

## SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the California Air Resources Board (CARB), with its principal location at 1001 I Street, Sacramento, California 95814 and Great Dane, with its principal location at 222 N. LaSalle St., Chicago, Illinois 60601 (collectively, the "Parties," or individually, "Party").

### LEGAL BACKGROUND

- (1) Purpose. The Global Warming Solutions Act of 2006 mandates CARB to adopt regulations to reduce greenhouse gas emissions and to enforce those regulations. (Health & Saf. Code §§ 38560, 38562, and 38580). CARB is mandated to reduce hydrofluorocarbon (HFC) emissions by 40 percent below 2013 levels by 2030. (Health & Saf. Code § 39730.5.)
- (2) Regulation. CARB adopted the regulation, *Prohibitions on Use of Certain Hydrofluorocarbons in Stationary Refrigeration, Chillers, Aerosols-Propellants, and Foam End-Uses* (CA SNAP Regulation) to reduce HFC emissions from certain end-uses. (Cal. Code Regs., tit.17, §§ 95371-95378; Health & Saf. Code § 39734.)
- (3) Regulatory Provisions. Any person who sells, installs, leases, rents, uses, enters, or otherwise causes any equipment or product to enter into commerce in the State of California, any HFC substance identified in certain refrigeration and foam end-uses in the California SNAP Regulation must ensure their products do not contain prohibited substances by the effective date, keep records, and provide a disclaimer to buyers of the product. (Cal. Code Regs., tit.17, § 95375, 95376, 95378.)
- (4) Penalty Provisions. Failure to comply with the regulatory requirements in paragraph 3 is a violation of state law that may result in penalties up to ten thousand dollars (\$10,000) for violations, respectively, for each day in which the violation occurs. (Cal. Code Regs., tit.17, § 95380 et seq.; Health & Saf. Code §§ 38580, 42400 et seq., 42402 et seq., and 42410.)

### BACKGROUND

- (5) Corporate Entities. At all relevant times, Great Dane, is organized under the laws of Illinois, as a corporation, and conducted business in the State of California.
- (6) Circumstances. Great Dane manufactures and sells transportation refrigeration units (TRU) using compliant foam blowing agent to insulate refrigerated trailer interiors. Great Dane notified CARB that there are shortages in compliant foam blowing agent due to force majeure events beyond their and the supplier's

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control and as a result, Great Dane does not have access to compliant foam blowing agent. Great Dane acknowledges that it will violate the California SNAP Regulation by selling, leasing, renting, installing, using, or entering into commerce in the State of California, HFC-245fa foam blowing agent in the end-use category of "Rigid Polyurethane: Commercial Refrigeration and Sandwich Panels" from the effective date of this Settlement Agreement through October 31, 2021. (Cal. Code Regs., tit.17, § 95371 et seq.) As of the date of this Settlement Agreement, despite best efforts by Great Dane and its suppliers, there are no suitable alternative foam blowing agents that would work in these TRUs.

- (7) Acknowledgment. Great Dane acknowledges paragraphs 1 through 5 and admits to the facts in paragraph 6, but denies any liability resulting from the foregoing paragraphs.
- (8) Consideration. In consideration of the foregoing, and of the promises and facts set forth herein, the Parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed anticipated violations and voluntarily agree to resolve this matter by means of this Settlement Agreement. In order to resolve the anticipated violations described herein, Great Dane has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of this matter.

### TERMS AND CONDITIONS

In consideration of CARB not filing a legal action against Great Dane for the anticipated violations set forth in paragraph 6, of CARB suspending the penalties, and of Great Dane complying with the Compliance Plan and conditions set forth below, CARB and Great Dane agree as follows:

- (9) Suspended Penalties. CARB will suspend the penalties as long as Great Dane complies with all conditions set forth in this Settlement Agreement. If Great Dane fails to comply with each and every requirement set out in this Settlement Agreement within the timeframe specified for each action, the Parties agree that Great Dane shall pay the suspended portion of this penalty of ten thousand **(\$10,000.00)** per day, beginning on the date the Settlement Agreement is fully executed, to CARB for deposit into the Air Pollution Control Fund for the purpose of carrying out CARB's functions and duties. Great Dane shall make payment within thirty (30) calendar days of the notice by CARB to Great Dane of the Settlement Agreement violation.

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(10) Great Dane Compliance Plan. Great Dane shall implement the following compliance requirements:

- a. Measures. Great Dane shall comply with the following:
  - i. Lack of Alternatives. Great Dane certifies that Great Dane's 214 TRUs in production for California may contain HFC 245fa, a noncompliant foam blowing agent, and there are no viable alternatives on the market that would work in Great Dane's products.
  - ii. Emissions Calculations. Great Dane anticipates that it will bring 68 pounds of noncompliant foam blowing agent into California, which is a CO<sub>2</sub> equivalent of 31.8 metric tons per trailer. With 214 trailers, the estimated total excess emissions is 6,805.2 metric tons of CO<sub>2</sub> equivalent.
  - iii. Mitigation. Great Dane shall install aerodynamic devices and automatic tire inflation on all trailers to reduce tractor fuel consumption and Thermoguard lining to reduce TRU fuel usage, which together save 94.5 metric tons of CO<sub>2</sub> equivalent over the life of the trailer. This provides an offset of 35.7 metric tons of CO<sub>2</sub> equivalent per unit, which is greater than the excess emissions of 31.8 metric tons for the HFC foam per unit. Certain orders will have additional aero devices and Thermoguard lining, which will yield further carbon offsets. The total emissions offset will be 9,050 metric tons of CO<sub>2</sub> equivalent over the life of the 214 trailers.
  - iv. Solutions. Great Dane will work with its refrigerant supplier to resolve the issue expeditiously.
  - v. Surplus. These mitigation measures shall be surplus to requirements of any federal, state, or local laws and may not be used to receive credit under these laws.
- b. Reporting. Great Dane shall submit monthly reports to CARB identifying all TRUs containing noncompliant HFC-245fa foam blowing agents that are sold, leased, rented, installed, used or entered into commerce in the State of California for each month. The monthly reports shall also summarize the actions Great Dane supplier has taken to formulate alternatives for each month. The first report shall be submitted within thirty (30) calendar days from the date of full execution of the Settlement Agreement. All reports shall be submitted in accordance with paragraph 12 (Notices).

