

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In re:	§	Chapter 11
	§	
	§	Case No. 20-43597-399
BRIGGS & STRATTON, CORPORATION, <i>et al.</i> ,	§	(Jointly Administered)
	§	
Debtors.	§	Related Docket No. 30

**FINAL ORDER (I) AUTHORIZING DEBTORS TO PAY
PREPETITION OBLIGATIONS IN THE ORDINARY COURSE OF
BUSINESS TO (A) CRITICAL VENDORS, (B) FOREIGN CREDITORS,
AND (C) 503(b)(9) CLAIMANTS; AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)¹ of Briggs & Stratton Corporation and its affiliated debtors in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”), for entry of an order pursuant to sections 105(a), 363(b), and 503(b)(9) of the Bankruptcy Code and Bankruptcy Rule 6004 (i) authorizing the Debtors to pay prepetition obligations in the ordinary course of business to (a) certain vendors, suppliers, service providers, and other similar entities that are essential to maintaining the going concern value of the Debtors’ enterprise (the “**Critical Vendors**” and their claims the “**Critical Vendor Claims**”), (b) certain suppliers, service providers, and other entities outside of the United States that are not or, in the Debtors’ reasonable judgment, may not be subject to jurisdiction in the United States and may take action against the Debtors in a foreign country (collectively, the “**Foreign Creditors**” and their claims the “**Foreign Claims**”), and (c) certain vendors holding claims that are entitled to statutory priority under section 503(b)(9) of the Bankruptcy Code (the “**503(b)(9) Claimants**,” and their claims the “**503(b)(9) Claims**,” and, together with the Critical Vendors and the Foreign

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.



Creditors, the “**Vendor Claimants**” and their collective claims the “**Vendor Claims**”); and (ii) granting related relief, all as more fully set forth in the Motion; and upon consideration of the Ficks Declaration [Docket No. 51]; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Debtors having represented that adequate and proper notice of the Motion has been given and that no other or further notice need be given; and this Court having reviewed the Motion; and this Court having held a hearing to consider the relief requested in the Motion; and this Court having granted interim relief on the Motion [Docket No. 145]; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors and their respective estates and creditors; and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor, **it is hereby ORDERED that the Motion is GRANTED in that:**

1. The Debtors are authorized, but not directed, pursuant to sections 105(a), 363(b), and 503(b)(9) of the Bankruptcy Code and Bankruptcy Rule 6004 to pay or cause to be paid, (a) Critical Vendor Claims, in an amount not to exceed \$8.42 million in the aggregate, (b) Foreign Creditor Claims, in amount not to exceed \$5.79 million in the aggregate, and (c) 503(b)(9) Claims, in amount not to exceed \$20.79 million in the aggregate. The Debtors in their sole discretion will determine which Critical Vendor Claims, Foreign Creditor Claims, or 503(b)(9) Claims, if any, will be paid pursuant to the Final Order.

2. The Debtors shall undertake all appropriate efforts to cause the Vendor Claimants to enter into written agreements to continue supplying goods and services to the Debtors for the duration of these chapter 11 cases, substantially in the form attached hereto as **Exhibit A** (each a “**Trade Agreement**”), as a condition of payment of each such Vendor Claimant’s Vendor Claims. The Debtors are authorized to negotiate, modify, or amend the form of Trade Agreement in their reasonable business judgment.

3. If, either after executing a Trade Agreement or receiving notification of this Final Order, a Vendor Claimant accepts payment pursuant to the relief requested by the Motion and thereafter does not continue to provide the goods and services to the Debtors on the Customary Trade Terms (regardless of whether a Trade Agreement has been executed), 14 days after receipt by the Vendor Claimant of a notice of non-performance and if no objection with the Court has been filed: (a) such payment may be deemed by the Debtors to be an improper postpetition transfer on account of a prepetition claim and, therefore, will immediately be recoverable by the Debtors in cash upon written request; (b) upon recovery by the Debtors of such payment, any prepetition claim of such Vendor Claimant shall be reinstated as if the payment by the Debtors had not been made in the first instance; and (c) if there exists an outstanding postpetition balance due from the Debtors to such Vendor Claimant, then the Debtors may elect to recharacterize and apply any payment made by the Debtors to such Vendor Claimant pursuant to the relief requested by the Motion to such outstanding postpetition balance, and such Vendor Claimant will be required to repay to the Debtors such paid amounts exceeding the postpetition obligations then outstanding from the Debtors to such Vendor Claimant without the right of any setoffs, claims, provisions for payment of any claims, or otherwise.

