

## CONSENT AND COEXISTENCE AGREEMENT

This Consent and Coexistence Agreement (“Agreement”), executed as of the last date of signing set forth below, is entered into by and between Advantage Sales & Supply Co., Inc., a corporation formed under the laws of the State of Pennsylvania with a place of business at 99 Servidea Drive, Ridgway, Pennsylvania 15853 (“Advantage”), and Harbor Freight Tools USA, Inc., a corporation formed under the laws of the State of Delaware having a place of business at 26541 Agoura Road, Calabasas, California 91302 (“Harbor Freight”).

WHEREAS, Advantage has adopted, is using and is the owner of the trademark BIG-FOOT and owns U.S. Trademark Registration No. 5,587,602 for BIG-FOOT for use in connection with hand-operated cargo securing equipment and hardware, namely, hand-operated load binders (respectively, the “Advantage Mark,” the “Advantage Registration” and the “Advantage Goods”);

WHEREAS, Harbor Freight has adopted, is using and is the owner of the trademark BIGFOOT and owns U.S. Trademark Application Serial No. 88/215755 for BIGFOOT for use in connection with dollies, hand trucks and wagons (respectively, the “Harbor Freight Mark,” the “Harbor Freight Application” and the “Harbor Freight Goods”); and

WHEREAS, the parties have concluded that confusion is not likely to arise from their use of their respective marks in connection with their respective goods as set forth above because, among other things, the channels of trade for and potential consumers of the parties’ respective goods are sufficiently distinct to obviate a likelihood of confusion; and moreover, during the approximately one year of concurrent use of the parties’ respective marks, there does not appear to have been any actual confusion.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**1. Acknowledgment of Rights.**

a. Harbor Freight hereby acknowledges Advantage's ownership and exclusive right to use, apply to register and register the Advantage Mark worldwide in connection with the Advantage Goods and agrees not to oppose, petition to cancel, or otherwise challenge or object to the Advantage's use of the Advantage Mark, the Advantage Registration and any future applications and registrations for the Advantage Mark except on the grounds of abandonment or fraud.

b. Advantage hereby acknowledges Harbor Freight's ownership and exclusive right to use, apply to register and register the Harbor Freight Mark worldwide in connection with the Harbor Freight Goods and agrees not to oppose, petition to cancel, or otherwise challenge or object to Harbor Freight's use of the Harbor Freight Mark, the Harbor Freight Application and any future applications and registrations for the Harbor Freight Mark except on the grounds of abandonment or fraud.

**2. Actual Confusion.**

The parties agree that they shall cooperate in taking any reasonable action to avoid confusion and to correct any instances of likelihood of confusion which may come to their attention arising out of their respective uses of their marks. The parties agree that in the event that either of them becomes aware of or is informed of confusion arising from the simultaneous use of their respective marks in connection with their respective goods, as set forth above, they will promptly inform one another of such confusion and will promptly and in good faith confer

and cooperate with one another to take appropriate steps to eliminate or minimize such confusion. The parties further agree that neither party, in connection with the use of their respective marks, will attempt to associate with the other party in any way in the future and that neither party has done so in the past.

**3. Acceptance by USPTO.**

If, for some reason, this Agreement is not accepted by the USPTO for the purpose of allowing the Harbor Freight Application to register, the parties agree to cooperate with one another to complete a revised Agreement which will be accepted by the USPTO.

**4. Enforcement against Third Parties.**

Each party shall have sole responsibility for enforcing that party's respective trademarks against third parties, but if either party believes that there is a joint interest in challenging a third party, then the parties shall use their reasonable commercial efforts to consult with respect thereto.

**5. Successors and Assigns.**

This Agreement shall be binding and inure to the benefits of the parties hereto and their respective assignees and successors; provided, however, that no party may assign its rights hereunder without the prior written consent of the other party which shall not be unreasonably withheld.

**6. Modification of Agreement.**

This Agreement shall not be altered, amended, modified or otherwise changed except by a writing duly signed by all parties hereto.


7. **Relationship between the Parties.**

Nothing in this Agreement shall be construed to create, authorize or constitute a partnership, joint venture or agency relationship of any kind. Neither party shall have the authority to bind the other to any obligation or liability.

IN WITNESS WHEREOF, the parties hereto enter into this Agreement on the last date set forth below.

ADVANTAGE SALES & SUPPLY CO., INC.      HARBOR FREIGHT TOOLS USA, INC.

By: *Sandra Lawrie*  
Name: *Sandra Lawrie*  
Title: *General Manager*  
Date: *7-29-2019*

By:   
Name: **MARC FRIEDMAN**  
Title: **GENERAL COUNSEL**  
Date: *8/1/19*