SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB") 1001 I Street, Sacramento, California 95814, and Swisher Acquisition, Inc. (hereinafter "SWISHER") with its principal place of business at 1602 Corporate Drive, Warrensburg, Missouri 64093.

I. RECITALS

(1) California Code of Regulations, title 13, section 2753 states, "evaporative emission control systems must be certified annually to the performance-based or system design standards set out in section 2754 through 2757 by the Air Resources Board. An Executive Order of Certification for such engines or equipment must be obtained prior to the sale or lease, or the offering for sale or lease, for use or operation in California of the delivery or importation for introduction into commerce in California."

(2) California Health and Safety Code section 43016 states, "Any person who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part, and for which violation there is not provided in this part any other specific civil penalty or fine, shall be subject to a civil penalty not to exceed five hundred dollars ($500) per vehicle, portable fuel container, spout, engine, or other unit subject to regulation under this part, as these terms are defined in this division or state board regulations. Any penalty collected pursuant to this section shall be payable to the State Treasurer for deposit in the Air Pollution Control Fund."

(3) SWISHER did not receive ARB certification for its evaporative emission control system on their small off-road engines for model years 2012.

(4) SWISHER subsequently reported 43 sales of uncertified small off road engines used in its equipment.

(5) SWISHER fully cooperated with ARB in the investigation of this matter.

(6) SWISHER admits the facts alleged in paragraphs (3) and (4) of the Recitals, and is entering into this Agreement for the purpose of settlement and resolution of this matter with ARB. Further, ARB accepts this Agreement in termination of this matter.

II. TERMS AND RELEASE

In consideration of ARB not filing a legal action against SWISHER for the alleged violations referred to above, the ARB and SWISHER agree as follows:

(1) As a condition of this Agreement SWISHER shall pay the total sum of sixteen thousand one hundred twenty five dollars ($16,125.00) as a penalty to the Air Resources Board, subject to the following terms:

Payments shall be made by check payable as described above and addressed to:

Attn: Tony Zeng
Air Resources Board
Enforcement Division
9460 Telstar Avenue, Suite 3
El Monte, CA 91731

(2) SWISHER represents that it understands the legal requirements applicable to selling small off-road engines in California and agrees that it will not introduce products to commerce unless ARB certification has first been obtained. SWISHER agrees that it will not acquire, introduce, import, offer for sale, or sell new, non-California certified small off-road engines for use or registration in California and SWISHER promises that any small off-road engines in its possession not certified to California emission standards will be clearly marked: "Not for Sale or Use in California."

(3) This Agreement shall apply to and be binding upon SWISHER and its principals, officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, dealers, distributors, and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

(4) This Agreement constitutes the entire agreement and understanding between ARB and SWISHER concerning the claims and settlement in this Agreement, and this Agreement fully supersedes and replaces any and all prior negotiations and agreement of any kind or nature, whether written or oral, between ARB and SWISHER concerning these claims.

(5) No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all parties to this Agreement.

(6) Advice of Counsel. Each party to this Agreement has reviewed the Agreement independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this Agreement and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this Agreement.

(7) This 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.

(8) Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.

(9) Waiver. The failure of any Party to enforce any provision of this 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 Agreement. The rights and remedies granted all 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 Agreement or otherwise provided by law.

(10) This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either party on the ground that said party drafted it.

(11) **SB 1402 Statement**

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010, Health and Safety Code section 39617) requires the ARB to provide information on the basis for the penalties it seeks. This required information, which is provided throughout this settlement agreement, is summarized here.

The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in Health and Safety Code section 43024.

The per unit penalty in this case is a maximum of $500 per unit per strict liability violation. The penalty obtained in this case is $375 per unit for 43 units. This reflects the facts that this was an unintentional, first time violation of this type; SWISHER self-disclosed it; and SWISHER's diligent efforts to comply and to promptly and fully cooperate with the investigation.

The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.

ARB alleges that the penalty provision being applied in this case, Health and Safety Code section 43016, is appropriate because SWISHER allegedly imported and sold portable generators in California that were not certified by ARB.

Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.

The provisions cited above do not prohibit emissions above a specified level. It is not practicable to quantify these emissions, because the information necessary to do so, such as emission rates and time of use, is not available. However, since the small off-road engines involved in this case are illegal for use or sale in California, all of the emissions attributable to them are illegal and excess as well.

(12) SWISHER acknowledges that ARB has complied with SB 1402 in prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at Health and Safety Code section 43024, has explained the manner in which the penalty amount was calculated (including a per unit or per vehicle penalty, if appropriate), has identified the provision of law under which the penalty is being assessed, and has considered and determined that this penalty is not being assessed under a provision of law that prohibits the emission of pollutants at a specified level.

(13) Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar case negotiation, and the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a certain period of time, considered together with the complete circumstances of this case. Penalties in future cases might be smaller or larger on a per unit basis.

(14) The penalty in this case was based in part on confidential business information provided by SWISHER that is not retained by ARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between ARB and SWISHER that ARB does not retain in the ordinary course of business either. The penalty also reflects ARB's assessment of the relative strength of its case against SWISHER, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that SWISHER may have secured from its actions.

The undersigned represent that they have the authority to enter this Agreement.

California Air Resources Board	**Swisher Acquisition, Inc.**
By: Ellen M. Peter	By: Elton L. Allen
Name: Ellen M. Peter	Name: Elton L. Allen
Title: Chief Counsel	Title: CEO
Date: 7/19/2013	Date: July 6, 2013