**MANUFACTURING AGREEMENT**

This Purchase Agreement (the “**Agreement**”) is by and between Pro Concrete Countertops LLC (“**Seller**”) and (“**Buyer**”) and is entered into as of , 20\_\_\_ (the “**Effective Date**”). In this Agreement, both Seller and Buyer may be referred to individually as a “Party” or collectively as the “Parties.”

**BACKGROUND**

1. Seller is in the business of manufacturing and selling custom concrete pieces and related component parts, which constitute Seller’s goods; and
2. Buyer wishes to purchase from Seller its goods on as as-needed and on-going basis; and
3. Seller and Buyer agree that the terms of this Agreement will govern their relationship.

The Parties have agreed as follows:

1. **Sale of Goods.** The Parties agree that the solicitation, construction, and delivery of Seller’s goods will occur in the following manner:
	1. Buyer will submit to Seller the request for goods in a form substantially similar to **Exhibit A** (the “Order”)**.**
	2. Seller will confirm receipt of the Order, and any additional details, if needed.
	3. Seller will provide Buyer with the price of the Order (“Price”) and the projected completion date of the Order.
	4. Buyer will confirm acceptance of the Order and Price and will pay 50% of the Order price (“the Down Payment”).
	5. All information related to the goods contained in the Order at the time the Down Payment is made will constitute the “Product” as referred to in this Agreement.
	6. Seller will begin fulfillment of the Order.
	7. Upon completion of the Order, Seller will pay the remaining balance of the Order (“Final Payment”). **Buyer understands and agrees that Seller will not release any Product unless Final Payment is received.**
	8. Seller and Buyer will mutually agree on the delivery of the Order.
2. **Buyer’s Obligations**. Buyer agrees to provide all necessary specifications, measurements, colors, and any additional information to Seller. Buyer agrees to communicate any changes to the Order in a timely manner. Buyer agrees to provide payment as outlined above. Buyer agrees to provide the end-user with Seller’s disclaimers, attached as **Exhibit B,** which also are incorporated as terms of this Agreement**.**
3. **Seller’s Obligations.** Seller agrees to manufacture the Product in accordance with the information provided by Buyer in the Order. Seller agrees to complete the Order in accordance with the agreed-upon timeline, barring any unforeseen circumstances or Acts of God. Seller agrees to communicate any changes to the timeline in a timely manner. Seller agrees to complete the Order in a workmanlike manner and in accordance with Buyer’s intended use.
4. **Changes to Order.** Due to the custom nature of Seller’s work, Buyer understands and agrees that changes to the Order after manufacturing has begun may not be possible. Buyer therefore agrees that, subject to the discretion of Seller, Buyer will be responsible for the entire Price of the Order after manufacturing begins.
5. **Delivery**.
	1. The Parties agree that the default manner in which the Product will be provided to Buyer is by picking up the Order at Seller’s business.
	2. If Buyer does not pick-up or arrange shipping within two weeks of notification from Seller that the Order is complete, Buyer agrees to pay a storage fee of $50.00 per day.
	3. In the event the Parties agree that the Order will be shipped, the following terms apply.
		1. Seller shall deliver the Order to the agreed upon location (“Delivery Point”) using Seller’s standard methods for packaging and shipping such Order.
		2. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Order to Buyer.
		3. If for any reason Buyer fails to accept delivery of any of the Order on the date fixed pursuant to Seller’s notice that the Order have been delivered at the Delivery Point, or if Seller is unable to deliver the Order at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses, or authorizations:
			1. risk of loss to the Order shall pass to Buyer;
			2. the Order shall be deemed to have been delivered; and
			3. Seller, at its option, may store the Order until Buyer picks them up, and Buyer will be liable for all related costs and expenses including, without limitation, storage and insurance.
		4. Seller shall not be liable for any non-delivery of Order even if caused by Seller’s negligence unless Buyer gives written notice to Seller of the non-delivery within 2 days of the date when the Order would in the ordinary course of events have been received. Any liability of Seller for non-delivery of the Order shall be limited to delivering the Order within a reasonable time or adjusting the invoice respecting such Order to reflect the actual quantity delivered.
		5. Title and risk of loss passes to Buyer upon delivery of the Order at the Delivery Point.
		6. In the event Buyer has not paid the entire Price of the Order, and as collateral security for the Price of the Order, Buyer hereby grants to Seller a lien on and security interest in and to all the right, title, and interest of Buyer in, to, and under the Order, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under Chapter 1309 of the MN Uniform Commercial Code.
6. **Plans and Specifications**. Unless otherwise specified and agreed upon, Buyer’s purchase of, and Seller’s creation of, the Product is not based upon any design, plans, or specifications regarding Buyer’s usage or installation of the Product. Seller makes no promise, covenant, or warranty regarding Buyer’s end use of the Product.
7. **Cancellation.** Buyer understands that the work performed by Seller involves substantial preparation and involves completely custom processes. As such, Buyer agrees that if the Order is cancelled by Buyer after acceptance by Seller, but before manufacturing has begun, the Down Payment will be forfeited, but Buyer will not be responsible for the Final Payment. If Buyer cancels after manufacturing has begun, Buyer will be responsible for the entire Price of the Order.
