



CONFIDENTIAL DISCLOSURE AGREEMENT

THIS CONFIDENTIAL DISCLOSURE AGREEMENT (the “Agreement”), made effective as of the _____ day of _____, _____ (the “Effective Date”), is by and between Specialty Manufacturing, Inc., a Delaware Corporation having a principal place of business at 10200 Pineville Road, Pineville NC 28134 (hereinafter “Discloser”) and _____ having a principal place of business at _____ (hereinafter “Recipient”).

Statement of Purpose

Discloser has developed certain non-public and proprietary Confidential Information (defined below). Recipient desires to receive, and Discloser desires to provide, a confidential disclosure of the Confidential Information for an Authorized Purpose (defined below). Discloser also desires to protect its interests by preventing Recipient and officers and employees of Recipient from disclosing the Confidential Information to third parties or making unauthorized use of the Confidential Information.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Definitions.
 - (a) “Authorized Purpose” means the following:
 - (i) the purpose of Recipient evaluating the compatibility of Discloser’s products or services with Recipient’s products or services;
 - (ii) the purpose of providing financial and or customer contractual pricing information for determining warranty recovery resulting from inferior workmanship;
 - (ii) the purpose of Recipient evaluating whether to assist Recipient with the manufacture or distribution of Discloser’s products or services;
 - (iii) the purpose of Recipient testing or evaluating Discloser’s Confidential Information; or
 - (iv) the purpose of Recipient providing goods or services to Discloser.
 - (b) “Confidential Information” means Trade Secrets and Proprietary Information furnished by Discloser to Recipient in any form, whether oral, written, physical, computer or other form, including but not limited to, information that relates to research, product plans, products, services, clients, markets, software, developments, inventions, processes, designs, drawings, engineering, technical

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data, know-how, hardware configuration information, marketing or finances of Discloser, and all copies, notes or other reproductions or partial reproductions thereof created by the Recipient and the existence, terms, conditions or status of this Agreement or of any negotiations, discussions, agreements or transactions between the parties. For the avoidance of doubt, “Confidential Information” may include information of a third party that has been provided or disclosed to Discloser and is further provided or made available to Recipient by Discloser pursuant to this Agreement.

- (c) “Proprietary Information” means non-public information other than trade secrets that is provided to Recipient by Discloser and that relates in any way to Discloser’s business.
- (d) “Trade Secret” has the meaning ascribed to that term in N.C.G.S. § 66-152.

2. Recipient’s Obligations. Recipient, on behalf of itself, its officers and its employees, agrees with respect to the Confidential Information, irrespective of the date of disclosure, including whether the date of disclosure is prior to the Effective Date:

- (a) to treat the Confidential Information as confidential and to take reasonable precautions to prevent unauthorized disclosure or use of the Confidential Information, such precautions taken being at least as great as the precautions taken by Recipient to protect its own confidential information (but in no case less than reasonable care);
- (b) not to disclose the Confidential Information to any third party without Discloser’s prior written authorization;
- (c) not to use the Confidential Information except for an Authorized Purpose;
- (d) to, upon request, cease use of the Confidential Information and promptly return any and all documents, models, discs or other electronic media storage devices, or prototypes embodying the Confidential Information to Discloser, whether such documents, models, electronic media storage devices or prototypes were originally provided to Recipient by Discloser or whether they were produced by Recipient after receiving a confidential disclosure of Discloser’s Confidential Information, together with a certificate of the Recipient certifying that all such materials in the Recipient’s possession have been delivered to the Company;
- (e) not to directly or indirectly manufacture or sell any product that directly competes with the proprietary Products which it has manufactured for SMI pursuant to this Agreement at any time during the term of this agreement or after the termination of this Agreement; and

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- (f) to limit disclosure of the Confidential Information among its officers and employees to those requiring such disclosure to accomplish the purposes stated above.

3. Exceptions to Confidentiality. Recipient shall have no confidentiality obligation with respect to information that:

- (a) was already known to Recipient at the time it was disclosed by Discloser;
- (b) was publicly known at the time it was disclosed by Discloser;
- (c) is received without restriction as to use or disclosure in good faith by Recipient from a third party under no confidentiality obligation to Discloser;
- (d) is approved for release by prior written authorization of Discloser; and
- (e) is independently developed by Recipient without benefit of or reference to the Confidential Information;

Each of the foregoing enumerated exceptions must be established by independent documentary proof, and the foregoing exceptions are effective only after the date of the event described in each.