4. Nothing herein shall impair or prejudice the Debtors' ability to contest, in their sole discretion, the extent, perfection, priority, validity, or amount of any of the Critical Vendor Claims, the Foreign Claims, or the 503(b)(9) Claims.

5. Nothing in the Motion or this Final Order shall be deemed to authorize the Debtors to accelerate any payments not otherwise due prior to the date of the hearing to consider entry of an order granting the relief requested in the Motion on a final basis.

6. Notwithstanding anything contained in the Motion or this Final Order, any payment made, and any authorization of the Debtors contained herein shall be subject to the terms and conditions contained in any orders entered by this Court authorizing the Debtors to obtain debtor-in-possession financing and/or authorizing the use of cash collateral (each such order, a "**DIP Order**"), the documentation in respect of any such debtor-in-possession financing or use of cash collateral, and any budget in connection with any such debtor-in-possession financing and/or use of cash collateral. To the extent there is any inconsistency between the terms of any DIP Order and any action taken or proposed to be taken by the Debtors hereunder, the terms of the DIP Order shall control.

7. Prior to making a payment to a party pursuant to this Final Order, the Debtors may, in their absolute discretion and in consultation with the DIP Agent and the official committee of unsecured creditors (the "**Creditors' Committee**"), settle all or part of the prepetition claims of such party for less than their face amount, without further notice or hearing. The Debtors may elect to only pay part of a prepetition claim, leaving the remainder of the claim to be addressed pursuant to the Debtors' chapter 11 plan.

8. The Banks are authorized to receive, process, honor, and pay any and all checks issued, or to be issued, and electronic funds transfers requested, or to be requested, by the

Debtors relating to such obligations, to the extent that sufficient funds are on deposit in available funds in the applicable bank accounts to cover such payments. The Banks are authorized to accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of this Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.

9. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds transfers, and to replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored or rejected as a result of the commencement of the Debtors' chapter 11 cases with respect to any prepetition amounts that are authorized to be paid pursuant to this Final Order.

10. The Debtors shall maintain a matrix (the "**Vendor Claimant Payment Matrix**") summarizing (i) the name of each Vendor Claimant the Debtors seek to pay on account of the terms set forth in any order approving this Motion, (ii) the amount of each made payment, and (iii) a brief description of the goods and services provided by the Vendor Claimant for which such payment will be made. Following entry of this Final Order, on August 21, 2020 and subsequently thereafter on the first day of each month, the Debtors shall provide a list of any changes to the Vendor Claimant Payment Matrix to (a) the United States Trustee for the Eastern District of Missouri; (b) counsel to the Creditors' Committee; and (c) counsel to the lenders under the Debtors' postpetition debtor in possession secured credit facility. Provision of the Vendor Claimant Payment Matrix and any subsequent changes by email shall be sufficient. Recipients of the Vendor Claimant Payment Matrix shall keep the Vendor Claimant Payment Matrix strictly confidential with access to the actual details limited to attorneys and financial advisors and shall

not disclose the Vendor Claimant Payment Matrix or any portion thereof to any individual or entity without the Debtors' prior written consent.

11. Nothing contained in the Motion or this Final Order or any payment made pursuant to the authority granted by this Final Order is intended to be or shall be deemed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim, (iii) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable nonbankruptcy law, (iv) an agreement or obligation to pay any claims, (v) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (vi) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code.

12. Notice of the Motion is adequate under Bankruptcy Rule 6004(a).

13. Notwithstanding the provisions of Bankruptcy Rule 6004(h), this Final Order shall be immediately effective and enforceable upon its entry.