8. **Collection**. In the event that Buyer does not pay for the Product or Order in full, regardless of whether Buyer takes possession of the Product, Buyer agrees that Seller is entitled to interest of the outstanding balance at 1.5% per month, or the maximum amount allowed by law. Seller is entitled to, and Buyer agrees to pay, all reasonable costs incurred in collecting any amounts owed to Seller, including, without limitation, attorneys’ fees.
9. **Inspection and Rejection of Nonconforming Order**.
	1. Buyer shall inspect the Order prior to receiving the Product.
	2. If the Order is picked-up at Seller’s business, Buyer will inspect prior to leaving the facility. After the Order leaves the facility, Seller is relieved of any obligation regarding the Product, except as expressly stated in this Agreement.
	3. If the Order is delivered, Seller has 24 hours from delivery to the Delivery Point to inspect (“Inspection Period”). Buyer will be deemed to have accepted the Order unless it notifies Seller in writing of any Nonconforming Order during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. “Nonconforming Order” means only the following: (i) Product shipped is different than identified in the Order; or (ii) Product is substantially non-compliant with the Specifications.
	4. If Buyer timely notifies Seller of any Nonconforming Order, Seller shall, in its sole discretion, (i) replace such Nonconforming Order with conforming Order, or (ii) credit or refund the Price for such Nonconforming Order. Buyer shall ship, at its expense and risk of loss, the Nonconforming Order to Seller’s facility located at 6737 LaBeaux Avenue NE, Albertville, MN 55362. If Seller exercises its option to replace Nonconforming Order, Seller shall, after receiving Buyer’s shipment of Nonconforming Order, ship to Buyer, at Buyer’s expense and risk of loss, the replaced Order to the Delivery Point.
	5. Buyer acknowledges and agrees that the remedies set forth in Section 9(d) are Buyer’s exclusive remedies for the delivery of Nonconforming Order. Except as provided under Section 9(d), all sales of Order to Buyer are made on a one-way basis and Buyer has no right to return Order purchased under this Agreement to Seller.
10. **Warranty**.
	1. Limited Warranty: Seller warrants to Buyer that, at the time of Delivery, the Order will materially conform to the specifications set forth in Order and will be free from material defects in material and workmanship.
	2. SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE ORDER FOLLOWING DELIVERY, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE**.**
11. **Limitation of Liability**.
	1. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE, ARISING OUT OF, OR RELATING TO, AND/OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (i) WHETHER SUCH DAMAGES WERE FORESEEABLE, (ii) WHETHER OR NOT SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (iii) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND (D) THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
	2. IN NO EVENT SHALL SELLER’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED TWO TIMES THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE ORDER SOLD HEREUNDER.
12. **Indemnification**. Buyer shall indemnify, defend, and hold harmless Seller and its officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, “Indemnified Party”) against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees, fees and the costs of enforcing any right to indemnification under this Agreement, and the cost of pursuing any insurance providers, incurred by Indemnified Party/awarded against Indemnified Party in a final, non-appealable judgment, arising out of or resulting from any claim of a third party or Seller arising out of or occurring in connection with the products purchased from Seller or Buyer’s negligence, willful misconduct, or breach of this Agreement. Buyer shall not enter into any settlement without Seller’s or Indemnified Party’s prior written consent.
13. **Miscellaneous**.
14. **Modifications**. Any alterations, variations, modifications, or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing, approved by the parties respective Boards, and signed by the authorized representatives of Buyer and Seller.
15. **Minnesota Law to Govern**. This Agreement shall be governed by and construed in accordance with the substantive and procedural laws of the State of Minnesota, without effect to the principles of conflict laws. All proceedings related to this Agreement shall be venued in Hennepin, State of Minnesota.
16. **Merger**. This Agreement is the final expression of the agreement of the parties and the complete and exclusive statement of the terms agreed upon and shall supersede all prior negotiations, understandings, or agreements.
17. **Severability**. The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid, or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement unless the part or parts that are void, invalid or otherwise unenforceable shall substantially impair the value of the entire Agreement with respect to either party.
18. **Notices**. All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement must be in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this Section). Unless otherwise agreed herein, all notices must be delivered by personal delivery, nationally recognized overnight courier, or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a notice is effective only (a) on receipt by the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.
	* **Notice to Seller**: Pro Concrete Countertops LLC

