

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF FIRE  
& FLOWER HOLDINGS CORP., FIRE & FLOWER INC. 13318184 CANADA INC.,  
11180703 CANADA INC., 10926671 CANADA LTED., FRIENDLY STRANGER  
HOLDINGS CORP., PINEAPPLE EXPRESS DELIVERY INC., and HIFYRE INC.**

Applicants

**MOTION RECORD OF THE MOVING PARTY  
(MOTION RETURNABLE JUNE 19, 2023)**

June 17, 2023

**GOWLING WLG (CANADA) LLP**

Barristers & Solicitors

1 First Canadian Place

100 King Street West, Suite 1600

Toronto ON M5X 1G5

Fax: 416-862-7661

**C. Haddon Murray (LSO#61640P)**

Tel: 416-862-3604

Email: haddon.murray@gowlingwlg.com

Counsel for Turning Point Brands (Canada) Inc.

## INDEX

| <b>TAB</b> | <b>DESCRIPTION</b>  |
|------------|---|
| <b>1</b>   | <b>Notice of Motion dated June 17, 2023</b>   |
| <b>2</b>   | <b>Affidavit of Mikail Fancy sworn June 17, 2023</b>  |
| A          | Exhibit A – Email from Dustyn Straga to Jason Haroutunian and Chris Riddoch dated September 2, 2022 |
| B          | Exhibit B – Madelaine Higgs to Mikail Fancy dated December 16, 2022                                 |
| C          | Exhibit C – Consignment Agreement dated January 5, 2023   |
| D          | Exhibit D – F&F Invoice dated February 1, 2023  |
| E          | Exhibit E – Invoices sent from TPB Canada to F&F for January to May, 2023                           |
| F          | Exhibit F - Letter from Haddon Murray dated June 12, 2023   |
| <b>3</b>   | <b>Draft Order</b>  |

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF FIRE  
& FLOWER HOLDINGS CORP., FIRE & FLOWER INC. 13318184 CANADA INC.,  
11180703 CANADA INC., 10926671 CANADA LTD., FRIENDLY STRANGER  
HOLDINGS CORP., PINEAPPLE EXPRESS DELIVERY INC., and HIFYRE INC.**

Applicants

**NOTICE OF MOTION OF TURNING POINT BRANDS (CANADA) INC.  
(Re: Lifting Stay Proceedings)**

Turning Point Brands (Canada) Inc. (“**TPB Canada**”), will make a motion to Justice Osborne presiding over the Commercial List on June 19, 2023 at 9:00 a.m. by way of judicial teleconference via Zoom at Toronto, Ontario, or as soon thereafter as possible.

**PROPOSED METHOD OF HEARING:** The Motion is to be heard

- in writing under subrule 37.12.1(1);
- in writing as an opposed motion under subrule 37.12.1(4);
- orally.

**THE MOTION IS FOR:**

1. An Order:
  - (a) lifting the stay of proceedings pursuant to the Amended and Restated Initial Order of Justice Osborne dated June 15, 2023 (“**ARIO**”) for the limited purpose of permitting TPB Canada to:

- (i) terminate the Exclusive Distribution Agreement between TPB Canada, as the distributor, and Fire & Flower Inc. (“**F&F**”), as the retailer, dated January 5, 2023 (the “**Consignment Agreement**”); and
  - (ii) take such steps as are necessary to repossess the Goods (as defined below) that are in the possession, power or control of F&F; and
- (b) that F&F return the Goods in its possession, power or control to TPB Canada.

**THE GROUNDS FOR THE MOTION ARE:**

1. TPB Canada carries on business as a manufacturer and distributor of products used in the preparation, storage, and use of cannabis. It does not carry on business as a financier.
2. On January 5, 2023 (the “**Effective Date**”), TPB Canada and F&F entered into the Consignment Agreement, pursuant to which:
  - (a) TPB Canada would purchase all of the cannabis accessories (the “**Goods**”) owned by F&F and be the sole distributor of Goods going forward;
  - (b) TPB Canada maintains ownership and title over the Goods in F&F’s possession; and
  - (c) F&F would sell the Goods, retain a specified commission and remit the balance to TPB Canada.

3. Since then, TPB Canada and F&F have acted at all times on the basis that this is a consignment relationship. TPB has continued to provide Goods to F&F. TPB Canada owns title to all of the Goods sold by F&F. The Goods are readily identifiable and traceable.
4. On June 5, 2023, F&F obtained the Initial Order of Justice Steele commencing these CCAA proceedings (the “**CCAA Proceedings**”) and imposing a stay of proceedings (the “**Stay**”).
5. As of June 5, 2023, F&F was indebted to TPB Canada in the approximate amount of \$460,000 and, as at May 31, 2023, held Goods owned by TPB Canada valued at of \$1,150,398.
6. On June 15, 2023, the Stay was continued by the ARIO.
7. The Stay interferes with TPB Canada’s right to repossess its property, which is in the possession of F&F and, by the nature of the terms of the Consignment Agreement, forces TPB Canada to extend credit to F&F. TPB Canada is unwilling to extend credit to F&F and to permit F&F to continue to fund these CCAA Proceedings with the sale of TPB Canada’s Goods.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

1. The Affidavit of Mikail Fancy sworn June 17, 2023; and
2. such further and other evidence as the lawyers may advise and this Honourable Court may permit.

June 17, 2023

**GOWLING WLG (CANADA) LLP**

1 First Canadian Place, Suite 1600

100 King Street West

Toronto, ON M5X 1G5

Tel: (416) 862-7525

Fax: (416) 862-7661

**C. Haddon Murray (LSO #61640P)**

Tel: (416) 862-3604

Email: [haddon.murray@gowlingwlg.com](mailto:haddon.murray@gowlingwlg.com)

Counsel for Turning Point Brands (Canada) Inc.

TO: **SERVICE LIST**

IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMNT OF FIRE & FLOWER HOLDINGS CORP., FIRE & FLOWER  
INC. 13318184 CANADA INC., 11180703 CANADA INC., 10926671 CANADA LTED., FRIENDLY STRANGER HOLDINGS CORP.,  
PINEAPPLE EXPRESS DELIVERY INC., and HIFYRE INC.

Applicants

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

**NOTICE OF MOTION**

**(Lift Stay Motion returnable June 19, 2023)**

**GOWLING WLG LLP**

First Canadian Place  
100 King St W #1600,  
Toronto, ON M5X 1G5  
Fax: (416) 862-7661

**C. Haddon Murray** (LSO #61640P)  
Tel: (416) 862-3604  
Email: haddon.murray@gowlingwlg.com

Counsel for Turning Point Brands (Canada) Inc.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF FIRE  
& FLOWER HOLDINGS CORP., FIRE & FLOWER INC., 13318184 CANADA INC.,  
11180703 CANADA INC., 10926671 CANADA LTED., FRIENDLY STRANGER  
HOLDINGS CORP., PINEAPPLE EXPRESS DELIVERY INC., and HIFYRE INC.**

Applicants

---

**AFFIDAVIT OF MIKAIL FANCY  
(Sworn June 17, 2023)**

---

I, Mikail Fancy of the City of Montreal, in the Province of Québec, **MAKE OATH AND SAY:**

1. I am Chief Operating Officer of Turning Point Brands (Canada) Inc. ("**TPB Canada**") and have been involved in the operational management of TPB Canada since November 2020. As such, I have personal knowledge of the matters to which I hereinafter depose, except where such knowledge is based upon information and belief, in which case I confirm the source of my information and verily believe such information to be true.
2. I am swearing this affidavit in support of TPB Canada's motion for an order lifting the stay of proceedings in this CCAA Application to permit TPB Canada to terminate the Consignment Agreement (as defined below) and take possession of its Goods (as defined below).

**History of TPB Canada**

3. TPB Canada is incorporated under the *Canada Business Corporations Act* and carries on manufacturing and selling cannabis accessories. This includes all products used in the preparation, storage, and use of cannabis. TPB Canada's management has significant



expertise in marketing and distributing tobacco products throughout Canada, accumulating over 50 years of combined experience in building and managing a portfolio of premium brands.

4. TPB Canada does not carry on business as a financier.

### **Consignment Agreement**

5. In or about the Fall of 2023, Fire & Flower Inc. (“**F&F**”) proposed that it enter into an consignment arrangement with TPB Canada. Attached to this affidavit as **Exhibit “A”** is an email (attachment omitted) from Dustyn Straga of F&F to Jason Haroutunian and Chris Riddoch of TPB Canada dated September 2, 2022 stating that “[t]he plan [F&F] would like to implement for accessories is a consignment model, where [TPB Canada] would own the inventory in shops and warehouse.”
6. On December 16, 2022, Madelaine Higgs of F&F wrote to me sending over a version of the Consignment Agreement for execution. In the correspondence, Ms. Higgs states that F&F is “declining the ownership of inventory in the event our agreement ends - our rationale here is that you have control of the assortment plan, as would be the responsibility of [sic] the products.” Attached to this affidavit as **Exhibit “B”** is the email from Ms. Higgs to me dated December 16, 2022.
7. On January 5, 2023 (the “**Effective Date**”), TPB Canada, as the distributor, and F&F, as the retailer, entered into an Exclusive Distribution Agreement (the “**Consignment Agreement**”) which included the following provisions:
  - a. Section 1.1 – TPB Canada was appointed as F&F's exclusive supplier of cannabis accessories, encompassing all products used in the preparation, storage, and use of cannabis that are provided by TPB Canada, excluding any products containing cannabis as defined in the *Cannabis Act* (Canada) (the “**Goods**”).
  - b. Section 4.2 – Title to the Goods remains with TPB Canada until they are sold by F&F to customers.