14. The Debtors are authorized to take all actions necessary or appropriate to carry out the relief granted in this Final Order.

15. Notwithstanding entry of this Final Order, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by any party.

16. Not later than August 25, 2020, the Debtors shall use reasonable best efforts to (a) reconcile the amount of Dantherm S.p.A.'s ("**Dantherm**") prepetition claim and (b) determine whether Dantherm is a Critical Vendor, Foreign Vendor, and/or 503(b)(9) Claimant, and in each case, notify Dantherm of their determination.

17. Not later than two (2) business days after the date of this Final Order, the Debtors shall serve a copy of the Final Order and shall file a certificate of service no later than twenty-four (24) hours after service.

DATED: August 20, 2020
St. Louis, Missouri

cke


Barry S. Schermer
United States Bankruptcy Judge

Order Prepared By:

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*Proposed Local Counsel to the Debtors and
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-and-

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*Proposed Counsel to the Debtors and
Debtors in Possession*

Exhibit A

Form Trade Agreement

TRADE AGREEMENT

[●] (the “**Company**”), on the one hand, and the supplier identified in the signature block below (“**Supplier**”), on the other hand, hereby enter into the following trade agreement (this “**Trade Agreement**”) dated as of the date in the Supplier’s signature block below.

Recitals

WHEREAS on July 20, 2020 (the “**Petition Date**”), Briggs & Stratton Corporation and certain of its affiliates (collectively, the “**Debtors**”) filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”), in the United States Bankruptcy Court for the Eastern District of Missouri (the “**Court**”).

WHEREAS on July 22, 2020, the Court entered its *Interim Order (I) Authorizing Debtors to Pay Prepetition Obligations in the Ordinary Course of Business to (A) Critical Vendors, (B) Foreign Creditors, and (C) 503(b)(9) Claimants; and (II) Granting Related Relief* [Docket No. 145], and on [●], 2020, the Court entered its *Final Order (I) Authorizing Debtors to Pay Prepetition Obligations in the Ordinary Course of Business to (A) Critical Vendors, (B) Foreign Creditors, and (C) 503(b)(9) Claimants; and (II) Granting Related Relief* [Docket No. [●]] (collectively, the “**Critical Vendor Order**”) ¹ authorizing the Debtors on an interim and final basis, under certain conditions, to pay the prepetition claims of certain suppliers, including Supplier, subject to the terms and conditions set forth therein.

WHEREAS prior to the Petition Date, Supplier delivered goods to and/or performed services for the Company, and the Company paid Supplier for such goods and/or services, according to Customary Trade Terms (as defined herein).

WHEREAS the Company and Supplier (each a “**Party**,” and collectively, the “**Parties**”) agree to the following terms as a condition of payment on account of certain pre-petition claims Supplier may hold against the Company.

Agreement

1. Recitals. The foregoing recitals are incorporated herein by reference as if set forth at length herein.

2. Supplier Payment. Supplier represents and agrees that, after due investigation, the sum of all amounts currently due and owing by the Company to Supplier is \$[●] (the “**Agreed Supplier Claim**”). Following execution of this Trade Agreement, the Company shall, in full and final satisfaction of the Agreed Supplier Claim, pay Supplier \$[●] on account of its prepetition claim (the “**Supplier Payment**”) (without interest, penalties, or other charges), as such amounts become due and payable in the ordinary course.

¹ Capitalized terms used but not defined herein shall have the meanings set forth in the Critical Vendor Order.

