxx Delaware.  
  
10. INVENTORY MANAGEMENT  
  
10.1 Xxxxx Georgia agrees to purchase components according to Xxxxx  
Delaware approved vendor list (AVL) including any sourcing plans as  
provided by the Addendum.  
  
10.2 All Xxxxx Delaware tooling/equipment furnished to Xxxxx Xxxxxx  
or paid for by Xxxxx Delaware in connection with this Agreement shall:  
  
a) Be clearly marked and remain the property of Xxxxx Delaware.  
  
b) Be kept free of liens and encumbrances.  
  
c) Unless otherwise agreed, Xxxxx Delaware is responsible for the  
general maintenance of Avery Delaware tooling/equipment.  
  
Xxxxx Georgia shall hold Xxxxx Delaware property at its own risk and  
shall not modify the property without the written permission of Xxxxx  
Delaware. Insurance will be bound to protect the property of Xxxxx  
Delaware and its product held by Xxxxx Georgia. Upon Xxxxx Delaware's  
request, Xxxxx Georgia shall return the property to Xxxxx Delaware in  
the same condition as originally received by Avery Georgia with the  
exception of reasonable wear and tear. In the event the property is  
lost, damaged or destroyed, Avery Georgia's liability for the  
property is limited to the book value of the property.  
  
11. CONFIDENTIAL INFORMATION  
  
11.1 Avery Georgia and Xxxxx Delaware agree to execute, as part of  
this Agreement, a Nondisclosure Agreement for the reciprocal  
protection of confidential information.  
  
11.2 Subject to the terms of the Nondisclosure Agreement and the  
proprietary rights of the parties, Xxxxx Georgia and Xxxxx Delaware  
agree to exchange, at least semi-annually, relevant process  
development information and business plans to include market trends,  
process technologies, product requirements, new product developments,  
available capacity and other information to support technology  
advancements by both Xxxxx Georgia and Xxxxx Delaware.  
  
12. WARRANTY  
  
12.1 The yarn manufacture will for a period of five (5) years from  
the date of manufacture of the Product, that (i) the Product will  
conform to the specifications applicable to such Product at the time  
of its manufacture from date of installation, which are furnished in  
writing by Xxxxx Delaware and accepted by Avery Georgia; (ii) such  
Product will be of good material (supplied by Avery Georgia) and  
workmanship and free from defects for which Avery Georgia is  
responsible (specifications) in the manufacture; (iii) such Product  
will be free and clear of all liens and encumbrances and that Xxxxx  
Georgia will convey good and marketable title to such Product. In the  
event that any Product manufactured shall not be in conformity with  
the foregoing warranties, Xxxxx Georgia shall, at its own option,  
either credit Xxxxx Delaware for any such nonconformity (not to  
exceed the purchase price paid by Xxxxx Delaware for such Product),  
or, at Avery Georgia's expense, replace, repair or correct such  
Product. Avery Georgia agrees to manufacture to specifications agreed  
on for each product for pile height, stitch rate, yarn weight and  
gauge upon delivery. The standard yarn warranties state that that  
there should be no more than a 50% yarn loss for the warranty period.  
The foregoing constitutes Xxxxx Delaware's sole remedies against  
Avery Georgia for breach of warranty claims.  
  
12.2 Avery Georgia shall have no responsibility or obligation to  
Xxxxx Delaware under warranty claims with respect to Products that  
have been subjected to abuse, misuse, accident, alteration, neglect  
or unauthorized repair.  
  
THE WARRANTIES CONTAINED IN THIS SECTION ARE IN LIEU OF, AND XXXXX  
EXPRESSLY DISCLAIMS AND XXXXX DELAWARE WAIVES ALL OTHER  
REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR  
ARISING BY COURSE OF DEALING OR PERFORMANCE, CUSTOM, USAGE IN THE  
TRADE OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE IMPLIED  
WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR USE.  
  
13. TERMINATION  
  
13.1 If either party fails to meet any one or more of the terms  
and conditions as stated in either this Agreement or the Addendum,  
Xxxxx Georgia and Xxxxx Delaware agree to negotiate in good faith to  
resolve such default. If the defaulting party fails to cure such  
default or submit an acceptable written plan to resolve such default  
within thirty (30) days following notice of default, the non-  
defaulting party shall have the right to terminate this Agreement by  
furnishing the defaulting party with thirty (30) days  
written notice of termination.  
  
13.2 This Agreement shall immediately terminate should either  
party; (i) become insolvent; (ii) enter into or file a petition,  
arraignment or proceeding seeking an order for relief under the  
bankruptcy laws of its respective jurisdiction; (iii) enter into a  
receivership of any of its assets or; (iv) enter into a dissolution  
of liquidation of its assets or an assignment for the benefit of its  
creditors.  
  
13.3 Either Xxxxx Georgia or Xxxxx Delaware may terminate this  
Agreement without cause by giving ninety (90) days advance written  
notice to the other party.  
  
14. DISPUTE RESOLUTION  
  
14.1 In the spirit of continued cooperation, the parties hereby  
establish the following dispute resolution procedure to be utilized  
in the unlikely event any controversy should arise out of or  
concerning the performance of this Agreement.  
  