- c. Sections 2.1(a) and (b) – TPB Canada agreed to provide instructions, information, and support to F&F regarding the marketing, advertising, promotion, and pricing of the Goods at the F&F Locations.
- d. Sections 2.2(a) – F&F agreed to market, advertise, promote, and sell the Goods in accordance with TPB's instructions. This includes adhering to TPB Canada's sales, marketing, and merchandising policies as they currently exist or as they may be amended by TPB Canada in the future and making every effort to maximize the sales volume of the Goods, consistent with good business practices.
- e. Section 3.1 – F&F will be entitled to a sales commission equal to twenty-eight percent (28%) of the net revenues collected from the sale of the Goods (the “**Commission**”), exclusive of (a) any rebates, quantity, trade, and cash discounts, as well as other granted or accrued discounts; (b) applicable goods and sales taxes related to the Goods' sales; and (c) shipping, insurance, and other transportation charges associated with delivering the Goods to customers.
- f. Section 3.3 – Within fourteen (14) days following the end of each calendar month, F&F agreed to provide TPB with a sales statement. This statement will detail the monthly net revenue derived from Goods sold at F&F Locations, broken down by Good and Retailer location. It will also include the calculation of the monthly Commission owed to F&F (the “**Monthly Statement**”).
- g. Section 3.6 – F&F will retain the Commission, while the remaining balance from the sales proceeds will be remitted to TPB each month.
- h. Section 1.1 – F&F is prohibited from directly or indirectly marketing, advertising, promoting, selling, or distributing products from any third-party that are substantially similar to or compete with the Goods at the F&F Locations.
- i. Section 1.2 – TPB Canada will purchase all third-party cannabis accessories owned by F&F that are still in inventory and in good resale condition as of the Effective Date for the same price that F&F originally paid for these goods, as determined by both Parties acting reasonably.

Attached to this affidavit as **Exhibit “C”** is a copy of the Consignment Agreement dated January 5, 2023.

8. In accordance with paragraph 1.2 of the Consignment Agreement, TPB Canada purchased all of the existing Goods owned by F&F. F&F maintained possession of these Goods and sold them to consumers in accordance with the Consignment Agreement. Attached to this affidavit as **Exhibit “D”** is a copy of the invoice from F&F to TPB Canada dated February 1, 2023.
9. The Goods are clearly identifiable and traceable, as they as they constitute 100% of F&F’s cannabis accessory products.
10. TPB Canada regularly made decisions with respect to the allocation of Goods at F&F stores. Each month TPB Canada determined which products to ship as Goods and how many of each Good would be sent to which store. TPB Canada had independent access to F&F’s sales and inventory information and so it would, on its own initiative, ship Goods to F&F stores when it determined that it was appropriate. All of these decisions with respect to the Goods were made exclusively by TPB Canada without any requirement for F&F’s permission. Since the Effective Date, TPB Canada has supplied units of Goods with an approximate value of \$831,000 to F&F as follows:

|                       | <b>Jan-23</b> | <b>Feb-23</b> | <b>Mar-23</b> | <b>Apr-23</b> | <b>May-23</b> | <b>Jun-23</b> | <b>Total</b> |
|-----------------------|---------------|---------------|---------------|---------------|---------------|---------------|--------------|
| <b>Value of Goods</b> | \$87,267      | \$105,115     | \$340,824     | \$173,481     | \$95,672      | \$28,519      | \$830,877    |

11. The aggregate value of Goods sold by F&F is approximately \$1,600,000. F&F has failed to remit sales proceeds for the months of April in the amount of \$232,302 and May in the amount of \$228,794. Accordingly the aggregate outstanding balance is \$461,096. Attached to this affidavit as **Exhibit “E”** are copies of the invoices sent from TPB Canada to F&F for the months of January to May, 2023.
12. As of May 31, 2023, the value of the TPB Canada Goods held by F&F was \$1,150,398.
13. At no time has TPB Canada expressly or implicitly conveyed title to the Goods to F&F.


**Discussions with F&F**


- 14. On June 12, 2023, TPB Canada’s counsel, Haddon Murray of Gowling WLG (Canada) LLP, wrote to F&F’s solicitors informing them that TPB is not prepared to allow F&F to continue to hold and sell its Goods to fund its insolvency proceedings without a trust arrangement. Attached to this affidavit as **Exhibit “F”** is a copy of the Haddon Murray’s Letter dated June 12, 2023.
- 15. On Tuesday, June 13, 2023, I spoke with Chris Bolivar, F&F’s Executive Vice-President, Commercial & Growth. During that conversation Chris affirmed to me that the Goods held by F&F are owned by TPB Canada.
- 16. F&F has failed to provide any proposal with respect to the issues raised by TPB.

**Urgency**

- 17. F&F’s failure to pay the pre-filing amount of \$461,000 creates a liquidity issue for TPB Canada, interfering with its ability to purchase inventory for other clients. Accordingly, it is critical that TPB Canada access the Goods that are currently in the F&F network to satisfy its other existing clients. If TPB Canada is unable to meet the demands of its clients it will lose sales and damage its reputation in the market, potentially resulting in the loss of clients. As a result, TPB Canada’s urgently requires a determination of its right to repossess the Goods.

SWORN BEFORE ME over video )  
 teleconference this 17<sup>th</sup> day of June, 2023. )  
 The affiant was located in the City of )  
 Montreal in the Province of Quebec, while )  
 the commissioner, C. Haddon Murray, was )  
 located in the City of Toronto in the Province )  
 of Ontario. )

DocuSigned by:  
  
 6E9FAB7AA4414D5

DocuSigned by:  
  
 46121D33BC9F4B3...

**Mikail Fancy**

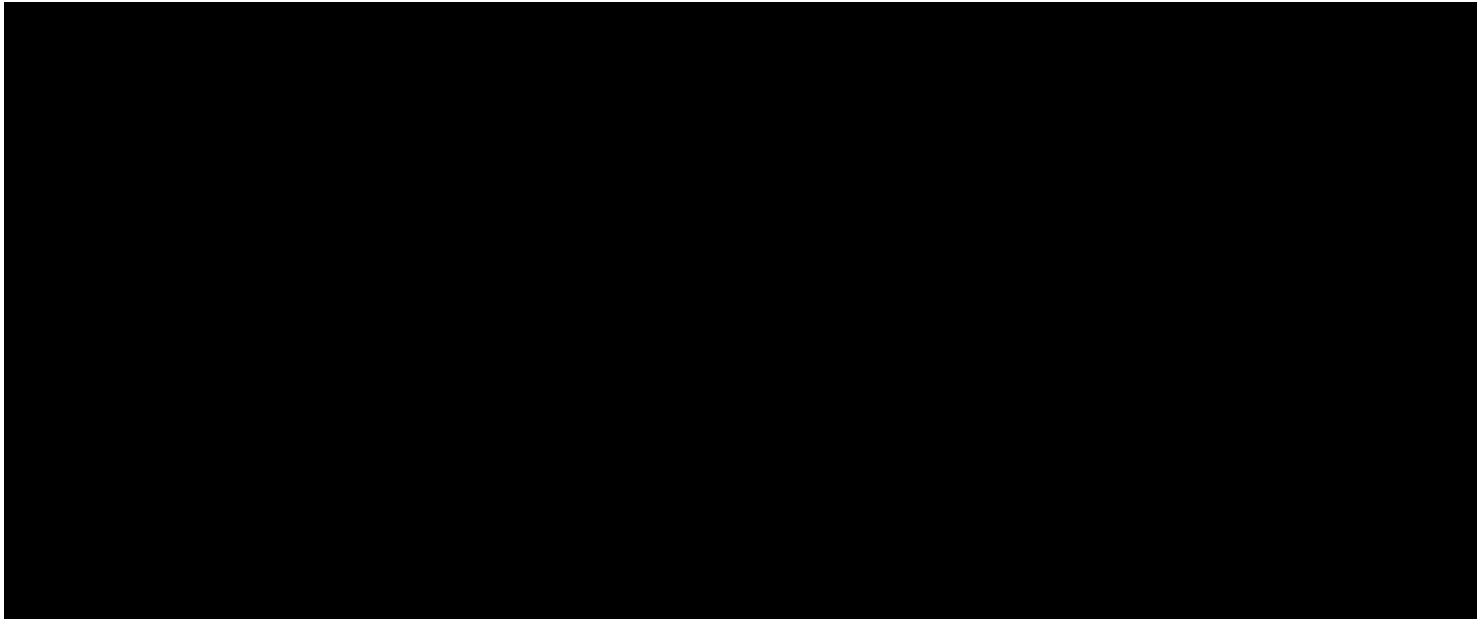
\_\_\_\_\_  
 A Commissioner for Oaths and Affidavits  
 C. Haddon Murray (LSO 61640P)

This is Exhibit "A" referred to in the Affidavit of Mikail Fancy, SWORN/AFFIRMED  
REMOTELY by the affiant at the City of Montreal in the Province of Quebec, before me at the  
City of Toronto in the Province of Ontario, on June 17, 2023.

