

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 The Parties

This Settlement Agreement is entered into by and between Ecological Rights Foundation ("ERF") and Rankam Metal Products Manufactory Ltd. USA ("Rankam Metal USA"), collectively referred to as the "Parties." ERF is an organization with its principal place of business in the State of California. For purposes of this settlement only, Rankam Metal, USA stipulates that it is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code section 25249.6, et seq. ("Proposition 65").

#### 1.2 General Allegations

ERF alleges that Rankam Metal, USA has distributed, marketed and/or sold in the State of California "Kingsford" brand charcoal starters that are used for igniting and combusting charcoal fuel. ERF further contends that when California residents use charcoal starters, they are exposed to carbon monoxide, a chemical known to the State of California to cause reproductive toxicity. For purposes of this Settlement Agreement, "Covered Products" means "Kingsford" brand charcoal starters that are or will be marketed or sold in California.

#### 1.3 Notice of Violation

ERF represents that on July 21, 2017 and October 10, 2017, ERF served Kingsford Products Company, LLC, Tractor Supply Company, and various public enforcement agencies with a Notice of Violations of Proposition 65 (the "Notice"). Kingsford Products Company has no record of being served. The Notice alleged violations of California Health & Safety Code § 25249.5, for failing to warn California consumers and customers that the Covered Products expose users to carbon monoxide. ERF represents that no public enforcer has diligently prosecuted the allegations set forth

in the Notice. Kingsford Products Company, LLC licenses its mark to Rankam Metal, USA, a manufacturer. Tractor Supply Company retail sold the Covered Products.

On February 21, 2018, ERF filed a Complaint under San Francisco Case Number CGC-18-56, seeking injunctive relief and civil Penalties for the Covered Products, naming, in pertinent part only, The Kingsford Products Company, LLC and Tractor Supply Company (“Complaint”). Rankam Metal, USA is not a named party to the Complaint but a party to this Settlement Agreement, and indemnitor of The Kingsford Products Company, LLC and Tractor Supply Company. The Kingsford Products Company, LLC and Tractor Supply Company are express third party beneficiaries of this Settlement Agreement and are intended to receive the benefits of this Settlement Agreement, including the rights to enforce the covenants, conditions, and promises herein.

#### 1.4 No Admission

Rankam Metal, USA, Kingsford Products Company, LLC, and Tractor Supply Company deny the material factual and legal allegations contained in the Notices and Complaint. Nothing in this Settlement Agreement shall be construed as an admission by Rankam Metal, USA, , Kingsford Products Company, LLC, and/or Tractor Supply Company of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Rankam Metal, USA, Kingsford Products Company, LLC, and/or Tractor Supply Company of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Rankam Metal, USA, Kingsford Products Company, LLC, and/or Tractor Supply Company. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of any party under this Settlement Agreement. Notwithstanding the allegations in the Notices and Complaint, Rankam Metal, USA, Kingsford Products Company, LLC, and/or Tractor Supply Company maintain that they have not violated Proposition 65, knowingly, intentionally or otherwise.


1.5 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean 90 days after the date on which all parties have signed this Settlement Agreement.

2. INJUNCTIVE RELIEF

2.1 Clear and Reasonable Warnings

As of the Effective Date, for all Covered Products offered for sale in California, Rankam Metal, USA shall include one of the following warning statements:

 **WARNING:** This product can expose you to chemicals including soot, which is known to the State of California to cause cancer, and carbon monoxide, which is known to the State of California to cause birth defects or other reproductive harm. For more information, go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

The warning statements shall be affixed to or printed on the Covered Products or their packaging. The warnings shall be displayed with such conspicuousness, as compared with other words, statements, designs, or devices as to render them likely to be read and understood by an ordinary individual under customary conditions of purchase or use. The type size of the warning must be legible, and no smaller than any other warning provided with the Covered Products. The word "WARNING:" shall be in upper case letters and bold text. Rankam Metal, USA shall utilize a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline or a black exclamation point in a white triangle with black border.