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- (11) Document(s). Great Dane shall promptly email or mail the signed and dated Settlement Agreement, with copy of proof of payment of the penalty (if applicable), mitigation (if applicable), and SEP (if applicable), a copy of the Payment Transmittal Form(s) (if applicable), and the original signed and dated Compliance Plan (if applicable) to the address or email in paragraph 12 (Notices).
- (12) Notice(s). Unless otherwise specified in this Settlement Agreement, whenever notifications, submissions, or communications are required by this Settlement Agreement, they shall be submitted in writing to the address or email below:

As to CARB:

California Air Resources Board  
Enforcement Division / Settlement Agreements  
Stationary Source Enforcement Branch  
Short Lived Climate Pollutant Section  
P.O. Box 2815  
Sacramento, California 95812-2815  
Settlement\_Agreement@arb.ca.gov

As to Great Dane:

Great Dane  
222 N. LaSalle Street  
Chicago, Illinois 60601

- Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. Notices submitted pursuant to this section shall be deemed submitted upon emailing or mailing.
- (13) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, Great Dane shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (14) Repeat Violations. Except as otherwise allowed by this Settlement Agreement, Great Dane agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (15) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the facts in the Background and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the facts in the Background hereof. This Settlement Agreement consists of 8 pages and 34 paragraphs.

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- (16) Binding Effect. This Settlement Agreement binds Great Dane, and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (17) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (18) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Settlement Agreement.
- (19) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.
- (20) Choice of Law. This Settlement Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice-of-law rules.
- (21) Non-Discharge. It is further agreed that the penalties described in this Settlement Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit.
- (22) Not Tax Deductible. For purposes of this Settlement Agreement, Great Dane shall not deduct any monies spent to comply with any provision of this Settlement Agreement in calculating and submitting its federal, state, or local income tax.
- (23) Rules of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Settlement Agreement.
- (24) Non-Waiver. The failure to enforce any provision of this Settlement Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Settlement Agreement. The rights and remedies granted the Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Settlement Agreement or otherwise provided by law.

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- (25) Intent to be Bound. The Parties represent that: They have participated fully in the review and drafting of this Settlement Agreement; understand and accept all terms; enter into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Settlement Agreement; have agreed to this Settlement Agreement after independent investigation and agree it was not arrived at through fraud, duress, or undue influence; and knowingly and voluntarily intend to be legally bound by this Settlement Agreement.
- (26) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (27) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Facsimile, electronic, or photocopied signatures shall be considered as valid signatures.
- (28) Release. In consideration of the full completion of penalty payment, and all undertakings above, CARB hereby releases Great Dane and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any claims CARB may have based on the circumstances described in all paragraphs contained in the Case Background above.
- (29) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.
- (30) Sunset. The Terms and Conditions of this Settlement Agreement shall cease to apply on October 31, 2021.

### **PENALTY BASIS**

- (31) Per Unit Penalty. The per unit penalty in this case is a maximum of ten thousand dollars (\$10,000.00) per day under Health and Safety Code section 38580 for violations of the CA SNAP Regulation. (Cal. Code Regs., tit.17, § 95371 et seq.) The penalty is suspended due to Great Dane's proactive disclosure, the force majeure events beyond the control of Great Dane, unavailability of a viable alternative, and actions to be taken in the Compliance Plan. The suspended penalty is \$10,000.00 over an unspecified number of days of violation.
- (32) Emissions. The provisions cited above do not prohibit emissions above a specified level but prohibit HFC-245fa altogether in the "Rigid polyurethane: commercial refrigeration and sandwich panels" category after January 1, 2020. HFC-245fa has a global warming potential of 1,030. Without more information, it is not practicable to quantify the excess emissions. Since CARB has alleged that

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the end-use will not meet the regulatory requirements, any emissions of HFC-245fa in this end-use category would be excess and illegal.

(33) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors as described in CARB's Enforcement Policy. CARB considered whether the violator came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods; efforts to attain, or provide for, compliance prior to violation; action taken to mitigate the violation; financial burden to the violator; and voluntary disclosure. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger depending on the unique circumstances of the case.

(34) Confidential Business Information. CARB based this penalty in part on confidential business information provided by Great Dane and confidential settlement communications, neither of which are retained by CARB in the ordinary course of business.

ACKNOWLEDGED AND ACCEPTED BY:

### **California Air Resources Board**

Signature: /S/

Name: Todd P. Sax, D.Env.

Title: Chief, Enforcement Division

Date: 7/22/2021

### **Great Dane**

Signature: /S/

Name: Rick Mullinix

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Title: EVP Engineering

Date: 7/21/2021