DocuSigned by:  
  
6F9FAB7AA4414D5...

---

A Commissioner for Taking Affidavits



**From:** Chris Riddoch <[chris@turningpointbrands.ca](mailto:chris@turningpointbrands.ca)>  
**Sent:** Tuesday, June 13, 2023 12:29 PM  
**To:** Mikail Fancy <[mikail@turningpointbrands.ca](mailto:mikail@turningpointbrands.ca)>  
**Subject:** Fwd: Turning Point x Fire and Flower

----- Forwarded message -----

**From:** **Dustyn Straga** <[DStraga@fireandflower.com](mailto:DStraga@fireandflower.com)>  
**Date:** Fri, Sep 2, 2022 at 1:01 PM  
**Subject:** Turning Point x Fire and Flower  
**To:** Jason Haroutunian <[jason@turningpointbrands.ca](mailto:jason@turningpointbrands.ca)>, [chris@turningpointbrands.ca](mailto:chris@turningpointbrands.ca) <[chris@turningpointbrands.ca](mailto:chris@turningpointbrands.ca)>  
**Cc:** Chris Bolivar <[cbolivar@fireandflower.com](mailto:cbolivar@fireandflower.com)>

Hey!

Attached is the current Accessory Assortment I have created. This is based on historical sales and the best of each subcategory are listed. I believe this assortment offers the best value and product variety for our guests. This assortment will also be able to fill our shop displays and offer our guests an engaging visual experience.

These are all high margin items, and if we can keep these in stock at our locations, we can drive consistent Gross Profit.

Here is a breakdown of our top categories.

Concentrate Accessories – Primarily 510 Batteries

Pipes - Bongs, Hand Pipes, Bowls, Down Stems

Rolling Papers - Papers, Cones, Tools

Combustion - Lighters, Torches

Housewares – Cleaners, Storage

Grinders – 4Piece and 2Piece

Flower Vaporizers – Primary focus is on the devices and less on the parts for the devices

Processing – Boveda and RAW Hydrostone

| Row Labels                     | Sum of GM\$    |
|--------------------------------|----------------|
| Concentrate Accessories        | 39.22%         |
| Pipes                          | 20.75%         |
| Rolling Papers and Accessories | 16.41%         |
| Combustion                     | 7.21%          |
| Housewares                     | 6.03%          |
| Grinders                       | 5.34%          |
| Flower Vaporizer               | 4.67%          |
| Processing                     | 0.38%          |
| <b>Grand Total</b>             | <b>100.00%</b> |

For White Label Projects, we are fine with keeping: 510-Battery, Grinder and the Lighter (Bic and Clipper). The Primary brands getting WL are Fire and Flower, and Friendly Stranger. Considerations to add Happy Dayz and Hot Box if MOQ allows.

What are we hoping from you?

1. Let us know what you think of the proposed assortment? Does this align to what you see from the products you sell to other retailers.
2. Are you able to offer us these products at a competitive price?
3. Are you able to source all these SKUs? If you are swapping them with something else, what would that product be.
4. Are you able to keep products such as Glass Water Pipes, Hand Pipes and Dab Rigs interesting and exciting? We want to offer guests consistent styles of bongs, but we also want to keep our displays fresh with new designs, colours, and sizes. Since this is our 2<sup>nd</sup> highest category, it's important that we drive sales in this category!

The plan we would like to implement for accessories is a consignment model, where you would own the inventory in shops and warehouse. We would provide a catalog based on the Accessory assortment above, with some additions for more exotic items (Puffco Peak, Volcano, etc), and perhaps some more flex items for higher volume locations. We would value any input on these kinds of items.

This Accessories catalog would be updated once a quarter, so we can stay on trend, and add new and exciting products.

Our shops would be able to direct order from your warehouse and manage their inventory (within our dollar guidelines), giving them the ability to satisfy their local market even better.

Let me know if you have any other questions regarding this and we can chat at a later date with your proposal.

Thanks, have a great long weekend!



**Dustyn Straga**  
Cannabis Buyer (YK/BC)

Accessory Buyer

5241 Calgary Trail NW, Suite 400

Edmonton, AB T6H 5G8

[fireandflower.com](http://fireandflower.com) | TSX:FAF

---

The content of this email, including any attachment(s), is confidential and intended solely for the recipient(s) to whom it is addressed. If you are not an addressed recipient, you are prohibited from disclosing, copying, distributing, using or relying upon the contents of this email. If you received this message in error, please notify the sender and delete it immediately. .

This message contains confidential information and is intended only for the individual(s) named in this email. If you are



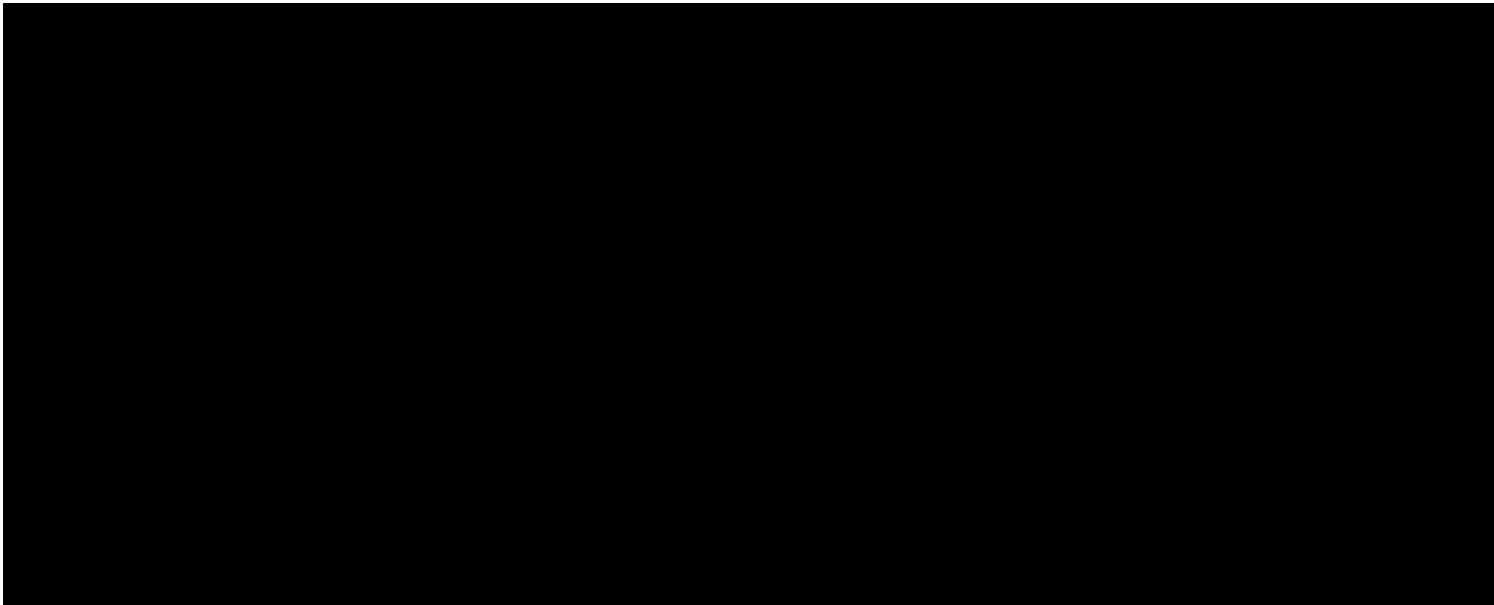
not the named addressee, or if this email has been sent to you in error, you may not disseminate, distribute or copy this email. Please notify the sender immediately by email if you have received this email by mistake and delete this email from your system. Computer viruses can be transmitted via email. The recipient should check this email and any attachments for the presence of viruses. The organization accepts no liability for any damage caused by any virus transmitted by this email.

This is Exhibit “B” referred to in the Affidavit of Mikail Fancy, SWORN/AFFIRMED  
REMOTELY by the affiant at the City of Montreal in the Province of Quebec, before me at the  
City of Toronto in the Province of Ontario, on June 17, 2023.