3. PAYMENTS

3.1 CIVIL PENALTIES

Pursuant to Health and Safety Code section 25249.7(b)(2), Rankam Metal, USA shall pay \$2,000 in complete resolution of any claim for civil penalties that is alleged, or could have been alleged, in the Complaint. The payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the amount remitted to the California Office of Environmental Health Hazard Assessment

("OEHHA") and the remaining 25% of the amount paid to Ecological Rights Foundation. Defendant will provide these payments in two checks for the following amounts made payable to: (1) "OEHHA" in the amount of \$1,500; and (2) "Ecological Rights Foundation" in the amount of \$500.

### 3.2 REIMBURSEMENT OF FEES AND COSTS

Rankam Metal, USA shall reimburse ERF's counsel for \$18,000 in ERF's fees and costs incurred as a result of investigating and bringing this matter to Rankam Metal, USA's attention, and negotiating a settlement in the public interest. This payment shall be made payable to Ecology Law Center. The payments described in Sections 3.1 and 3.2 shall be sent within 10 days after the date on which all parties have signed this Settlement Agreement, via USPS certified mail, return receipt requested, to the following addresses: and delivered to the following address:

Fredric Evenson  
Ecology Law Center  
P.O. Box 1000  
Santa Cruz, CA 95061

## 4. RELEASE OF ALL CLAIMS

### 4.1 Release of Rankam Metal, USA and its customers

ERF acting on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors and/or assignees (all of whom, collectively, are defined as the "ERF Releasers"), releases Rankam Metal, USA, and its licensees/licensors (including Kingsford Products Company, LLC and its parents, subsidiaries, and affiliated entities), parents, subsidiaries, affiliated entities, marketplaces directors, officers, agents, employees, attorneys and each entity to whom Rankam Metal, USA directly or indirectly distributes or sells the Covered Products, (including but not limited to Tractor Supply Company and its parents, subsidiaries, and affiliated entities), downstream distributors, wholesalers, customers, retailers, franchisees, cooperative

members and licensees and all other upstream and downstream entities in the distribution chain, and the predecessors, successors, and assigns of any of them (collectively, the "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on failure to warn about alleged exposures to carbon monoxide from use of the Covered Products. This settlement is a full, final and binding resolution of all claims that were or could have been asserted against Rankam Metal, USA, and/or the Releasees for failure to provide warnings for alleged exposures to Proposition 65-listed chemicals emitted during use of the Covered Products.

In further consideration of the promises and agreements herein contained, and for the payment to be made pursuant to Section 3 above, the ERF Releasors provide a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands against Rankam Metal, USA and/or any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged or actual exposure to Proposition 65 chemicals from use of the Covered Products.

ERF shall file a dismissal with prejudice of Kingsford Products Company, LLC and Tractor Supply Company from the Complaint within 20 days after receiving all payments due pursuant to sections 3.1 and 3.2 above.

#### 4.2 Rankam Metal, USA's Release of ERF

Rankam Metal, USA, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waive any and all claims against ERF, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by ERF and/or its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to the Products.

4.3 California Civil Code Section 1542

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. ERF on behalf of itself only, on one hand, and Rankam Metal, USA, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in Sections 4.1 and 4.2 above may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

ERF and Rankam Metal, USA each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

6. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the law of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, Rankam Metal, USA shall provide written notice to ERF of any asserted change in the law, and shall have no further obligations pursuant to this

Settlement Agreement with respect to, and to the extent that, a Covered Product is so affected.

7. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any party by the other party to the following addresses:

For Rankam Metal, USA:

Min N. Thai, Attorney at Law  
Splinter & Thai, LLP  
25124 Narbonne Ave., Suite 106  
Lomita, CA 90717

For Ecological Rights Foundation:

Fredric Evenson  
Ecology Law Center  
P.O. Box 1000  
Santa Cruz, CA 95061

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

8. COUNTERPARTS: SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or .pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

ERF agrees to comply with the reporting requirements referenced in Health & Safety Code section 25249.7(f).

10. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the Parties.

11. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all the terms and conditions contained of this Settlement Agreement.

AGREED TO:

Date: May 11, 2018

By: S. K. Lee  
Rankam Metal Products Manufactory Ltd. USA  
*Ecological Rights Foundation*

Date: MAY 17, 2018

By: James Lampert, EXEC. DIR.  
James Lampert, Executive Director  
Ecological Rights Foundation