



## **MATERIAL STAGING AGREEMENT (Tag and Hold)**

**THIS MATERIAL STAGING AGREEMENT** (this "Agreement") made as of the [REDACTED] day of [REDACTED], 2022, by and between **TURTLE & HUGHES, INC.**, a New Jersey corporation, having an address of 100 Walnut Ave, Clark, NJ 07066 ("Turtle") and [REDACTED], a [REDACTED], having an address of [REDACTED] ("Customer"). Each of Turtle and Customer may be referred to as a "Party," and both shall be collectively referred to as the "Parties."

### **WITNESSETH:**

**WHEREAS**, Customer previously ordered from Turtle certain equipment, products, goods and/or materials (collectively referred to as the "Materials"); and

**WHEREAS**, Customer has paid Turtle for the Materials (or will pay Turtle for the Materials as provided herein); and

**WHEREAS**, it was anticipated that the Materials would be shipped to a jobsite ("Jobsite") whereat the Materials would be incorporated, either by Customer or by another contractor or subcontractor, into the facility or other project being developed at the Jobsite; and

**WHEREAS**, for one or more reasons the Customer has determined that it is impossible or impracticable to accept delivery of the material at the jobsite or at an alternative location of their choosing. These reasons may include Jobsite closures or inaccessibility, prerequisite conditions not satisfied for the immediate utilization of the product, or any other reason as determined solely by the Customer; and

**WHEREAS**, Customer has requested that Turtle temporarily store the Materials until the Materials may be transported to the Jobsite as reasonably determined by the Customer in consultation with those in control of the Jobsite; and

**WHEREAS**, Turtle owns or leases the premises at which the material shall be stored (the "Turtle Property"); and

**WHEREAS**, Customer has agreed to accept the materials stored at the Turtle Property as if the materials were delivered to the Customer's own location; and

**WHEREAS**, Customer has the right to inspect the material at the Turtle Property during regular business hours or upon mutually agreed upon special arrangements with the appropriate Turtle Property personnel in order to satisfy the Customer's acceptance procedures, and any failure to inspect materials stored at Turtle Property will not render acceptance invalid; and

**WHEREAS**, Turtle is willing to store the Materials at the Turtle Property for a limited period of time and in accordance with, and subject to, the terms and conditions set forth in this Agreement; and

**WHEREAS**, the Parties wish to set forth their understanding as to the storage of the Materials and the rights and obligations of the Parties with respect thereto;

**NOW, THEREFORE**, in consideration of the mutual promises and the agreements and covenants contained herein and for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The aforesaid recitals, which the Parties acknowledge are true and correct, are hereby incorporated into this Agreement and made a part hereof.

2. **Storage of Materials at Turtle Property.** Turtle agrees that the Materials may be stored at the Turtle Property for the term of this Agreement as set forth in, and qualified by, Section 6. Turtle shall have sole and absolute discretion as to precisely where at the Turtle Property the Materials shall be stored. Turtle agrees to separately identify, segregate and label Customer Materials and shall not make the stored goods available for any use other than at the Customer's sole direction.

3. **Payment for Materials.** If Customer has not previously paid in full for the Materials prior to the date of this Agreement, Customer shall make such payment in full no later than the earlier of (a) the date for payment otherwise specified in the purchase order/acquisition agreement between Turtle and Customer or (b) fifteen (15) days after the Materials are received at the Turtle Property for storage notwithstanding anything to the contrary in such purchase order/acquisition agreement.

4. **Storage Charges.** For each and every whole or partial day until the Materials are removed from the Turtle Property, Customer shall be liable to pay to Turtle a per diem storage charge equal to the greater of (a) \$20.00 or (b) such larger sum (as may be mutually agreed upon by the Parties in writing), for the storage of some or all of the Materials at the Turtle Property. Given any breach of this Agreement by Customer, the amount of the per diem storage charge, immediately and without further action by either Party, shall be doubled for the entire duration of the breach.