DocuSigned by:  
*C. Haddon Murray*  
6F9FAB7AA4414D5...

---

A Commissioner for Taking Affidavits



**From:** Madelaine Higgins <mhiggins@fireandflower.com>  
**Sent:** Friday, December 16, 2022 3:44 PM  
**To:** Mikail Fancy <mikail@turningpointbrands.ca>  
**Cc:** jason@turningpointbrands.ca; Chris Bolivar <cbolivar@fireandflower.com>  
**Subject:** Final Agreement & Notes

Hi Mikhail!

Happy to say I'm about to send over a DocuSign for the final version of the agreement to Chris Riddoch - a few points to mention that were modified in the version I'm sending (copy attached for your reference):

- We are bringing up the true-up date to end of February
- We are declining the ownership of inventory in the event our agreement ends - our rational here is that you have control of the assortment plan, as would be the responsibility of the products
- We are agreeing to sending weekly and monthly reports and declining the audit period, since the cadence of reporting is frequent and ongoing negating the need to reopen closed items

Please let me or Chris know if you have any questions.

Thanks!

Madelaine



**Madelaine Higgins**  
Manager, Business Development

130 King Street West, Suite 2500

Toronto, Ontario M5X 1C8

647.227.8828 | [fireandflower.com](http://fireandflower.com) | TSX:FAF



---

The content of this email, including any attachment(s), is confidential and intended solely for the recipient(s) to whom it is addressed. If you are not an addressed recipient, you are prohibited from disclosing, copying, distributing, using or relying upon the contents of this email. If you received this message in error, please notify the sender and delete it immediately. .

This message contains confidential information and is intended only for the individual(s) named in this email. If you are not the named addressee, or if this email has been sent to you in error, you may not disseminate, distribute or copy this email. Please notify the sender immediately by email if you have received this email by mistake and delete this email from your system. Computer viruses can be transmitted via email. The recipient should check this email and any attachments for the presence of viruses. The organization accepts no liability for any damage caused by any virus transmitted by this email.

This is Exhibit “C” referred to in the Affidavit of Mikail Fancy, SWORN/AFFIRMED  
REMOTELY by the affiant at the City of Montreal in the Province of Quebec, before me at the  
City of Toronto in the Province of Ontario, on June 17, 2023.

DocuSigned by:  
*C. Haddon Murray*  
6F9FAB7AA4414D5...

---

A Commissioner for Taking Affidavits

## Exclusive Distribution Agreement

This Exclusive Distribution Agreement (this "**Agreement**"), dated as of January 5, 2023 (the "**Effective Date**"), is entered into between Turning Point Brands (Canada ) Inc., a legal person duly constituted under the Canada Business Corporations Act, having its head office at 3166 Boulevard le Corbusier, Laval (Québec) H7L 4S8 ("**Distributor**"), and Fire & Flower Inc., a legal person duly constituted under the Canada Business Corporations Act, having its head office at 5241 Calgary Trail NW, Suite 400, Edmonton (Alberta) T6H 5G8 ("**Retailer**", and together with Distributor, the "**Parties**", and each, a "**Party**").

WHEREAS, Distributor is in the business of manufacturing and selling the Goods (as defined in Schedule 1);

WHEREAS, Retailer is an adult-use cannabis retailer in the business of marketing and reselling Goods;

WHEREAS, Retailer desires to appoint Distributor as its exclusive supplier of Goods on a consignment basis for sale to customers at the F&F Locations (as defined below), and Distributor desires to accept such appointment, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set out herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

### 1. Appointment

1.1 Exclusive Appointment. Retailer appoints Distributor as its exclusive supplier of the Goods within all of the Distributor's network, including any current and future retail locations and online platforms owned or operated by Retailer (the "**F&F Locations**") during the Term, and Distributor accepts such appointment. Retailer shall not directly or indirectly market, advertise, promote, sell, or distribute products from any third-party, at the F&F Locations, that are substantially similar or compete with the Goods, subject to Section 1.2 and 1.3.

1.2 Exception. The Parties agree that Distributor will purchase from Retailer all third party cannabis accessories owned by Retailer, that are still inventoried at the Effective Date and are in good re-sale condition, as determined by the Parties, each acting reasonably, at the price Retailer paid for these goods. As of February 28th, 2023, Distributor will pay to Retailer 100% of the price paid by Retailer for these goods inventoried on the Effective Date. At the election of the Distributor, such price may be set-off against the Balance (as defined below) payable to the Distributor. The Parties, acting reasonably, will decide if such goods shall remain and be sold by Retailer at the F&F Locations, or removed from F&F Locations and be sold to other customers of the Distributor. Should these goods remain at the F&F Locations, they will be included in the share of revenues at Section 3.

1.3 Existing Supplier. It is acknowledged that Retailer has entered into a supply agreement with Humble & Fume Inc. relating to the supply of cannabis accessories, which is terminable by Retailer at its convenience on 3 months' notice. Retailer has provided notice of termination in respect of such contract as of the Effective Date.

1.4 No Right to Appoint Sub-Distributors. Retailer shall not, without the prior written consent of Distributor, such consent not to be unreasonably withheld or delayed, appoint any sub-distributor or other person or entity to sell or distribute the Goods.

## 2. Promotion and Marketing

### 2.1 Distributor Obligations. Distributor shall:

- (a) provide instructions to Retailer regarding the marketing, advertising and promotion of the Goods at the F&F Locations;
- (b) provide any information and support that may be reasonably requested by Retailer regarding the marketing, advertising, promotion, and sale of Goods;
- (c) provide Retailer and maintain, at all times, a representative quantity of each Good sufficient for and consistent with the needs of customers at the F&F Locations;
- (d) provide instructions regarding pricing of the Goods that will allow the Retailer to be competitive in the marketplace, which pricing is expected to (i) match the consumer selling price raised by a consumer of any other competing dispensary retailer offering the same Goods or products and (ii) remain competitive in comparison to any other major retailer with whom Distributor is doing business;
- (e) in addition to the marketing, advertising and promotion instructions provided by Distributor pursuant to this Agreement, allow Retailer to participate, at its own expense, in any marketing, advertising, promotion, and sales programs or events that Distributor may make generally available to its authorized distributors of Goods, *provided that* Distributor may alter or eliminate any program at any time;
- (f) provide, at its expense, promotional information and material for use by Retailer in accordance with this Agreement, including in-store shelf displays and other promotional materials required to carry out the instructions provided by Distributor pursuant to this Agreement.

### 2.2 Retailer Obligations. Retailer shall:

- (a) market, advertise, promote, and sell the Goods in the F&F Locations in conformity with Distributor's instructions, including Distributor's sales, marketing, and merchandising policies as they currently exist or as they may hereafter be changed by Distributor, provided that all such instructions, materials and policies comply with applicable laws, and in a manner that reflects favourably at all times on the Goods, brands and the good name, goodwill, and reputation of Distributor and consistent with good business practice, in each case using its best efforts to maximize the sales volume of the Goods;
- (b) make place and provide Distributor with adequate space at the primary point(s) of sale for rolling papers, lighters, 510 batteries and will work with Distributor to agree on planogramming and merchandising solutions that maintain at minimum the space granted areas to display the Goods in all F&F Locations on the Effective Date of the Agreement, and make available the Goods on Distributor's online consumer sales channels;

- (c) feature promotions, from time to time, of the Goods through Retailer's loyalty membership program, with pricing of such Goods applicable to loyalty members to be determined by mutual agreement between the Parties;
- (d) Upon request at a time mutually agreed between the Parties, provide direct access and time to engage with staff in order to have sufficient knowledge of the industry and products competitive with each Good (including specifications, features, and benefits) so as to be able to explain in detail to customers:
  - (i) the differences between the Good and competing products; and
  - (ii) information on standard protocols and features of each Good;
- (e) not make any materially misleading or untrue statements concerning Distributor or the Goods, including any product disparagement or bait-and-switch practices;
- (f) promptly notify Distributor of any complaint or adverse claim about any Good or its use of which Retailer becomes aware;
- (g) submit to Distributor the Monthly Statement (as defined below) in a computer-readable format, maintain books, records, and accounts of all transactions and permit examination thereof by Distributor in accordance with Section 13 and Section 14;
- (h) submit weekly to Distributor, sales and inventory reports relating to the Goods in each F&F Location;
- (i) not resell Goods to any federal, provincial, territorial, or municipal or foreign government or political subdivision or agency thereof, without prior written approval from Distributor;
- (j) allow Distributor's employees or sub-contractors reasonable access to the F&F Locations for verification and audit purposes of the display and sales of the Goods; and ok
- (k) conduct a full, independently verifiable, manual inventory count of all third-party cannabis accessories owned by Retailer to be purchased by Distributor in accordance with Section 1.2 within seven (7) days of the Effective Date.