14.2 It is the intent of the parties that any dispute be  
resolved informally and promptly through good faith negotiation  
between Xxxxx Georgia and Xxxxx Delaware. Either party may initiate  
negotiation proceedings by written notice to the other party setting  
forth the particulars of the dispute. The parties agree to meet in  
good faith to jointly define the scope and a method to remedy the  
dispute. If these proceedings are not productive of a resolution,  
then senior management of Xxxxx Georgia and Xxxxx Delaware are  
authorized to and will meet personally to confer in a bona fide  
attempt to resolve the matter.  
  
14.3 Should any disputes remain between the parties after  
completion of the two-step resolution process set forth above, then  
the parties shall promptly submit any dispute to mediation with an  
independent mediator. In the event mediation is not successful in  
resolving the dispute, the parties agree to submit the dispute to  
binding arbitration as provided by their respective jurisdiction.  
  
15. LIMITATION OF LIABILITY  
  
IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, OR  
TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY, OR  
OTHERWISE, SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL,  
INCIDENTAL, CONSEQUENTIAL, EXEMPLARY DAMAGES OF ANY KIND WHETHER OR  
NOT EITHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.  
  
16. PATENTS, COPYRIGHT AND TRADEMARK INDEMNITY  
  
Each party (the "indemnifying party") shall defend, indemnify, and  
hold harmless the other party from any claims by a third party of  
infringement of intellectual properties resulting from the acts of  
the indemnifying party pursuant to this Agreement, provided that the  
other party (i) gives the indemnifying party prompt notice of any  
such claims, (ii) renders reasonable assistance to the indemnifying  
party thereon, and (iii) permits the indemnifying party to direct the  
defense of the settlement of such claims.  
  
17. GENERAL  
  
17.1 Each party to this Agreement will maintain insurance to  
protect itself from claims (i) by the party's employees, agents and  
subcontractors under Worker's Compensation and Disability Acts, (ii)  
for damages because of injury to or destruction of tangible property  
resulting out of any negligent act, omission or willful misconduct of  
the party or the party's employees or subcontractors, (iii) for  
damages because of bodily injury, sickness, disease or death of its  
employees or any other person arising out of any negligent act,  
omission, or willful misconduct of the party or the party's  
employees, agents or subcontractors.  
  
17.2 Neither party shall delegate assign or transfer its rights or  
obligations under this Agreement, whether in whole or part, without  
the written consent of the other party.  
  
17.3 Neither party shall be liable for any failure or delay in its  
performance under this Agreement due to acts of God, acts of civil or  
military authority, fires, floods, earthquakes, riots, wars or any  
other cause beyond the reasonable control of the delayed party  
provided that the delayed party: (i) gives the other party written  
notice of such cause within fifteen (15) days of the discovery of the  
event; and (ii) uses its reasonable efforts to remedy such delay in  
its performance.  
  
17.4 This Agreement shall be governed by, and construed in  
accordance with the laws of the State of Delaware, excluding its  
conflict of laws provisions. In any action to enforce this Agreement,  
the prevailing party shall be awarded all court costs and reasonable  
attorney fees incurred.  
  
Agreed to: May 14th 2003  
  
Xxxxx Sports Turf, Inc., a Georgia corporation  
  
  
By: /s/ Xxxxxx Xxxxx  
Name: Xxxxxx Xxxxx, President  
  
  
Xxxxxx Xxxxx, individually  
  
  
By: /s/ Xxxxxx Xxxxx  
Name: Xxxxxx Xxxxx  
  
  
Xxxxx Sports Turf, Inc., a Delaware corporation  
  
  
By: /s/ Xxxx Xxxxxxxx  
Name: Xxxx Xxxxxxxx, President  
  
  
 XXXXX ADDENDUM TO STANDARD MANUFACTURING AGREEMENT  
  
This Addendum and the Standard Manufacturing Agreement ("SMA") set  
forth the terms and conditions under which Xxxxx-Georgia agrees to  
manufacture and support the Xxxxx Sports Turf product based on the  
specifications provided by Avery Sports Turf ("Avery Delaware").  
Xxxxx Georgia agrees to perform such manufacturing, and to ship to  
Xxxxx Delaware in return for payment. This Addendum is hereby  
incorporated by reference into the SMA. Except as set forth herein,  
the Addendum is subject to each and every provision of the SMA.  
Capitalized terms not otherwise defined here shall have the meanings  
ascribed to such terms in the SMA.  
  
Xxxxx Georgia agrees to provide exclusively product referred to as,  
"Polylon Turf." Polylon Turf is a synthetic turf that is 2 1/2  
inches, 55-ounce playground, day care and landscaping product. If  
Product cannot be provided timely and additional Product is needed to  
meet the requirements of Xxxxx Delaware, Xxxxxx Xxxxx/Xxxxx Georgia  
will allow Xxxxx Delaware to purchase product from Crystal of Dalton,  
Georgia.  
  
This Addendum describes changes and additions to the SMA. It follows  
the numbering scheme of the SMA. If a specific item was NOT changed  
or modified, that item number will NOT be seen in the Addendum.  
  
Signatures:  
  
  
/s/ Xxxx Xxxxxxxx  
/s/ Xxxxxx Xxxxx  
Xxxx Xxxxxxxx  
  
XXXXXX XXXXX  
President/CEO  
President/CEO  
Avery-Delaware  
Xxxxx-Georgia