Specific information disclosed by Discloser to Recipient shall not be deemed to be publicly known or in Recipient's possession merely because the specific information is embraced by more general information available to the public.

Any combination of features or elements relating to the Confidential Information shall not be deemed to be within the foregoing enumerated exceptions merely because the individual features are separately in the public domain or in Recipient's possession unless the combination itself or its principle of operation is publicly known or in Recipient's possession.

4. Term. All Proprietary Information shall be safeguarded by Recipient as required by Section 2 above for a period of 5 years from the effective date or date of disclosure. All Trade Secret information shall be safeguarded by Recipient as required by Section 2 in perpetuity or for so long as such information remains a Trade Secret under North Carolina law, whichever occurs first.

5. Breach of Agreement. Recipient acknowledges that the restrictions contained in this Agreement are reasonably necessary to protect the legitimate interests of the Discloser and that any violation hereof will result in irreparable injury to the Discloser. If Recipient should breach or threaten to breach any provisions of this Agreement, the Discloser, in addition to any other remedies

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it may have at law or in equity, shall be entitled to a restraining order, injunction, specific performance or other similar remedy in order to specifically enforce this Agreement.

6. Ownership of Confidential Information. Discloser shall remain the owner of all rights in the Confidential Information. Except for the limited right to use the Confidential Information for the Authorized Purpose, Discloser does not grant any express, implied, or other license or right to Recipient under patents, trade secrets, trademarks, or copyrights or any other right of Discloser by disclosing the Confidential Information.

7. No Warranty. ALL CONFIDENTIAL INFORMATION IS PROVIDED BY DISCLOSER "AS IS" AND WITHOUT WARRANTY OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. RECIPIENT'S RELIANCE UPON ANY CONFIDENTIAL INFORMATION IS AT RECIPIENT'S SOLE RISK.

8. No Further Agreement Obligation/No Agency. Neither party shall be obligated to enter into any further agreement relating to the Confidential Information or any other matter. This Agreement shall not be construed as creating, nor shall it create, a partnership, joint venture, or agency between the parties.

9. Amendments. Any modification or amendment of any provision of this Agreement must be made in writing and signed by an authorized representative of each party.

10. Governing Law/Exclusive Jurisdiction. This Agreement shall be deemed to have been made and entered into in the State of North Carolina, and the construction, validity and enforceability of this Agreement shall be governed by the internal laws of the State of North Carolina, without regard to conflict of laws principals. Both parties hereby consent to exclusive jurisdiction of the federal and state courts located in North Carolina for the purpose of resolving any and all disputes arising under this Agreement.

11. Severability. Should any provision of this Agreement or part thereof be held under any circumstances in any jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision of this Agreement or other part of such provision.

12. Entire Agreement. This Agreement constitutes the entire agreement between the parties regarding confidentiality of the Confidential Information, superseding any and all previous oral or written representations, communications, or understandings.

13. Consent and Waiver. No consent to or waiver of any provision of this Agreement shall be deemed a consent to or waiver of any other provision hereof, whether or not similar, or a continuing consent or waiver unless otherwise specifically provided.

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14. Binding Effect/Assignability. This Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by the parties hereto and their respective permitted successors and assigns. This Agreement may be assigned at any time by Discloser to any affiliate of Discloser or to any other person or entity. Neither this Agreement nor any of the rights and obligations hereunder may be assigned or delegated by Recipient without the prior express written consent of Discloser, and any purported assignment or delegation without such consent shall be void and of no effect.

15. Headings. Section headings contained in this Agreement have been inserted herein only as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

16. Execution in Counterparts. This Agreement may be executed by the parties in multiple counterparts and shall be effective as of the date set forth above when each party shall have executed and delivered a counterpart hereof, whether or not the same counterpart is executed and delivered by each party. When so executed and delivered, each such counterpart shall be deemed an original and all such counterparts shall be deemed one and the same document. Transmission of images of signed signature pages by facsimile, e-mail or other electronic means shall have the same effect as the delivery of manually signed documents in person.

17. Signatory Warranty. Each person executing this Agreement warrants that: (a) he or she is authorized to execute this Agreement on behalf of the party for whom he or she signs this Agreement; and (b) the party on behalf of which execution is made can rightfully enter into this Agreement and receive a confidential disclosure of the Confidential Information with violating any other agreement to which such party is bound.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective duly authorized representatives, all as of the day and year first above written.

“Discloser”

“Recipient”

By: Specialty Mfg Inc (seal)

By: _____ (seal)

Name: _____

Name: _____

Title: _____

Title: _____

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