### 3. Share of revenues

3.1 Commission. Retailer will be paid a sales commission representing twenty-eight percent (28%) of the net revenues collected by it resulting from the sale of the Goods (the "**Commission**"), exclusive of (a) any rebates, quantity, trade and cash discounts, and other discounts granted or accrued; (b) goods and sales taxes applicable to sales of the Goods; (c) shipping, insurance and other transportation charges incurred in shipping or delivering the Goods to customers. The Commission will be retained by the Retailer, and the balance (the "**Balance**") will be remitted to the Distributor in accordance with Section 3.6. For the first six (6) months of the Term, Distributor will reduce the Commission payable by fifty percent (50%) of the cost of inventory that is considered not to turn in 6 months or less through the



Distributor's locations, as mutually agreed by both Parties as of the Effective Date ("**Non turning stock**"), which total deduction of the Commission shall not exceed in the aggregate an amount of \$400,000 CAD.

3.2 Bonus. During the Term, should the calendar yearly net revenue resulting from the sale of the Goods at the F&F Locations represent five percent (5%) or more of the Retailer's total calendar year net revenues at all F&F Locations, Distributor will pay a bonus to Retailer representing 2.5% of the net revenue resulting from the sale of the Goods, in addition to the Commission.

3.3 Monthly Statement. Within fourteen (14) days of the end of each preceding calendar month, the Retailer shall provide the Distributor with a sales statement detailing the monthly net revenue derived from sales of the Goods sold at the F&F Locations, per Good and per Retailer location, in addition to the calculation of the monthly Commission due to Retailer and the Balance to be remitted to the Distributor (the "**Monthly Statement**").

3.4 Objection by Distributor. Within seven (7) days of receipt of the Monthly Statement, Distributor may object to the Monthly Statement by written notice to the Retailer, which notice (the "**Objection Notice**") shall specify in reasonable detail those items or amounts as to which the Distributor objects (the "**Disputed Amounts**") and the Parties shall be deemed to have agreed upon all other items and amounts contained in such Monthly Statement which are not impacted by the Objection Notice (the "**Undisputed Amounts**"). If no Objection Notice is made within the period and in the manner specified, or if the Distributor confirms in writing that it accepts the Monthly Statement prior to the end of such seven (7) day period, then the Monthly Statement shall be conclusive, final and binding on all the Parties without possibility of amendment or appeal and shall constitute the final Monthly Statement.

3.5 Resolution. If an Objection Notice is delivered in the manner and within the seven (7) day period contemplated above, Distributor may audit Retailer's files, books, records, and other documentation insofar as they relate to its sales, marketing, and inventory of Goods for the period relating to the applicable Monthly Statement and a Manager/Director of each of the Parties shall in good faith attempt to resolve the Disputed Amounts as promptly as practicable. If the Retailer and the Distributor are unable to resolve the Disputed Amounts within fifteen (15) days after receipt of the Objection Notice, then the matter shall be referred to executive management of each of the Parties in good faith attempt to resolve the Disputed Amounts as promptly as practicable. If the Retailer and the Distributor are unable to resolve the Disputed Amounts after referring the matter to executive management of each of the Parties, then the Disputed Amounts shall be submitted for resolution within five (5) days following such fifteen (15) day period to an independent accounting firm to be agreed between the Parties (the "**Independent Firm**"). The Independent Firm, acting as an expert and not as an arbitrator, will limit its review only to the Disputed Amounts. While the Independent Firm is making its determination, the Parties shall fully collaborate and refrain from communicating with the Independent Firm, except jointly, by conference call, joint meeting, or letter with copy to the other Party. The Independent Firm shall make the final determination in reliance upon supporting documentation provided by the Distributor and Retailer. The Parties shall use commercially reasonable efforts to cause the Independent Firm to submit its determination or opinion in a written statement delivered to the Distributor and the Retailer as promptly as practicable, but in no event later than thirty (30) days of the appointment of such Independent Firm, and such determination or opinion, together with those items accepted by the Distributor in respect of the Monthly Statement or otherwise resolved between the Distributor and the Retailer shall be conclusive, final and binding on all

the parties without possibility of amendment or appeal and shall constitute the final Monthly Statement. The Parties will bear their respective fees and expenses in auditing or reviewing the Monthly Statement, but the fees and expenses of the Independent Firm shall be allocated based on the percentage of success of each Party's position regarding the Disputed Amounts.

3.6 Payment Terms. Following determination of the final Monthly Statement, Distributor will issue to Retailer an invoice for the Balance payable to Distributor (excluding the Commission). Retailer shall pay all properly invoiced amounts due to Distributor on the first day of the subsequent month following determination of the final Monthly Statement. Retailer shall make all payments in Canadian dollars by cheque or wire transfer, in accordance with the wire instructions set out in Schedule 1. Retailer shall pay interest on all late payments, calculated daily and compounded monthly at a rate of twenty-four percent (24%) per annum or the highest rate permissible under applicable law.

#### 4. Shipment and Delivery

4.1 Shipment and Delivery Requirements. Unless otherwise expressly agreed to by the Parties, Distributor shall deliver the Goods to the Retailer, using Distributor's or manufacturer's standard methods for packaging and shipping the Goods, at its costs.

4.2 Title and Risk of Loss. Risk of loss passes to Retailer upon delivery of the Goods to Retailer, but title of the Goods remains to Distributor until such Goods are sold by Retailer to customer.

#### 5. Product Warranty, Recall and Unavailable Products

5.1 Warranty. Distributor warrants that, upon delivery of Goods throughout the Term: (a) Distributor shall have good and marketable title to the Goods; (b) the Goods shall be delivered by Distributor free and clear of any claims or encumbrances; (c) the Goods shall comply with all requisite standards, specifications and requirements as stipulated under the *Cannabis Act* (Canada) and all other applicable laws, regulations and ordinances; (d) the Goods shall be merchantable and fit for their intended purpose; and (e) the Goods shall not infringe or misappropriate any third party's intellectual property rights.

5.2 Recall. In the event that a government (or its regulatory agent) advises and/or orders a recall of any Good, or, where Distributor and Retailer agree that a recall of a Good is required, Distributor shall be the prime co-ordinator of such recall undertaking for all activities, including, without limitation, public communications (that are mutually agreed by Retailer and, where applicable, governmental representatives). Distributor is solely responsible for all costs associated with such recall undertaking, including those incurred by Retailer as a result of such recall, if any. Under such recall undertaking, Distributor agrees to take any and all quantities of the recalled Goods in the possession of Retailer and reimburse Retailer for all expenses related to such return and recall within thirty (30) days of receipt of Retailer's invoice in respect of same.

6. Distributor's Trademark Licence Grant Distributor hereby grants to Retailer a non-exclusive, non-transferable, and non-sublicensable licence during the Term solely on or in connection with the promotion, advertising, and resale of the Goods in accordance with the terms and conditions of this Agreement to use all Distributor's trademarks set forth in Schedule 2, whether registered or unregistered, including the listed registrations and applications and any

registrations, which may be granted pursuant to such applications. On expiration or earlier termination of this Agreement or upon Distributor's request, Retailer shall promptly discontinue the display or use of any trademark or change the manner in which it is displayed or used with regard to the Goods. Upon expiration or earlier termination of this Agreement, Retailer's rights under this Section 5 shall cease immediately. Other than the express licences granted by this Section 5, Distributor grants no right or licence to Retailer, by implication, estoppel, or otherwise, to the Goods or any intellectual property rights of Distributor or its affiliates.

## **7. Term; Termination**

7.1 Term. The term of this Agreement commences on the Effective Date and terminates after two (2) years, on January 4, 2025, and shall thereafter renew for additional successive two (2) year terms unless and until either Party provides notice of non-renewal at least six (6) months before the end of the then-current term, or unless and until earlier terminated as provided under this Agreement or applicable law (the "**Term**"). If either Party provides timely notice of its intent not to renew this Agreement, then, unless earlier terminated in accordance with its terms, this Agreement terminates on the expiration of the then-current Term.

### 7.2 Termination Rights.

- (a) Either Party may terminate this Agreement upon notice to the other Party:
  - (i) except as otherwise specifically provided under this Section 7, if the other Party is in breach of this Agreement and either the breach cannot be cured or, if the breach can be cured, it is not cured within ten (10) days following the other Party's receipt of notice of such breach;
  - (ii) if either party:
    - (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due;
    - (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law;
    - (C) seeks reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition, or other relief with respect to it or its debts;
    - (D) makes or seeks to make a general assignment for the benefit of its creditors; or
    - (E) applies for or has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

Any termination under this Section 7.2(a) is effective on receipt of notice of termination.

b) Both Parties can terminate the Agreement upon mutual consent, at any time.

7.3 Early Termination Right. Notwithstanding the foregoing or anything to the contrary contained herein, following the first twelve (12) months of the Term, either Party may terminate this Agreement for any reason, upon 6 months' prior written notice to the other Party.

