

# COMPANY-SUPPLIER CONFIDENTIALITY & NON-COMPETE AGREEMENT

THIS CONFIDENTIALITY AND NON-COMPETE AGREEMENT ("Agreement") is made on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ (Company) headquartered at \_\_\_\_\_ (Street, City, State, Zip Code) on the one hand, and \_\_\_\_\_ (Supplier), located at \_\_\_\_\_, on the other hand.

## RECITALS

WHEREAS, in connection with possible supply of product and/or services from Supplier to Company (a "Transaction"), Company will provide the Supplier with confidential proprietary information, subject to this Agreement, so that the Transaction may be quoted and performed; and

WHEREAS, the parties wish to assure confidentiality and prevent use of such information for purposes other than a Transaction;

NOW, THEREFORE, for good and valid consideration, including the mutual covenants and promises set forth herein, and intending to be bound, it is agreed:

1. The term "Confidential Information" means all business information, whether or not in writing, heretofore or hereafter provided by Company to the Supplier in connection with consideration of, preparation for or execution of a Transaction, and all notes or writing made by the Supplier regarding the business of the Company in connection with the discussions referred to above, and includes without limitation, technical plans and specifications of the Company and its customers, financial information, pricing and customer data, cost data and operational information, production processes, personnel or business plans or strategies. All such business information shall be deemed Confidential Information, except (i) information that is in the public domain or hereafter becomes publicly available other than as a result of disclosure by the Supplier in violation of this Agreement, (ii) information that was known to Supplier at the time of its disclosure as evidenced by business records of Supplier or that hereafter is independently developed by Supplier, or (iii) information hereafter acquired by the Supplier from source(s) other than the Company provided the disclosure to the Supplier is not in violation of a contractual or fiduciary obligation of such source(s) to the Company.
2. The Confidential Information (i) shall be deemed and treated as confidential and held in strictest confidence by the Supplier, (ii) shall not be used for any purpose other than consideration, negotiation, preparation for and/or execution of a Transaction, and (iii) shall not be disclosed to third parties except for disclosure to affiliated entities, outside counsel or accountants in connection with obtaining advice regarding a Transaction under conditions that maintain the confidentiality of the Confidential Information. This Agreement and the covenants herein against use and disclosure of Confidential Information shall not preclude any person or entity from competing without using or disclosing such Confidential Information, or from pursuing any business opportunity or endeavor without use or disclosure of the Confidential Information.
3. If for any reason a Transaction does not occur, upon the termination of consideration thereof, or at any time if the Company so requests, all Confidential Information that is in writing shall be destroyed or returned to the Company, as requested, and no copies or other reproductions or summaries thereof shall be retained without the express prior written consent of the Company.
4. In the event of breach of this Agreement by the supplier, it shall be liable for damages and reasonable costs and attorneys' fees incurred by the Company in enforcement of this Agreement. In addition to an action for damages, this Agreement may be enforced by suit for temporary, preliminary and permanent injunctive relief in any court having jurisdiction, without proof of irreparable injury, which shall be presumed in the event of violation of this Agreement.
5. This Agreement shall terminate, and be of no further force and effect upon the expiration of two years from the date of the last Transaction. This Agreement shall not be modified except in writing signed by the parties. The waiver of any breach or asserted breach of this Agreement shall not constitute or be construed as a continuing waiver of any subsequent or other breach or asserted breach of this Agreement. This Agreement shall be construed and interpreted in accordance with the laws of the State without regard to conflict of law principles. Each party acknowledges that the signatories hereto are duly authorized to enter into this Agreement and to bind the respective party. This Agreement may be executed in counterpart by telecopy and shall be binding and effective upon execution by all of the parties.
6. During Supplier's relationship with the Company, and for a period of two years following the last transaction, Supplier agrees and covenants that excluding any services rendered to the Company, Supplier shall not directly or indirectly compete with the Company, or directly or indirectly own, manage, operate, control, loan money to, or participate in the ownership, operation or control of, or be connected with as a director, partner, employee, consultant, agent, independent contractor or otherwise, or acquiesce in the use of Supplier's name in, any other business (whether or not conducted for profit) or organization which is in competition with the Company.
7. With respect to the foregoing, a business is in competition with the Company if it involves the design, production, lease or sale of products or services that are the same as, substantially similar to, or competitive with, products or services produced, leased or sold by the Company or contemplated in connection with a corporate opportunity of the Company to any of the Company's customers whose information and/or identity has been made known to the Supplier by the Company.

IN WITNESS WHEREOF, the parties have entered this Agreement on the date first above written.

COMPANY NAME: \_\_\_\_\_

Signed:

By: \_\_\_\_\_

Its: \_\_\_\_\_

SUPPLIER NAME: \_\_\_\_\_

Signed:

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATE: \_\_\_\_\_

