EX 10.2  
  
 STANDARD MANUFACTURING AGREEMENT  
  
  
Xxxxx Sports Turf Inc. ("Xxxxx-Delaware"), a Delaware whose principal  
place of business is located at 0 Xxxxxxxxx Xxxxxxxxxx Xxxxxxx, Xxxx,  
XX 00000 ("Xxxxx-Delaware") and Xxxxxx Xxxxx, an individual and Xxxxx  
Sports Turf, Inc., a private corporation whose principal place of  
business is located in Rome, GA ("Customer") 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-Delaware and Customer 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.  
  
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  
signed by both parties.  
  
2. TERM  
  
2.1 This Agreement shall commence on the effective date, December 3,  
2002, and shall continue for an initial term of four (4) year(s).  
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 Customer will provide an annual twelve (12) month forecast and  
a monthly six (6) month rolling Product forecast to Xxxxx-Delaware.  
  
4.0 MATERIAL PROCUREMENT  
  
4.1 Xxxxx-Delaware is authorized to purchase materials using  
standard purchasing practices in order to meet the forecasted  
requirements of Customer.  
  
Customer recognizes its financial responsibility for the material  
purchased by Xxxxx-Delaware on behalf of Customer. Customer is  
responsible for material to the extent that (i) material was  
purchased by Xxxxx-Delaware to support the Product forecast; (ii)  
Xxxxx-Delaware exercised reasonable business judgment in managing  
suppliers and lead times; (iii) Xxxxx-Delaware complied with Customer  
cancellation instructions in a timely manner (canceled all open  
orders within one (1) week of receiving instructions).  
  
4.2 Customer may revise or cancel a purchase order for Product and  
may also eliminate a component from a Product. If Customer revises or  
cancels a purchase order ("Order"), or eliminates a component, or  
through revised forecast (downside) causes excess inventory, Xxxxx-  
Delaware shall identify all potential liability of Customer for  
material on order, material on hand, work in process, and finished goods.  
Xxxxx-Delaware 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 Customer. Customer agrees to compensate Xxxxx-  
Delaware 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 customers and at other sites  
of Xxxxx-Delaware; material on order which could not be canceled;  
applicable material supplier's restocking or cancellation fees; and  
agreed Xxxxx-Delaware handling charges.  
  
4.3 Xxxxx-Delaware will report its inventory position to Customer  
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. Report will specifically identify any  
material on hand or on order where the quantity exceeds the agreed  
three (3) month forward looking forecast.  
  
4.4 Xxxxx-Delaware shall undertake reasonable efforts to cancel all  
applicable component purchase orders and reduce component inventory  
through return for credit programs or allocate components for  
alternate programs if applicable.  
  
5. PURCHASE ORDERS AND PRICE REVIEWS  
  
5.1 Initial order placement will be an Order from Customer to  
Xxxxx-Delaware issued electronically with facsimile copy as backup.  
  
Xxxxx-Delaware will provide notice to Customer of Order acceptance  
and scheduled shipment date.  
  
5.2 Customer may issue specific Orders to Xxxxx-Delaware, which  
will be identified as "high priority" at time of Order placement.  
Xxxxx-Delaware'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 Customer issues Orders in excess of forecasts,  
Xxxxx-Delaware will use commercially reasonable efforts to recover  
and replenish inventory levels. Expediting costs for such Orders will  
be agreed upon prior to Order placement. Xxxxx-Delaware will provide  
Customer with "what-if" shortages results.  
  
5.4 Xxxxx-Delaware and Customer 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 Xxxxx-Delaware will provide pricing for average monthly volumes  
of . If volumes fall below production rate, Xxxxx-Delaware and  
Customer agree to review the causes. If the volumes have dropped due  
to the end of Product life, Xxxxx-Delaware and Customer agree to  
develop their end-of-life support strategy. If the low volumes are  
only temporary, Xxxxx-Delaware and Customer will discuss what if any  
fixed program costs are required to maintain the Xxxxx-Delaware team.  
Xxxxx-Delaware will attempt to minimize the fixed program costs by  
re-assigning personnel whenever possible. Xxxxx-Delaware will  
consider production volumes of comparable (within the same Product  
family) follow-on products when calculating total monthly volumes realized.  
  
6. DELIVERY  
  
6.1 Xxxxx-Delaware will target on time delivery, defined as  
shipment of Product by Xxxxx-Delaware within a window except as  
provided above.  
  
Each configuration order received from Customer will include the date  
on which the Product is to be delivered to either Customer or their  
designated customer location.  
  
6.2 The FOB point is Rome, GA.  
  
6.3 Xxxxx-Delaware and Customer 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, Xxxxx-Delaware  
will notify Customer as to the cause and extent of such delay.  
  
6.5 If Xxxxx-Delaware fails to make deliveries at the specified  
time and such failure is caused by Xxxxx-Delaware, Xxxxx-Delaware  
will, at no additional cost to Customer, 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 Customer require Xxxxx-Delaware to undertake export  
activity on behalf of Customer, Customer agrees to submit requested  
export information to Xxxxx-Delaware pursuant to Xxxxx-Delaware  
Guidelines for Customer-Driven Export Shipments as provided in the addendum.  
  
7. PAYMENT TERMS  
  
7.1 Xxxxx-Delaware and Customer agree to payment terms of Net 30  
days from the date of invoice.  
  
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-Delaware have been received in full, Xxxxx-Delaware retains and  
Customer grants to Xxxxx-Delaware a security interest in the products  
delivered to Customer and any proceeds therefrom.  
  
8. QUALITY  
  
Omitted.  
  
9. ENGINEERING CHANGES  
  
9.1 Customer may, upon advance written notice to Xxxxx-Delaware,  
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-Delaware will make a reasonable effort to  
review the engineering change and report to Customer . If any such  
change affects the price, delivery, or quality performance of said  
Product, an equitable adjustment will be negotiated between Xxxxx-  
Delaware and Customer prior to implementation of the change.  
  
9.2 Xxxxx-Delaware 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 the Customer.  
  
10. INVENTORY MANAGEMENT  
  
10.1 Xxxxx-Delaware agrees to purchase components according to the  
Customer approved vendor list (AVL) including any sourcing plans as  
provided by the addendum.  
  
10.2 All customer tooling/equipment furnished to Xxxxx-Delaware or  
paid for by Customer in connection with this Agreement shall:  
  
a) Be clearly marked and remain the personal property of Customer.  
  
b) Be kept free of liens and encumbrances  
  
c) Unless otherwise agreed, Customer is responsible for the general  
maintenance of Customer tooling/equipment.  
  
Xxxxx-Delaware shall hold Customer property at its own risk and shall  
not modify the property without the written permission of Customer.  
Upon Customer's request, Xxxxx-Delaware shall redeliver the property  
to Customer in the same condition as originally received by Xxxxx-  
Delaware with the exception of reasonable wear and tear. In the event  
the property is lost, damaged or destroyed, Xxxxx-Delaware's  
liability for the property is limited to the book value of the property.  
  
11. CONFIDENTIAL INFORMATION  
  
11.1 Xxxxx-Delaware and Customer 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-Delaware and Customer 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-Delaware and Customer.  
  
12. WARRANTY  
  
12.1 Xxxxx-Delaware warrants for a period of Five (5) 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, which are furnished in writing by Customer and accepted  
by Xxxxx-Delaware; (ii) such Product will be of good material  
(supplied by Xxxxx-Delaware) and workmanship and free from defects  
for which Xxxxx-Delaware is responsible in the manufacture; (iii)  
such Product will be free and clear of all liens and encumbrances and  
that Xxxxx-Delaware 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-Delaware shall, at  
Xxxxx-Delaware's option, either credit Customer for any such  
nonconformity (not to exceed the purchase price paid by Customer for  
such Product), or, at Xxxxx-Delaware's expense, replace, repair or  
correct such Product. The foregoing constitutes Customer's sole  
remedies against Xxxxx-Delaware for breach of warranty claims.  
  
12.2 Xxxxx-Delaware shall have no responsibility or obligation to  
Customer 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-  
DELAWARE EXPRESSLY DISCLAIMS AND CUSTOMER 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-Delaware and Customer 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-Delaware or Customer may terminate this  
Agreement without cause by giving ninety (90) days advance written  
notice to the other party.  
  
14.0 DISPUTE RESOLUTION  
  
14.1 In the spirit of continued cooperation, the parties intend  
to and 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-Delaware and Customer. 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-Delaware and Customer are authorized  
to and will meet personally to confer in a bona fide attempt to  
resolve the matter.  
  
14.3 Should any disputes remain existent 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. PATENT, 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:  
  
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/ Xxxxxx Xxxxx  
Name: Xxxxxx Xxxxx, President