7.4 Effect of Expiration or Termination Upon the expiration or earlier termination of this Agreement:

- (a) Retailer shall cease to represent itself as Distributor's authorized retailer regarding the Goods, and shall otherwise desist from all conduct or representations that might lead the public to believe that Retailer is authorized by Distributor to sell the Goods.
- (b) Retailer shall promptly return or destroy (under Distributor's instructions) all:
  - (i) documents and tangible materials and any copies containing, irrespective of the medium, reflecting, incorporating, or based on the Distributor's Confidential Information; and
  - (ii) products that Distributor provided to Retailer that are not intended for resale.

7.5 Post-Term Purchase and Resale. On the expiration or earlier termination of this Agreement, Retailer will return to Distributor all Goods on hand, subject to any sell-through period mutually agreed to between the Parties at the time of such expiration or termination.

## 8. Confidential Information

8.1 All non-public, confidential, or proprietary information of a Party including, but not limited to, specifications, samples, products, patterns, designs, plans, drawings, other confidential intellectual property, trade secrets, documents, data, business operations and affairs, customer lists, pricing, discounts, rebates or third-party confidential information disclosed by one Party to the other, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential," in connection with this Agreement is confidential, solely for the use of each Party performing its obligations under this Agreement and may not be disclosed or copied unless authorized by the disclosing Party in writing. Upon a disclosing Party's request, the receiving Party shall promptly return all documents and other materials received from disclosing Party. A Party seeking relief under this Section shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is:

- (a) in the public domain;
- (b) known to the other Party at the time of disclosure (and not otherwise subject to confidentiality obligations); or
- (c) rightfully obtained by the other Party on a non-confidential basis from a third party.

8.2 For certainty, this Agreement shall constitute confidential information. Neither Party shall publish, disclose or publicly announce any information pertaining to this this Agreement without the prior written consent of the other Party.

**9. Representations and Warranties.** Each Party represents and warrants to the other that:

9.1 It is a corporation duly incorporated and validly existing under the laws of its jurisdiction of incorporation and has all necessary power, authority and capacity to enter into and carry out its obligations under this Agreement. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action on the part of such Party.

9.2 This Agreement constitutes a valid and binding obligation of such Party, enforceable against it in accordance with its terms, subject to limitations with respect to bankruptcy or to the extent that equitable remedies are in the discretion of the court.

9.3 The performance of its obligations under this Agreement do not, and will not, violate or infringe in any material respect any intellectual property right or proprietary right belonging to a third party.

9.4 It is in compliance with and shall comply with all applicable federal, provincial, territorial, and local laws, regulations, and ordinances. Without limiting the generality of the foregoing, each Party has and shall, at all times, at its own expense, obtain and maintain in effect all certifications, credentials, authorizations, permissions, licences, consents, and permits necessary to conduct their respective business and to perform their respective obligations under this Agreement.

**10. Indemnification**

10.1 Subject to the terms and conditions of this Agreement, Retailer shall indemnify, hold harmless, and defend Distributor and its parent, officers, directors, partners, shareholders, employees, agents, affiliates, successors, and permitted assigns (collectively, "**Distributor's Indemnified Parties**") from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including legal fees, disbursements and charges, fees, and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers relating to any claim of a third party arising out of, relating to or occurring in connection with:

- (a) Retailer's negligence, wilful misconduct, or breach of this Agreement;
- (b) Retailer's advertising or representations that warrant performance of Goods beyond that provided by Distributor's written warranty or based upon Retailer's business or trade practices, unless such advertising or representations were carried out at the instruction of Distributor in accordance with the terms of this Agreement;
- (c) any failure by Retailer or its personnel to comply with any applicable laws, unless such failure was carried out at the instruction of Distributor in accordance with the terms of this Agreement; or

- (d) allegations that Retailer breached its agreement with a third party because of or in connection with entering into, performing under, or terminating this Agreement.

10.2 Subject to the terms and conditions of this Agreement, Distributor shall indemnify, hold harmless, and defend Retailer and its parent, officers, directors, partners, shareholders, employees, agents, affiliates, successors, and permitted assigns (collectively, "**Retailer's Indemnified Parties**") from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including legal fees, disbursements and charges, fees, and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers relating to any claim of a third party arising out of, relating to or occurring in connection with:

- (a) Distributor's negligence, wilful misconduct, or breach of this Agreement;
- (b) all product liability claims made by third parties in connection with the Goods (including, without limitation, those for death, loss or claim for bodily injury or damage to real or tangible personal property allegedly arising out of the use of any Goods) except to the extent based on Retailer's handling, alteration or change of the Goods, whether intentional or unintentional, or sale of the Goods contrary to this Agreement;
- (c) any third-party claim arising out of the use of Distributor's intellectual property licensed pursuant to Section 6, provided use of such intellectual property by Retailer is in accordance with the terms of the license granted by this Agreement;
- (d) Distributor's acts or omissions regarding marketing, pricing or commercialization of the Goods; or
- (e) Any failure by Distributor or its personnel to comply with any applicable laws.

## 11. Limitation of Liability

11.1 IN NO EVENT:

- (a) SHALL EITHER PARTY OR THEIR RESPECTIVE REPRESENTATIVES BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY OR ANY THIRD PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR AGGRAVATED DAMAGES, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE, ARISING OUT OF, OR RELATING TO, AND/OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT, REGARDLESS OF:
  - (i) WHETHER THE DAMAGES WERE FORESEEABLE;
  - (ii) WHETHER OR NOT SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF THE DAMAGES; AND

(iii) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

**12. Insurance** For the Term, Retailer shall, at its own expense, maintain and carry insurance in full force and effect that includes, but is not limited to, commercial general liability (including product liability) with limits no less than \$10,000,000 dollars with financially sound and reputable insurers. Upon Distributor's request, Retailer shall provide Distributor with a certificate of insurance and policy endorsements for all insurance coverage required by this Section, and shall not do anything to invalidate such insurance. The certificate of insurance shall name Distributor as an additional insured.

**13. Distributor's Inspection Rights** During the Term, Retailer shall, on reasonable request, make available for physical inspection by Distributor at a time mutually agreed between the Parties during regular business hours: (a) any and all Goods in Retailer's inventory; and (b) any F&F Location.

**14. Inventory Counts** Retailer agrees to conduct and remit to Distributor the results of independently verifiable physical inventory counts every six (6) months.

**15. Entire Agreement** This Agreement, including and together with any related exhibits, schedules, attachments, and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter, including but not limited to the Memorandum of Understanding dated October 27<sup>th</sup>, 2022. In the event of conflict between the terms of this Agreement and the terms of any purchase order or other document submitted by one Party to the other, this Agreement shall control unless the Parties specifically otherwise agree in writing under Section 18.

**16. Notices** All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement must be in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this Section). Notices sent in accordance with this Section will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile or email (in each case, with confirmation of transmission) if sent during the addressee's normal business hours, and on the next business day if sent after the addressee's normal business hours; and (d) on the third (3<sup>rd</sup>) day after the date mailed by certified or registered mail by the Canada Post Corporation, return receipt requested, postage prepaid.

Notice to Retailer: 5241 Calgary Trail NW, Suite 400, Edmonton (Alberta) T6H 5G8

Facsimile: N/A

Email: cbolivar@fireandflower.com

Attention: Chris Bolivar

Notice to Distributor: 3166 Boulevard le Corbusier, Laval (Québec) H7L 4S8

Facsimile: N/A

Email: chris@turningpointbrands.ca

Attention: CHRIS RIDDOCH

**17. Severability** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect the enforceability of any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**18. Amendments and Modifications** No amendment or modification to this Agreement is effective unless it is in writing and signed by an authorized representative of each Party.

**19. Waiver** No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

**20. Cumulative Remedies** All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties or otherwise.

**21. Assignment** The Parties shall not assign, transfer, delegate, or subcontract any of their rights or obligations under this Agreement without the prior written consent of the other Party. Any purported assignment, transfer or delegation in violation of this Section shall be null and void. No assignment, transfer or delegation shall relieve the Party of any of its obligations hereunder.

**22. Successors and Assigns** This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and assigns.

**23. No Third-Party Beneficiaries** Subject to the next paragraph, this Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

The Parties hereby designate their respective Indemnified Parties as third-party beneficiaries of Section 10 with the right to enforce Section 10.

**24. Governing Law** This Agreement, including all exhibits, schedules, attachments, and appendices attached to this Agreement and thereto are governed by, and construed in accordance with, the laws of the Province of Ontario, and the federal laws of Canada applicable therein.

**25. Choice of Forum** Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments, and appendices attached to this Agreement, and all contemplated transactions, in any forum other than in the courts of the Province of Ontario, and each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts in any such action, litigation, or proceeding.



Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

**26. Waiver of Jury Trial** Each Party acknowledges and agrees that any controversy that may arise under this Agreement, including exhibits, schedules, attachments, and appendices attached to this Agreement, is likely to involve complicated and difficult issues and, therefore, each such Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement, including any exhibits, schedules, attachments, or appendices attached to this Agreement, or the transactions contemplated hereby.

