

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In re

BRIGGS & STRATTON
CORPORATION, *et al.*,

Debtors.¹

§ Chapter 11
§
§ Case No. 20-43597-399
§
§ (Jointly Administered)
§
§ Related Docket No. 879
§ Obj. Deadline: September 21, 2020, 5:00 p.m.
§ Hearing Date: October 14, 2020
§ Hearing Time: 10:00 a.m. (CT)

**OBJECTION AND RESERVATION OF RIGHTS OF DANTHERM S.P.A.
TO DEBTORS' AMENDED NOTICE OF CURE COSTS AND PROPOSED
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND
UNEXPIRED LEASES IN CONNECTION WITH SALE**

NOW COMES Dantherm S.p.A. ("**Dantherm**"), by and through its undersigned counsel, and for its Objection and Reservation of Rights (the "**Amended Notice Objection**") to Debtors' *Amended Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale* filed September 14, 2020 (ECF No. 879) ("**Amended Cure Cost Notice**"), respectively states as follows:

Jurisdiction, Core Nature, and Venue

1. This Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are Briggs & Stratton Corporation (2330), Billy Goat Industries, Inc. (4442), Allmand Bros., Inc. (4710), Briggs & Stratton International, Inc. (9957), and Briggs & Stratton Tech, LLC (2102). The address of the Debtors' corporate headquarters is 12301 West Wirth Street, Wauwatosa, Wisconsin 53222.

Background, Request for Relief, and Reservation of Rights

A. The Parties' Relationship

2. One of the Debtors herein, Allmand Bros., Inc. (“**Allmand**”), is one of the largest manufacturers in the world of trailers with diesel air heaters (the “**Maxi Heat trailer**”). On information and belief, the Maxi Heat trailer is one of Allmand’s two principal product lines.

3. Beginning in 1948, Dantherm, based in Italy, was a pioneer of the design and manufacture of diesel portable air heaters. Dantherm designed and manufactured a unique heater for use only with Maxi Heat trailers. Since 2014, all of Allmand’s Maxi Heat trailers have been equipped air heaters manufactured by Dantherm. Dantherm owns several United States and international patents on the air heaters it has specially designed for Allmand.

4. In 2018, Allmand commenced plans to develop a new model of the Maxi Heat trailer. In connection therewith, Allmand requested Dantherm to develop a new generation of diesel air heaters in furtherance of this joint project. Dantherm presented Allmand with two options as the project reached its final stages.

5. On September 24, 2019, Allmand informed Dantherm of the option it had selected, the agreed upon cost of the units, and its intention to purchase not less than 1,000 units from Dantherm each year (the “Allmand/Dantherm Contract”). Consistent with prior business practices, in furtherance of the Allmand/Dantherm contract, Allmand commenced issuing purchase orders to Dantherm for the specially designed units and accessories for Allmand’s manufacture of the new Maxi Heat trailer.

6. An example of the purchase orders issued by Allmand to Dantherm is attached hereto as **Exhibit A**. The terms and conditions of each purchase order expressly incorporates the

terms and conditions stated on the Debtors' web site, a copy of which is attached hereto as **Exhibit B**.

B. The Debtors' Auction Sale Process

7. In connection with the Court-approved auction sale procedures, in August, 2020, the Debtors filed five alphabetical portions of their Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Unexpired leases in Connection with Sale (ECF Nos. 513-516, 537) ("**Cure Cost Notice**"). The Cure Cost Notice clearly states that the successful bidder may not request the assumption and assignment of any particular executory contract or unexpired lease listed therein. Moreover, on page 5 of the Cure Cost Notice, the Debtors state "[t]he inclusion of any Contract on **Exhibit A** shall not constitute or be deemed a determination or admission by the Debtors that a particular Contract is an executory contract or unexpired lease within the meaning of the Bankruptcy Code"

8. Dantherm is listed as possibly holding a Contract that could possibly be desired by the successful bidder with a proposed cure cost of \$1,059,275.40 (ECF No. 514, p. 9 of 100).

9. After an exchange of correspondence regarding the proposed cure cost, on August 25, 2020, Debtors' counsel informed Dantherm's counsel "[t]he amount in the Cure Notice will be updated to reflect the amount in my email below (\$3,008,153.61)."²

10. Debtors' counsel thereafter informed Dantherm's counsel that the contract reference in the Cure Cost Notice was not an executory contract. However, the contract furnished by counsel refers to Dantherm as the buyer, and does not pertain in any way to the specially manufactured goods sold by Dantherm to Allmand pursuant to the Allmand/Dantherm Contract

² In connection with these discussion, the Debtors and Dantherm agreed upon the amount of Dantherm's allowable claim pursuant to § 503(b)(9) of the Bankruptcy Code.

and the project commenced by the parties in 2018, if not earlier, regarding the next generation of Maxi Heat trailers.