5. **Maintenance/Servicing of Materials during Storage.** Customer, at Customer's sole cost and expense, shall be responsible for any maintenance services that may be required or reasonably desirable for any of the Materials while the Materials remain in storage at the Turtle Property. For example, but without limitation, battery packs or units for an Uninterruptible Power Supply apparatus may require charging or other servicing while such apparatus remains idle in storage. Turtle shall grant reasonable access to such stored apparatus or other Materials by Customer's employees, agents, representatives, contractors or consultants to perform such maintenance activities in accordance with Section 9.

6. **Term of Agreement/Termination.** (a) Subject to the termination rights of the Parties set forth below, this Agreement shall remain in effect for a period of one (1) year.

(b) If (i) Customer breaches any term of this Agreement, and fails to cure such breach as promptly as practicable but in any event no later than ten (10) calendar days of receipt of notice of such breach from Turtle, or (ii) Customer becomes unable to pay its bills as they become due in the ordinary course, a trustee or receiver over Customer's property is appointed, Customer makes an assignment for the benefit of creditors, a petition in bankruptcy is filed by or against Customer or Customer terminates or liquidates its business, then Turtle shall be entitled to terminate this Agreement immediately by written notice to Customer.

(c) In addition to the foregoing, either Party may terminate this Agreement, without cause and for convenience, upon sixty (60) days' written notice to the other Party.

(d) Upon any termination, all (i) outstanding payments due and owing from Customer to Turtle shall become immediately due and payable (if not previously payable or paid), including, without limitation, any fees and charges arising under Section 3 and Section 4 of this Agreement, and (ii) after such payment to Turtle, the Materials shall be removed from the Turtle Property by Customer at Customer's sole cost and expense as hereafter provided.

7. **Risk of Loss.** Except for the gross negligence or willful misconduct of Turtle (or its employees), Turtle shall have no liability or responsibility for, and Customer shall be fully liable and responsible for and shall bear the risk of, any and all damages, injuries or losses to the Materials while the Materials are stored at the Turtle Property, whether attributable to fire or other casualty, theft or any other cause. Customer hereby releases Turtle from any and all such damages, injuries and/or losses to the Materials.

8. **Insurance.** At all times during this Agreement, Customer shall secure and maintain in full force and effect, at Customer's sole cost and expense, the following insurance coverages with financially sound and reputable insurance carriers:

- (a) Commercial General Liability Insurance with a limit of not less than \$1 million per occurrence and \$2 million in the aggregate;
- (b) Workers' Compensation Insurance consistent with statutory limits;
- (c) Employer's Liability Insurance in an amount not less than \$1,000,000 per each accident/each employee;
- (d) Automobile Liability Insurance (including non-owned and hired vehicles) in an amount not less than \$1,000,000 per accident; and
- (e) Broad "special form" property insurance for the full replacement cost (without co-insurance) on the Materials.

The aforesaid liability policies shall (i) name Turtle, its officers, directors, and employees as additional insureds; (ii) contain endorsements as to waivers of subrogation in favor of Turtle; and (iii) be primary and not contributory to any other insurance carried by or solely for the benefit of Turtle. The aforesaid property insurance policies shall contain endorsements as to waivers of subrogation in favor of Turtle.

At the time of execution of this Agreement, Customer shall provide to Turtle a certificate of insurance confirming the existence of the foregoing insurance coverages.

9. **Access to Materials.** During the term of this Agreement and so long as the Materials remain stored at the Turtle Property, Customer shall be afforded access to the Materials at such times, and from time to time, as reasonably requested by Customer. Customer shall be obligated to provide Turtle with no less than 2 business days' written notice of Customer's intent to access the Turtle Property to inspect, maintain and/or remove the Materials stored thereat. Access will be granted only during Turtle's normal business hours (i.e., 8:00 am to 5:00 pm Monday through Friday

(exclusive of holidays during which Turtle is closed for business). While being afforded access, the Customer employees, agents, representatives, contractors or consultants shall be accompanied at all times by Turtle personnel.

**10. Removal of Materials from Turtle Property; Cost of Transporting Materials to the Jobsite.** Customer shall be responsible for, and shall pay, all preparation, packing, crating, handling, freight, shipping and insurance fees and costs associated with transporting the Materials from the Turtle Property to the Jobsite (or to such other location to which Customer may elect to move the Materials). The failure of Customer to remove the Materials from the Turtle Property on or before the expiration or effective date of termination of this Agreement (time being of the essence) shall, automatically and without notice or opportunity to cure, constitute a material breach of this Agreement by Customer. Notwithstanding anything to the contrary, Customer shall not be permitted to remove any of the Materials from the Turtle Property unless and until all payments due and owing to Turtle have been paid in full with respect to the Materials to be moved, including, without limitation, any and all amounts due and owing pursuant to Section 3 and Section 4.

**11. Indemnification.** (a) Customer shall indemnify, defend and hold Turtle, and its shareholders, directors, officers, and employees (the "Turtle Group") harmless from and against any and all claims, including third party claims, losses, costs, damages or expenses, fines, amounts paid in settlement, and reasonable legal fees and expenses (collectively "Claims") arising out of or related, directly or indirectly, to any of the following: (i) Customer's breach of this Agreement; (ii) the storage of the Materials on the Turtle Property, including loss or damage to the Materials during the period of storage; (iii) bodily injury or death, or loss or damage to the Materials, while the Materials are being moved onto or off of the Turtle Property; (iv) the actions, inactions, omissions, negligence, and/or willful misconduct of Customer's employees, agents, representatives, contractors, subcontractors, and/or consultants; (v) bodily injury or death, or loss or damage to the Materials or other personal property of Customer, Turtle or any third party, during periods of Customer access to the Materials on the Turtle Property; and (vi) any Customer employee related Claims.

(b) Customer's obligations under this Section 11 shall exist independent of whether or not such Claim is ultimately proven to be legitimate.

(c) Under this Section 11, Customer's liability shall include direct, indirect, special, consequential, liquidated, punitive, and exemplary Claims for damages known or unknown, disclosed or undisclosed, and whether or not foreseeable at the time of execution of this Agreement.

12. **Confidentiality.** During the term of this Agreement, either Party ("Receiving Party") may become aware of, or privy to, whether in writing, oral or any other form, and even if not marked as confidential, restricted, proprietary or other similar designation, certain proprietary, technical and business information, formulas (including any safety material and compliance information), samples, process information, raw materials, product specifications and production or manufacturing methods or customer information or product or inventory information of the other Party ("Disclosing Party"), its parent, its affiliates and subsidiaries, including information relative to Disclosing Party's interests in specific materials or areas of business, drawings, plans, specifications, know-how, discoveries, and production methods which is the valuable property of Disclosing Party (collectively "Confidential Information"). Receiving Party will not use or disclose to any third party and will cause its employees not to use or disclose to any third party, any Confidential Information other than for Receiving Party's performance in accordance with this Agreement. The commitments set forth in the preceding sentence shall not extend to any portion of Confidential Information, (i) which is already in Receiving Party's lawful possession at the time of disclosure by Disclosing Party; (ii) which is through no act on the part of Receiving Party, generally available to the public; (iii) which corresponds to that furnished by Disclosing Party to any third party on a non-confidential basis; (iv) which is required to be disclosed by law or government regulation, provided that Receiving Party provides reasonable prior notice of such required disclosure to Disclosing Party; or (v) which has been independently acquired or developed by Receiving Party without violating any of its obligations under this Agreement as established by relevant documentary evidence. Receiving Party shall, at Disclosing Party's option, return or destroy all Confidential Information promptly upon the earlier of termination or expiration of this Agreement. All Confidential Information shall be and remain the sole property of Disclosing Party, and Receiving Party shall not have or obtain any rights therein. Disclosing Party shall be entitled to specific performance and injunctive relief as remedies for any breach or threatened breach of any provision of this Section 12 without the necessity of proving actual damages, which remedies shall not be deemed to be exclusive remedies for such breach, but shall be in addition to all other available remedies. The rights and obligations as set forth in this provision shall survive the termination or expiration of this Agreement.

13. **Remedies.** Given a breach of this Agreement by a Party, the injured Party shall be entitled to pursue any and all rights and remedies available to such injured Party at law or in equity. The prevailing Party in any dispute shall be entitled to recover from the other Party all fees and costs (including attorney fees and court costs) incurred by the prevailing Party in pursuing its rights and remedies.

14. **Notices.** All notices will be given in writing (electronic copies are permissible) and will be deemed received upon receipt by the following contacts:

If to Customer:

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]@ [Redacted]

If to Turtle:

Turtle & Hughes, Inc.  
Attn: [Redacted]  
100 Walnut Ave  
Clark, NJ 07066  
[Redacted]@Turtle.com

15. **Assignment.** Neither Party may assign this Agreement without the prior written consent of the other Party.

16. **Survival of Certain Provisions.** All Sections of this Agreement which by their nature should survive the termination of this Agreement will survive such termination, including, without limitation, Sections 3, 4, 7, 10, 11, 12, 13 and 22.

17. **Further Assurances.** Both parties hereto agree that they shall execute, acknowledge and deliver any and all other instruments or documents, and engage in any other further actions, which shall be deemed reasonably necessary or desirable to effect the purposes of this Agreement.

18. **Captions.** All captions in this Agreement are for convenience only. They should not be deemed part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions hereof.

19. **No Party Deemed Drafter.** Each and every provision of this Agreement has been independently, separately and freely negotiated by the parties as if this Agreement were drafted by all

parties hereto. The parties, therefore, waive any statutory or common law presumption which would serve to have this document construed in favor of, or against, either party as the drafter thereof.

20. **Amendment; Modification; Waiver.** Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated, except by a written instrument signed by both Parties.

21. **Severability.** This Agreement is severable. In the event that any term or provision hereof is finally determined by a court of competent jurisdiction to be invalid, such determination shall not affect the balance of this Agreement, which shall remain in full force and effect. The Parties shall undertake to replace the invalid, ineffective, or unenforceable provision with a valid, effective, and enforceable provision, which, in their commercial effect, approximates as closely as possible to the intention of the Parties as expressed in the invalid, ineffective, or unenforceable provision.

22. **Governing Law; Venue.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of New Jersey without regard to any otherwise applicable principles or rules of conflict of laws. The venue for any and all legal proceedings arising under this Agreement shall be Union County, New Jersey.

23. **Entire Agreement.** This Agreement and its exhibits constitute the entire understanding and agreement between the Parties and supersedes any prior communications, representations or agreements, whether oral or in writing, regarding the same matter between them.

24. **Facsimile and Electronic Signatures, Copies and Counterparts.** To the extent legally permissible, a signed facsimile or a signed electronic copy of this Agreement will bind the Parties to the same extent as original documents. Neither Party shall challenge the validity or enforceability of this Agreement solely because the other Party uses an electronic signature. This Agreement may be signed in counterparts and all counterparts will represent one and the same instrument.

25. **Heirs, Successors and Assigns Bound.** This Agreement shall be binding upon, and inure to the benefit of, the heirs, successors and/or assigns of the Parties.

**[Signatures Follow on the Ensuing Page]**





**IN WITNESS WHEREOF**, each Party has caused this Agreement to be duly authorized executed and delivered as of the day and year first above written.

**ATTEST:** **[CUSTOMER NAME]**

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

**ATTEST:** **TURTLE & HUGHES, INC.**

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