**27. Counterparts** This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Notwithstanding anything to the contrary in Section 16, a signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

**28. Force Majeure** No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other Party under this Agreement), when and to the extent the failure or delay is caused by or results from acts beyond the impacted Party's (the "**Impacted Party**") control (which events may include natural disasters, epidemics, pandemics, excluding the 2019 coronavirus disease (COVID-19) pandemic, embargoes, explosions, riots, wars or acts of invasion or terrorism, requirements of law, national or regional emergency, strikes, labour stoppages or slowdowns) (each, a "**Force Majeure Event**"). A Party shall give the other Party prompt written notice of any event or circumstance that is reasonably likely to result in a Force Majeure Event, and the anticipated duration of such Force Majeure Event. An Impacted Party shall use all diligent efforts to end the Force Majeure Event, ensure that the effects of any Force Majeure Event are minimized and resume full performance under this Agreement.

**29. No Franchise Agreement** The Parties to this Agreement are independent contractors and nothing in this Agreement shall be deemed or construed as creating a joint venture, partnership, agency relationship, franchise, or business opportunity between Distributor and Retailer. Neither Party, by virtue of this Agreement, will have any right, power, or authority to act or create an obligation, express or implied, on behalf of the other Party. Each Party assumes responsibility for the actions of their personnel under this Agreement and will be solely responsible for their supervision, daily direction and control, wage rates, withholding income taxes, disability benefits, or the manner and means through which the work under this Agreement will be accomplished. Except as provided otherwise in this Agreement, Retailer has the sole discretion to determine Retailer's methods of operation, Retailer's accounting practices, the types and amounts of insurance Retailer carries, Retailer's personnel practices, Retailer's advertising and promotion, its customers, and Retailer's service areas and methods. The relationship created hereby between the parties is solely that of distributor and retailer. If any provision of this Agreement is deemed to create a franchise relationship between the parties, then Distributor may immediately terminate this Agreement.

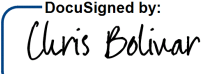
[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**TURNING POINT BRANDS (CANADA) INC.**

DocuSigned by:  
  
By \_\_\_\_\_  
46121D33BC9F4B3...  
Name: Mikail Fancy  
Title: Chief Operating Officer

**FIRE & FLOWER INC.**

DocuSigned by:  
  
By \_\_\_\_\_  
CBC0878F88D242F...  
Name: Chris Bolivar  
Title: Executive Vice President, Commercial  
& Growth

## SCHEDULE 1

### Goods and Price List

- Cannabis accessories, meaning all products used in the preparation, storage and use of cannabis that are made available by the Distributor, but excluding any products containing cannabis (as defined in the *Cannabis Act* (Canada)) (the "**Goods**")
- PAYMENT TERMS - Retailer shall make all payments in Canadian dollars by cheque or wire transfer, in accordance with the following wire instructions:
  - SWIFT code: [NUMBER]
  - Account number: [NUMBER]
  - Bank address: [ADDRESS]
  - Attn: [NAME], [TITLE], [OTHER CONTACT INFORMATION].]



## **SCHEDULE 2**

### **Distributor Trademarks**

This is Exhibit “D” referred to in the Affidavit of Mikail Fancy, SWORN/AFFIRMED  
REMOTELY by the affiant at the City of Montreal in the Province of Quebec, before me at the  
City of Toronto in the Province of Ontario, on June 17, 2023.

DocuSigned by:  
*C. Haddon Murray*  
6F9FAB7AA4414D5...

---

A Commissioner for Taking Affidavits

Fire & Flower Inc.  
 5241 Calgary Trail NW Suite 400  
 Edmonton, AB T6H 5G8  
 CAN



### Turning Point Brands

**3166 Boul Le Corbusier**  
**Laval, QC H7L4S8**  
**CAN**

Telephone

Fax

IBAN

Tax registration number 723097721

VAT

## Invoice

Invoice **12040663**

Date **2023-02-01**

Billing classification

Customer reference

Worker name **Fred Carino**

Payment **COD**

Invoice account **C00386**

Contact

Packing duty licence  
 number

| Description  | Billing code | Quantity | Unit price       | Amount       | Print code |
|--|--------------|----------|------------------|--------------|------------|
| Total value agreed with turning point<br>for accessories |              | 1.00     | 1,080,548.<br>34 | 1,080,548.34 |            |

| Print code | Sales tax code | Amount | Percent cash discount | Amount origin | Amount origin (CAD) | Sales tax amount | Sales tax amount (CAD) | Description |
|------------|----------------|--------|-----------------------|---------------|---------------------|------------------|------------------------|-------------|
|            | HST_           | 0.00   | 0.00                  | 1,080,548.    | 1,080,548.          | 140,471.2        | 140,471.2              |             |
|            | ON             |        |                       | 34            | 34                  | 8                | 8                      |             |

| Sales subtotal amount | Total discount | Total charges | Net amount   | Sales tax  | Round-off | Total            |
|-----------------------|----------------|---------------|--------------|------------|-----------|------------------|
| 1,080,548.34          | 0.00           | 0.00          | 1,080,548.34 | 140,471.28 | 0.00      | 1,221,019.62 CAD |

Payment per: 2023-02-01

This is Exhibit “E” referred to in the Affidavit of Mikail Fancy, SWORN/AFFIRMED  
REMOTELY by the affiant at the City of Montreal in the Province of Quebec, before me at the  
City of Toronto in the Province of Ontario, on June 17, 2023.

DocuSigned by:  
*C. Haddon Murray*  
6F9FAB7AA4414D5...

---

A Commissioner for Taking Affidavits



**10233625 Canada Corp. DBA Turning Point Brands Canada**  
 3166 Boul Le Corbusier  
 Laval, QC, CA  
 GST/HST Registration No.: 714026523RT0001  
 QST Registration No.: 1225476043TQ0002  
 PST No.: 1250-5465

**INVOICE****Bill To:**

Fire and Flower Inc.  
 5241 Calgary Trail NW Suite 400  
 Edmonton, T6H 5G8  
 AB  
 Canada

**INVOICE** FF/Jan23  
**ORDER NO.**  
**DATE** 1/31/2023  
**TERMS**  
**DUE DATE** 3/5/2023

| DESCRIPTION                               | AMOUNT          |
|---|-----------------|
| Sales for January 2023                    | \$ 318,948.00   |
| Commission for January 2023 including HST | \$ (100,915.00) |

|                    |            |                      |
|--------------------|------------|----------------------|
| <b>TOTAL</b>       |            | <b>\$ 218,033.00</b> |
| <b>BALANCE DUE</b> | <b>CAD</b> | <b>\$ 218,033.00</b> |

**10233625 Canada Corp. DBA Turning Point Brands Canada**  
3166 Boul Le Corbusier  
Laval, QC, CA  
GST/HST Registration No.: 714026523RT0001  
QST Registration No.: 1225476043TQ0002  
PST No.: 1250-5465



**INVOICE**

**Bill To:**

Fire and Flower Inc.  
5241 Calgary Trail NW Suite 400  
Edmonton, T6H 5G8  
AB  
Canada

**INVOICE** FF/Feb23  
**ORDER NO.**  
**DATE** 2/28/2023  
**TERMS**  
**DUE DATE** 4/5/2023

| DESCRIPTION                                | AMOUNT         |
|--|----------------|
| Sales for February 2023                    | \$ 285,433.00  |
| Commission for February 2023 including HST | \$ (90,311.00) |

---

|                    |            |                      |
|--------------------|------------|----------------------|
| <b>TOTAL</b>       |            | <b>\$ 195,122.00</b> |
| <b>BALANCE DUE</b> | <b>CAD</b> | <b>\$ 195,122.00</b> |

**10233625 Canada Corp. DBA Turning Point Brands Canada**

3166 Boul Le Corbusier

Laval, QC, CA

GST/HST Registration No.: 714026523RT0001

QST Registration No.: 1225476043TQ0002

PST No.: 1250-5465

**INVOICE****Bill To:**

Fire and Flower Inc.

5241 Calgary Trail NW Suite 400

Edmonton, T6H 5G8

AB

Canada

|                  |           |
|------------------|-----------|
| <b>INVOICE</b>   | FF/Mar23  |
| <b>ORDER NO.</b> |           |
| <b>DATE</b>      | 3/31/2023 |
| <b>TERMS</b>     |           |
| <b>DUE DATE</b>  | 5/5/2023  |

| DESCRIPTION                             | AMOUNT                   |
|---|--------------------------|
| Sales for March 2023                    | \$ 312,831.00            |
| Commission for March 2023 including HST | \$ (98,980.00)           |
| <b>TOTAL</b>                            | <b>\$ 213,851.00</b>     |
| <b>BALANCE DUE</b>                      | <b>CAD \$ 213,851.00</b> |

**10233625 Canada Corp. DBA Turning Point Brands Canada**

3166 Boul Le Corbusier

Laval, QC, CA

GST/HST Registration No.: 714026523RT0001

QST Registration No.: 1225476043TQ0002

PST No.: 1250-5465

**INVOICE****Bill To:**

Fire and Flower Inc.