11. Business representatives of the parties have since conferred on at least three occasions regarding the Allmand/Dantherm Contract and the project.

C. The Amended Cure Cost Notice

12. The Amended Cure Notice was filed near the close of business on the day preceding the sale hearing. In Exhibit C thereto, Dantherm is referred to as the holder of a Contract removed as a Contract which possibly be designated by the buyer for assumption and assignment prior to the closing, or even thereafter. Dantherm has not had discussions with the Stalking Horse Bidder. Dantherm does not know whether the approved sale transaction has closed.

13. As set forth above, inclusion of a Contract in the Cure Cost Notice and/or the Amended Cure Cost Notice does not constitute an admission by the Debtors that any such Contract is an executory contract or unexpired lease susceptible of assumption and assignment pursuant to the Bankruptcy Code.

14. As chapter 11 cases were commenced on July 20, 2020 (the “**Petition Date**”). Prior to the Petition Date, Dantherm had an extensive business relationship with the Debtors, particularly Allmand Bros., Inc. Dantherm sells to one or more of the Debtors a large volume of specially-manufactured goods used by one or more of the Debtors in the manufacture of its products.

WHEREFORE, Dantherm S.p.A. respectfully requests that this Limited Objection be sustained in its entirety; that any and all amounts to be paid to Dantherm in accordance with the Vendor Motion be in an amount not less than \$3,015,792.84; that the terms of payment of such amount be fair and reasonable; and that Dantherm be granted such further and additional relief as may be equitable and just under the circumstances presented.

Dated: September 21, 2020

Respectfully submitted,

DANTHERM S.P.A.

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Lisle, IL 60532
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F: 630-799-6901
cstahl@smbtrials.com

EXHIBIT A

Allmand Bros, Inc.
PO Box 888
1502 W 4th Avenue
Holdrege NE 68949

Phone: 308-995-4495

Purchasing Fax: 308-995-3453



CHANGE ORDER	
Purchase Order No.	PO48638
Date	7/10/2020
Revision Number	3

Dantherm S.p.A.
VIA GARDESANA, 11
PASTRENGO VERONA 37010

Phone: (000) 000-0000 Ext. 0000

Fax: (000) 000-0000 Ext. 0000

Ship To:

ALLMAND BROS.
1502 W 4TH AVE
HOLDREGE NE 68949-3132

Contract Number:

Shipping Method		Payment Terms		Confirm With			Page
CONTAINER		NET 30					1
L/N	Item Number	Description	Req. Date	U/M	Ordered	Unit Price	Ext. Price
Shipping Method		Reference Number	FOB				
^1	4035.502	AIR RE-CIRCULATION KIT	8/7/2020	EA	50.0000	\$41.7300	\$2,086.50
UPS WORLD EXPED		116385	None				

*Please confirm receipt, pricing, and delivery dates within 24 hours of order receipt.

*By acceptance of this Purchase Order, you are agreeing to Briggs & Stratton's Standard Terms and Conditions of Purchase which can be found at <http://www.basco.com/for%20suppliers/>. If any item on the Purchase Order is coded #SELF-ASSESSED TAX# or #TAX EXEMPT# and an Exemption certificate is necessary, please contact the Briggs & Stratton Purchasing Agent listed above.

Subtotal	\$2,086.50
Trade Discount	\$0.00
Freight	\$0.00
Miscellaneous	\$0.00
Tax	\$0.00
Order Total	\$2,086.50

Authorized Signature

EXHIBIT B



Allmand Bros., Inc.,
a wholly owned subsidiary of
Briggs & Stratton Corporation

STANDARD TERMS AND CONDITIONS OF SALE

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Entire Agreement: These terms and conditions of sale (these "Terms") are incorporated into the quote, purchase order, order confirmation, and/or invoice (collectively, the "Sale Documents") for the sale of products, materials, parts and/or components ("Products") by Allmand Bros., Inc. ("Seller") to Buyer. The Sale Documents, including these Terms, and any attached specifications constitute the entire and final agreement between Buyer and Seller regarding the Products; they replace any prior proposals, agreements and negotiations, whether written or oral, and may only be modified in writing signed by authorized representatives of both parties. No current or future Buyer document, and no other agreement or understanding claiming to modify these Terms, shall be binding upon Seller unless agreed to by Seller in writing. Buyer's acceptance of any Products, making payments, or similar act of Buyer shall constitute Buyer's acceptance of the Sale Documents. Seller reserves the right to revise these Terms from time to time upon reasonable notice to Buyer.