3. Agreement to Supply.

a. Supplier shall supply goods and/or perform services to or for the Company, and the Company shall accept and pay for goods and/or service from Supplier, for the Duration of the Cases (as defined below), on the trade terms (the “**Customary Trade Terms**”) at least as favorable to the Company as those practices and programs (including credit limits, pricing, cash discounts, timing of payments, allowances (as may be incorporated or contemplated by any agreements between the Parties or based on historic practice, as applicable), product mix, availability, and other programs) in place in the 180 days prior to the Petition Date except for any partial payments or other payments (or assurances) Company made with respect to any unfinished product.

b. “**Duration of the Cases**” means the earlier of: (i) the effective date of a chapter 11 plan in the Debtors’ chapter 11 cases; (ii) the closing of a sale of all or a material portion of the Debtors’ assets pursuant to Bankruptcy Code section 363 resulting in a cessation of the Debtors’ business operations; (iii) conversion of the Debtors’ chapter 11 cases to cases under chapter 7 of the Bankruptcy Code; or (iv) a default under any of the Debtors’ debtor-in-possession financing facilities that results in the Company losing access to funds available under any such facility.

c. The Customary Trade Terms may not be modified, adjusted, or reduced in a manner adverse to the Company except as agreed-to in writing by the Parties. For the avoidance of doubt, such Customary Trade Terms include, but are not limited to:

d. Supplier shall continue to honor any existing allowances, credits, contractual obligations, or balances that accrued as of the Petition Date and shall apply all such allowances, credits, or balances towards future orders in the ordinary course of business.

4. Other Matters.

a. Supplier agrees that it shall not require a lump-sum payment upon the effective date of a plan in the Debtors’ chapter 11 cases on account of any outstanding administrative claims Supplier may assert arising from the delivery of postpetition goods or services, to the extent that payment of such claims is not yet due. Supplier agrees that such claims will be paid in the ordinary course of business after confirmation of a plan pursuant to the Customary Trade Terms then in effect.

b. Supplier will not separately seek payment from the Debtors on account of any prepetition claim (including, without limitation, any reclamation claim or any claim pursuant to section 503(b)(9) of the Bankruptcy Code) outside the terms of this Trade Agreement or a plan confirmed in the Company’s chapter 11 cases.

c. Supplier will not file or otherwise assert against the Debtors, their assets, or any other affiliated person or entity, or any of their respective assets or property (real or personal) any lien, regardless of the statute or other legal authority upon which the lien is asserted, related in any way to any remaining prepetition amounts allegedly owed to Supplier by the Debtors arising from prepetition agreements or transactions. Furthermore, if Supplier has taken steps to file or assert such a lien prior to entering into this Trade Agreement, Supplier will promptly take all necessary actions to remove such liens.

5. Breach.

a. In the event that the Company pays Supplier its Supplier Payment and Supplier is determined to have breached this Trade Agreement (a “**Supplier Breach**”), upon written notice to Supplier, Supplier shall promptly pay to the Company immediately available funds in an amount equal to, at the election of the Company, the Supplier Payment or any portion of the Supplier Payment which cannot be recovered by the Company from the postpetition receivables then owing to Supplier from the Company.

b. In the event that the Company recovers the Supplier Payment pursuant to Section 5(a) hereof or otherwise, the full Agreed Supplier Claim shall be reinstated as if the Supplier Payment had not been made.

c. Supplier agrees and acknowledges that irreparable damage would occur in the event of a Supplier Breach and remedies at law would not be adequate to compensate the Company. Accordingly, Supplier agrees that the Company shall have the right, in addition to any other rights and remedies existing in its favor, to seek an injunction or injunctions to prevent breaches of the provisions of this Trade Agreement and to enforce its rights and obligations hereunder not only by an action or actions for damages but also by an action or actions for specific performance, injunctive relief and/or other equitable relief. The right to equitable relief, including specific performance or injunctive relief, shall exist notwithstanding, and shall not be limited by, any other provision of this Trade Agreement. Supplier hereby waives any defense that a remedy at law is adequate and any requirement to post bond or other security in connection with actions instituted for injunctive relief, specific performance, or other equitable remedies. Notwithstanding the foregoing, in the event of a specific performance action by the Company, the Supplier retains its right to seek adequate assurance of payment and other similar relief pursuant to applicable law.

d. In the event the Company fails to pay for goods or services delivered postpetition in accordance with this Trade Agreement, and the Company fails to cure such default within ten (10) days after receiving notice of such default from the Supplier, the Supplier shall have the right to terminate this Trade Agreement, in which event the Supplier (i) shall have no obligation to continue to provide goods or services to the Company, and (ii) reserves its rights to file a timely proof of claim for any alleged unpaid amounts of the Supplier Payment.