5241 Calgary Trail NW Suite 400

Edmonton, T6H 5G8

AB

Canada

**INVOICE** FF/Apr23**ORDER NO.****DATE** 4/30/2023**TERMS****DUE DATE** 6/5/2023

| DESCRIPTION                             | AMOUNT                   |
|---|--------------------------|
| Sales for April 2023                    | \$ 335,241.00            |
| Commission for April 2023 including HST | \$ (106,070.00)          |
| <b>TOTAL</b>                            | <b>\$ 229,171.00</b>     |
| <b>BALANCE DUE</b>                      | <b>CAD \$ 229,171.00</b> |

**10233625 Canada Corp. DBA Turning Point Brands Canada**

3166 Boul Le Corbusier

Laval, QC, CA

GST/HST Registration No.: 714026523RT0001

QST Registration No.: 1225476043TQ0002

PST No.: 1250-5465

**INVOICE****Bill To:**

Fire and Flower Inc.

5241 Calgary Trail NW Suite 400

Edmonton, T6H 5G8

AB

Canada

**INVOICE** FF/May23**ORDER NO.****DATE** 5/31/2023**TERMS****DUE DATE** 7/5/2023

| DESCRIPTION                           | AMOUNT          |
|---------------------------------------|-----------------|
| Sales for May 2023                    | \$ 334,690.00   |
| Commission for May 2023 including HST | \$ (105,896.00) |

|                    |            |                      |
|--------------------|------------|----------------------|
| <b>TOTAL</b>       |            | <b>\$ 228,794.00</b> |
| <b>BALANCE DUE</b> | <b>CAD</b> | <b>\$ 228,794.00</b> |

This is Exhibit "F" referred to in the Affidavit of Mikail Fancy, SWORN/AFFIRMED  
REMOTELY by the affiant at the City of Montreal in the Province of Quebec, before me at the  
City of Toronto in the Province of Ontario, on June 17, 2023.

DocuSigned by:  
*C. Haddon Murray*  
6F9FAB7AA4414D5...

---

A Commissioner for Taking Affidavits



**Haddon Murray**  
Direct +1 416 862 3604  
haddon.murray@gowlingwlg.com

June 12, 2023

**By Email:** [mkonyukhova@stikeman.com](mailto:mkonyukhova@stikeman.com), [williams@tgf.ca](mailto:williams@tgf.ca), [jeffrey.rosenberg@fticonsulting.com](mailto:jeffrey.rosenberg@fticonsulting.com)

**STIKEMAN ELLIOTT LLP**  
5300 Commerce Court West  
199 Bay Street  
Toronto, ON M5L 1B9

**Attention: Maria Konyukhova**

**THORNTON GROUT FINNIGAN LLP**  
Suite 3200, TD West Tower  
100 Wellington St. West  
P.O. Box 329  
Toronto-Dominion Centre  
Toronto ON M5K 1K7

**Attention: Leanne Williams**

**FTI CONSULTING CANADA INC.**  
TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto ON M5K 1G8

**Attention: Jeffery Rosenberg**

**Re: Re: Exclusive Distribution Agreement between Fire & Flower Inc. ("F&F") and Turning Point Brands (Canada) Inc. ("TPB") dated January 5, 2023 ("Consignment Agreement")**

---

We are counsel to TPB. Pursuant to the Consignment Agreement (attached) F&F appointed TPB as its exclusive supplier for Cannabis Accessories (the "**Goods**"). F&F agreed, among other things, to sell the Goods on behalf of TPB in exchange for a commission from the sale proceeds. The remaining sales proceeds were to be paid to TPB each month (the "**Proceeds**").

Since that time, TPB has continued to supply goods on a consignment basis to F&F. Accordingly, F&F currently holds property owned by TPB.

**Gowling WLG (Canada) LLP**  
Suite 1600, 1 First Canadian Place  
100 King Street West  
Toronto ON M5X 1G5 Canada

**T +1 416 862 7525**  
**F +1 416 862 7661**  
**gowlingwlg.com**

Gowling WLG (Canada) LLP is a member of Gowling WLG, an international law firm which consists of independent and autonomous entities providing services around the world. Our structure is explained in more detail at [gowlingwlg.com/legal](http://gowlingwlg.com/legal).



TPB is prejudiced by the stay of proceedings as it is unable to recover its property. It is willing to continue its contractual relationship and deliver goods on a consignment basis, but requires a trust agreement or court order recognizing its interest in the Goods and the Proceeds.

TPB is not prepared to allow F&F to continue to hold and sell its Goods to fund its insolvency proceeding without these assurances. Accordingly, we require a response prior to the comeback hearing, or TPB will seek an order permitting it to recover its property.

Sincerely,

Gowling WLG (Canada) LLP

A handwritten signature in black ink, appearing to read "Haddon Murray", written in a cursive style.

Haddon Murray

HM



Court File No. CV-23-00700581-00CL

IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF FIRE & FLOWER HOLDINGS CORP., FIRE & FLOWER INC.  
13318184 CANADA INC., 11180703 CANADA INC., 10926671 CANADA LTED., FRIENDLY STRANGER HOLDINGS CORP., PINEAPPLE  
EXPRESS DELIVERY INC., and HIFYRE INC.

Applicants

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

**AFFIDAVIT OF MIKAIL FANCY**  
**(Sworn June 17, 2023)**

**GOWLING WLG LLP**

First Canadian Place  
100 King St W #1600,  
Toronto, ON M5X 1G5  
Fax: (416) 862-7661

**C. Haddon Murray** (LSO #61640P)

Tel: (416) 862-3604

Email: haddon.murray@gowlingwlg.com

Counsel for Turning Point Brands (Canada) Inc.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) MONDAY, THE 19th  
 )  
JUSTICE OSBORNE ) DAY OF JUNE, 2023

**IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED***

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF FIRE &  
FLOWER HOLDINGS CORP., FIRE & FLOWER INC. 13318184 CANADA INC., 11180703  
CANADA INC., 10926671 CANADA LTED., FRIENDLY STRANGER HOLDINGS CORP.,  
PINEAPPLE EXPRESS DELIVERY INC., and HIFYRE INC.**

Applicants

---

**ORDER**

---

**THIS MOTION**, made by Turning Point Brands (Canada) Inc. ("**TPB**") for an Order lifting the stay of proceedings established by the Amended and Restated Initial Order of Justice Osborne dated June 15, 2023 (the "**Stay of Proceedings**") to permit TPB to terminate the Exclusive Distribution Agreement between TPB, as the distributor, and Fire & Flower Inc. ("**F&F**"), as the retailer, dated January 5, 2023 (the "**Consignment Agreement**") and take possession of its Goods (as defined in the Consignment Agreement) was heard this day virtually *via* videoconference.

**ON READING** the Motion Record, the affidavit of Mikail Fancy dated June 17, 2023, and on hearing the submissions of counsel for TPB, counsel for the Applicants and counsel for the Monitor,

1. **THIS COURT ORDERS THAT** the stay of proceedings is lifted for the limited purpose of permitting TPB to:

- a) terminate the Consignment Agreement; and
- b) take such steps as are necessary to repossess the Goods;

2. **THIS COURT ORDERS THAT** F&F immediately return all Goods in its power, possession and control to TPB.

---

**JUSTICE OSBORNE**

IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF FIRE & FLOWER HOLDINGS CORP., FIRE & FLOWER INC.  
13318184 CANADA INC., 11180703 CANADA INC., 10926671 CANADA LTED., FRIENDLY STRANGER HOLDINGS CORP., PINEAPPLE  
EXPRESS DELIVERY INC., and HIFYRE INC.

Applicants

---

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

---

**ORDER**

---

**GOWLING WLG LLP**

First Canadian Place  
100 King St W #1600,  
Toronto, ON M5X 1G5  
Fax: (416) 862-7661

**C. Haddon Murray** (LSO #61640P)

Tel: (416) 862-3604

Email: [haddon.murray@gowlingwlg.com](mailto:haddon.murray@gowlingwlg.com)

Counsel for Turning Point Brands (Canada) Inc.

IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMNT OF FIRE & FLOWER HOLDINGS CORP., FIRE & FLOWER  
INC. 13318184 CANADA INC., 11180703 CANADA INC., 10926671 CANADA LTED., FRIENDLY STRANGER HOLDINGS CORP.,  
PINEAPPLE EXPRESS DELIVERY INC., and HIFYRE INC.

Applicants

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

**MOTION RECORD OF THE MOVING PARTY**

**GOWLING WLG LLP**

First Canadian Place  
100 King St W #1600,  
Toronto, ON M5X 1G5  
Fax: (416) 862-7661

**C. Haddon Murray** (LSO #61640P)  
Tel: (416) 862-3604  
Email: haddon.murray@gowlingwlg.com

Counsel for Turning Point Brands (Canada) Inc.