Order Cancellation: Buyer may suspend or cancel an order confirmation only upon written approval from an authorized officer of Seller. If Buyer cancels, Buyer shall pay Seller the reasonable costs and expenses (including all commitments to suppliers and subcontractors and indirect expenses) incurred by Seller prior to receiving Buyer's cancellation notice. Additionally, Seller will charge a 15% cancellation fee for orders cancelled within thirty (30) days of the scheduled build date.

Delivery & Inspection: Delivery dates are approximate and subject to Product availability, freight space, and prompt receipt of all necessary documentation regarding the order. Seller shall not be responsible or liable for any loss or damage resulting from delay in delivery or non-delivery. Trans-shipment and partial shipment shall be allowed. Each delivery or shipment hereunder shall be considered a separate sale. Seller shall select the method of transportation when Seller is paying for that shipment. Charges for shipping to a location other than the one designated in the applicable order confirmation or resulting from refusal, delay in unloading of shipment, or charges for demurrage, detention, redelivery, sorting, stop-off, excess freight, switching, or other accessorial charges are Buyer's sole responsibility. Buyer shall, on demand, immediately reimburse Seller for all such amounts. Transportation of Products and risk of loss shall be governed by CIP Destination (for U.S. shipments) and FCA-Seller's Dock if by truck or FOB Port of Departure if by vessel (for international shipments) (all Incoterms 2010). Buyer shall inspect the Products within three (3) days after delivery of the Products to Buyer and shall notify Seller in writing of any defects, damage or shortage in the Products. Such notification must be supported by carrier documentation (e.g., truck pro-bill or intermodal inspection report) and failure to so notify Seller shall be proof that the Products have been received without issue.

Title: Security Interest: Title to the Products shall pass to Buyer at the time and place the Products are delivered to the first carrier for shipment, except that Buyer grants Seller a security interest (which shall include a purchase money security interest where it satisfies the criteria therefor) in the Products and all insurance or other proceeds of disposition thereof until the Products have been paid for in full. Buyer shall execute any documents and do such other things as Seller deems appropriate to establish, complete and perfect such security interest. Seller may register its security interest and may file a financing statement to perfect its security interest.

Payment: Buyer will pay Seller under the terms stated in the order confirmation or invoice in full within thirty (30) days from the invoice date unless Seller agrees to different terms in writing. If deliveries are made in installments, each delivery shall be paid for without regard to other scheduled shipments. Seller's prices do not include applicable sales, use, or other taxes, quotation fees and governmental impositions, however designated or levied, on the sale, transportation, or use of the Products. Buyer shall pay all such taxes and related amounts in addition to Seller's prices. If Buyer defaults on any payment or under any other contract with Seller, all amounts owed under this and other contracts by Buyer to Seller shall become due, notwithstanding the terms of sale. Seller may charge Buyer interest on any overdue invoices at the lesser of 1.5% per month or the maximum rate allowed by law. Buyer shall pay all Seller's costs of collecting overdue accounts including reasonable attorneys' fees and expenses.

Returns: Buyer may return Products to Seller only with Seller's prior written permission and transportation charges prepaid. Products accepted for return are subject to Seller's applicable restocking charge in effect at such time. All returned Products shall be inspected by Seller upon receipt and must be of current design and finish and in a new, restockable condition.

Excusable Delays: Seller shall not be liable for any breach caused by extreme weather or other act of God, strike or other labor shortage or disturbance, fire, flood, accident, war or civil disturbance, delay of carriers, failure of normal sources of supply, change in law or other act of government or any other cause beyond Seller's reasonable control.

Warranty and Limitation of Liability: Seller provides a limited warranty on certain Products manufactured by Seller to and for the benefit of the end-user of such Products. The terms and conditions of such warranty are contained in warranty documents by product line available separately at the time of sale. Such warranty shall be the sole and exclusive warranty with respect to the Products. Seller makes no other warranty of any kind, express or implied, including without limitation any warranty of merchantability or fitness for a particular purpose, to or for the benefit of Buyer. Seller shall not be liable for any indirect, incidental, consequential, punitive or other special damages arising out of or relating to the Products, including damages arising out of a tort, action for breach of contract, negligence, strict liability or breach of warranty, even if Seller has been advised of the possibility of such damages and whether or not any remedy provided should fail of its essential purpose. Seller's total liability to Buyer with respect to any Product, from all causes of action and all theories of liability, will be limited to and will not exceed the contract price paid by Buyer for that Product.

Assignment / Amendment: Buyer may not assign any of the Sale Documents without Seller's prior written consent. No Sale Document may be amended without the written consent of both Buyer and Seller.

Intellectual Property: Seller's proprietary information, trade secrets, specifications, illustrations, drawings, data, and other information transmitted to Buyer are the property of Seller. Such information may be disclosed to Buyer's employees on a need-to-know basis and



Allmand Bros., Inc.,

a wholly owned subsidiary of
Briggs & Stratton Corporation

STANDARD TERMS AND CONDITIONS OF SALE

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used only for the purpose for which it was provided. Buyer shall not disclose any such information to any third party, or permit any third party to use any such information, without Seller's prior written consent.

Buyer Indemnification: (IP) Buyer will indemnify, defend, and hold harmless Seller against any third party patent infringement claim if the Products are (a) modified by Buyer or its agents, (b) made to Buyer's specifications, (c) combined with other components such that absent such combination there would be no infringement, or (d) used despite Seller's offer to replace, modify, or return them. (Product Liability) Buyer will indemnify, defend, and hold harmless Seller against (x) any third party claim, suit, or proceeding alleging that the sale or use of the Products (i) are not legal in the local market, or (ii) do not comply with local laws or ordinances, or any (y) liability for property damage, or product liability based on Buyer-modified Products.

Confidential Information: Seller shall treat financial information supplied by Buyer as confidential, but may provide such information to Seller's affiliated companies provided such companies also agree to treat such information as confidential.

No Waiver / Severability: No right or obligation of Seller or Buyer will be waived due to any industry custom or practice at variance with these Terms. Any waiver by either party of any breach of any provision of these Terms shall not be construed as a waiver of any continuing or succeeding breach of such provision. If any part of these Terms is void, voidable, invalid, or unenforceable, for any reason, such part shall then be considered severed from the other provisions in these Terms, with the remainder of these Terms remaining valid and binding.

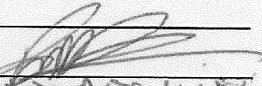
Export: Buyer represents and warrants that it will not directly or indirectly arrange for or participate in the export, rental or sale of Products, in whole or in part, outside of the territory agreed to by Buyer and Seller in the Sale Documents or Distributor Agreement, or, if none, the country to which Seller shipped the Products (the "Territory"), without Seller's prior written consent. Buyer will take all reasonable and adequate steps to prevent the export, use or sale of the Products outside of the Territory by others who purchase or lease from Buyer who might reasonably be expected to export, use or sell them outside the Territory. It is Buyer's responsibility to investigate and determine whether any sale or lease by Buyer would violate this section. If Buyer violates this section, any and all warranties provided by Seller for the Products involved in such violation shall immediately become void and Buyer shall indemnify and hold Seller harmless from any liability arising out of such prohibited export, use or sale.

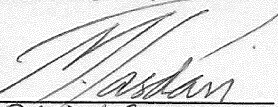
Seller Termination: Seller may terminate an order confirmation at any time, effective immediately upon written notice to Buyer if (a) Buyer files a voluntary petition in bankruptcy or other voluntary proceedings to settle or extend payment of its obligations to general creditors; (b) an involuntary petition in bankruptcy is filed against Buyer, and is not dismissed within thirty (30) days; (c) Buyer becomes insolvent; or (d) Buyer ceases to function as a going concern or to conduct its normal course of business.

Dispute Resolution: If a dispute is not resolved by general negotiation in 30 days, Buyer and Seller will participate in at least four hours of non-binding mediation before pursuing litigation or other legal remedies. This mediation will occur in Chicago, Illinois with a mutually-agreed mediator, with the parties splitting costs equally.

Data Privacy. Each of the parties hereto acknowledges that business contact information of its employees that is shared by such party (the "provider") with the other party (the "recipient") may constitute protected personal data pursuant to the European Union General Data Protection Regulation or other applicable laws (collectively, "Privacy Laws"). The provider represents and warrants to the recipient that it has taken all actions necessary to permit the sharing thereof in accordance with applicable Privacy Laws and that use by the recipient of such information is necessary to serve the provider's legitimate interests, in furtherance of the parties' commercial relationship as described herein. The recipient of such information agrees that it will use such information solely in connection with legitimate interests of that relationship.

Governing Law: The Sale Documents and any and all claims or causes of action relating to the transactions contemplated thereby shall be governed by the laws of the State of Nebraska, without regard to its conflict of laws principles. If the U.N. Convention on Contracts for the International Sale of Goods (Vienna, 1980) ("CISG") applies to the transactions contemplated by the Sale Documents and any provision of the Sale Documents conflicts with the CISG, the CISG shall govern regarding that provision.

Buyer's Company Name
Signature: 
Printed Name: **DAN THERM S.P.A.**
Title: **C.F.O.**
Date: **17/10/2019**
Società a partecipazione
Via Gardesana, 11 - 37010 - Pastrengo (VR) Italy
Phone: +39 0456770533
Fax: +39 0456770534/37
P. IVA, Cod. Fisc. e N° Iscr. R.I. 07526660969

ALLMAND BROS., INC.
Seller's Company Name
Signature: 
Printed Name: **M. PASDARI**
Title: **DIRECTOR, INTERNATIONAL SALES**
Date: **17 OCT 2019**