 6737 LaBeaux Avenue NE

 Albertville, MN 55362

* + **Notice to Buyer**:

 Attention:

1. **Cumulative Remedies**. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties, or otherwise. Notwithstanding the previous sentence, the Parties intend that Buyer’s rights under this Agreement are Buyer’s exclusive remedies for the events specified therein.
2. **Assignment**. Buyer shall not assign, transfer, delegate, or subcontract any of its rights or obligations under this Agreement without the prior written consent of Seller. Any purported assignment, transfer, delegation, or subcontract in violation of this Section shall be null and void. No assignment, transfer, delegation, or subcontract shall relieve Buyer of any of its obligations hereunder. Seller may at any time assign, transfer, delegate, or subcontract any or all of its rights or obligations under this Agreement without Buyer’s prior written consent.
3. **Successors and Assigns**. This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.
4. **No Third-Party Beneficiaries**. This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
5. **Force Majeure**. Any delay or failure of Seller to perform its obligations under this Agreement will be excused to the extent that the delay or failure was caused directly by an event beyond such Party’s control, without such Party’s fault or negligence and that by its nature could not have been foreseen by such Party or, if it could have been foreseen, was unavoidable (which events may include natural disasters, embargoes, explosions, riots, wars, acts of terrorism, strikes, labor stoppages or slowdowns or other industrial disturbances, and shortage of adequate power or transportation facilities.
6. **Acceptance and Endorsement**.

**It is Agreed**. The Parties to this Agreement have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**Pro Concrete Countertops, LLC**

By:

Title:

By Name:

Title:

**EXHIBIT A**

|  |  |
| --- | --- |
| Buyer | Email |
| Project Address/Description | Date Needed |
| The Scope of Work and Materials: |
| **ACCEPTANCE OF AGREEMENT**By signing below, you agree that the above-listed scope of work and specifications are correct. You agree that the terms and conditions of this Order are governed by the Manufacturing Agreement signed by You and Pro Concrete Countertops LLC. **You understand that because all items are custom made, upon signature, you are bound for the entire price of the contract, regardless of any outside circumstances.**

|  |  |  |
| --- | --- | --- |
| Date  |  | Buyer |

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**EXHIBIT B**

Disclaimer Regarding Hand-Made Concrete Products:

* 1. Products made by Pro Concrete are hand-made and hand-finished. Each piece is unique. Variations in texture, dimension, color and aggregate distribution and exposure within a final product may occur and are considered an inherent property of our hand-made products.
	2. Samples of any material may not precisely represent material you will receive. Shades of color, for example, may vary per shipment due to the inherent nature of the materials used. For example, the humidity on the day the concrete is poured can subtly affect the color of the cured concrete.
	3. “Variegated” colors are highly variable in pattern. The pattern may be different from samples in density, size and distribution of patterning. The pattern may vary from slab to slab. Variegation is random.
	4. Embedded objects such as glass chips, metal shavings or stones are randomly distributed and tend to shift during the casting process. Every effort is made to use the size and density of objects shown in a sample, but size and density will vary throughout the finished slabs.
	5. Embedded metal shavings are composed of stainless steel, steel, and other metals, and the composition of the shavings is not under Pro Concrete’s control, as the shavings are recycled from a machine shop. Some rust may occur on some shavings and should be considered inherent to the look of the product.
	6. Hairline cracks that may occur in the finished product are a natural characteristic of concrete. Hairline cracks do not affect the structural integrity of the concrete.
	7. Seaming may be required for layouts designed to exceed maximum casting lengths. Seams are kept to a tolerance not to exceed 1/4" difference from the templates. Seams are filled with a clear silicone after slabs are placed. Typical seams are on the order of 1/16” to 1/8” wide. Typical slab size maximum is 8’ x 25”. We will provide you with a seam design after templating; please let us know if you require a seam design earlier.
	8. Undermount sinks will be mounted with a slight overhang of the countertop over the flange of the sink, so that the flange is not visible, unless otherwise specified in the Description of Job. Templates must be provided for the sink cutout. We need a sink template to provide an accurate sink hole. We charge $250 for a sink hole when we are not provided a template and do not guarantee the fitment of the sink hole without a template.
	9. All sizes are nominal and slight variations in thickness and other dimensions are to be expected. Maximum dimensional variations are +0”, - 1/4" at maximum slab length; typical variations are usually half of the maximum or less.
	10. Integrated LEDs are warrantied for 6 months. Integrated LEDs will have fiberglass embedded into the epoxy and epoxy high gloss will be the final finish.