6. Notice.

If to Supplier, then to the person and address identified in the signature block hereto.

If to Company:

Briggs & Stratton Corporation
12301 West Wirth Street
Wauwatosa, Wisconsin 53222
Attn: General Counsel
E-mail: generalcounsel@basco.com

– and –

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attn: Martha Martir and Sarah Schnorrenberg
E-mail: martha.martir@weil.com and sarah.schnorrenberg@weil.com
Facsimile: (212) 310-8007

– and –

Carmody MacDonald P.C.
120 S. Central Avenue, Suite 1800
St. Louis, Missouri 63105
Attn: Robert E. Eggmann, Christopher J. Lawhorn, and Thomas H. Riske
E-mail: ree@carmodymacdonald.com, cjl@carmodymacdonald.com, and
thr@carmodymacdonald.com
Facsimile: (314) 854-8660

7. Representations and Acknowledgements. The Parties agree, acknowledge and represent that:

a. the Parties have reviewed the terms and provisions of the Critical Vendor Order and this Trade Agreement and consent to be bound by such terms and that this Trade Agreement is expressly subject to the procedures approved pursuant to the Critical Vendor Order;

b. any payments made on account of the Agreed Supplier Claim shall be subject to the terms and conditions of the Critical Vendor Order;

c. if Supplier refuses to supply goods or services to the Company as provided herein or otherwise fails to perform any of its obligations hereunder, the Company may exercise all rights and remedies available under the Critical Vendor Order, the Bankruptcy Code, or applicable law; and

d. in the event of disagreement between the Parties regarding whether a breach has occurred, either Party may apply to the Court for a determination of their relative rights, in

which event, no action may be taken by either Party, including, but not limited to, the discontinuing of shipment of goods from Supplier to the Company, until a ruling of the Court is obtained.

8. Confidentiality. In addition to any other obligations of confidentiality between Supplier and Company, Supplier agrees to hold in confidence and not disclose to any party: (a) this Trade Agreement; (b) any and all payments made by the Company pursuant to this Trade Agreement; (c) the terms of payment set forth herein; and (d) the Customary Trade Terms (collectively, the “**Confidential Information**”); provided that if any party seeks to compel Supplier’s disclosure of any or all of the Confidential Information, through judicial action or otherwise, or Supplier intends to disclose any or all of the Confidential Information, Supplier shall immediately provide the Company with prompt written notice so that the Company may seek an injunction, protective order or any other available remedy to prevent such disclosure; provided, further, that, if such remedy is not obtained, Supplier shall furnish only such information as Supplier is legally required to provide.

9. Miscellaneous.

a. The Parties hereby represent and warrant that: (i) they have full authority to execute this Trade Agreement on behalf of the respective Parties; (ii) the respective Parties have full knowledge of, and have consented to, this Trade Agreement; and (iii) they are fully authorized to bind that Party to all of the terms and conditions of this Trade Agreement.

b. This Trade Agreement sets forth the entire understanding of the Parties regarding the subject matter hereof and supersedes all prior oral or written agreements between them for the Duration of the Cases, provided that any terms from prior agreements that are not addressed in the Trade Agreement continue to apply. This Trade Agreement may not be changed, modified, amended or supplemented, except in a writing signed by both Parties.

c. Signatures by facsimile or electronic signatures shall count as original signatures for all purposes.

d. This Trade Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

e. The Parties hereby submit to the exclusive jurisdiction of the Court to resolve any dispute with respect to or arising from this Trade Agreement.

f. This Trade Agreement shall be deemed to have been drafted jointly by the Parties, and any uncertainty or omission shall not be construed as an attribution of drafting by any Party.

[Signature page follows]

AGREED AND ACCEPTED AS OF THE DATE SET FORTH BELOW:

[COMPANY]

[SUPPLIER]

By:
Title:

By:
Title:
Address:

Date: