



CONFIDENTIALITY AND NON-USE AGREEMENT

This CONFIDENTIALITY AND NON-USE AGREEMENT ("**Agreement**"), is entered into by and between Diversified Engineering & Plastics, LLC ("**DEP**"), and _____ ("**Receiving Party**"). DEP and Receiving Party are individually referred to as a "**Party**," and collectively referred to as the "**Parties**". The Parties agree that, in consideration for the opportunity to fully review and consider the Parties' business relationship (whether potential or ongoing) including _____ (the "**Purpose**"), DEP will share Confidential Information (as defined in Section 1 below) with the Receiving Party, and the Receiving Party hereby agrees to be bound by the following terms and conditions:

1. **CONFIDENTIAL INFORMATION DEFINED**

"Confidential Information" includes, but is not limited to, any and all DEP information, intellectual property or know-how of a confidential, proprietary or secret nature. Confidential Information includes, by example and not by limitation, trade secrets, processes, formulas, designs, data, know-how, technical or engineering information, improvements, inventions, techniques, patents, pending patents, copyrights, computer software, computer software design, technical data, developments, modifications, and research projects. Confidential Information also includes any information which is created, developed, added to or arises from the aforementioned Confidential Information, namely proprietary technical or engineering information, including any data in any form, techniques, modifications and general know-how, and includes all information supplied from DEP to the Receiving Party whether provided prior to or subsequent to the Effective Date, orally, in writing or other physical form (including electronically) and shall include any DEP information disclosed through plant visits or in meetings between the Parties. Information provided to Receiving Party need not be marked or designated as Confidential or Confidential Information to be treated confidentially. Confidential Information does not include information that was:

- (a) published or otherwise is, or becomes, available to the public other than by breach of this Agreement;
- (b) lawfully received from a third party without restriction on disclosure and without breach of this Agreement;
- (c) disclosed to a third party without a similar restriction on the rights of such third party;
- (d) already known by the Receiving Party and the Receiving Party can demonstrate that the information was known without breach of this Agreement;
- (e) developed independently within the Receiving Party's organization without access to or use of the Confidential Information; or
- (f) approved in writing by DEP for public release or disclosure by the Receiving Party.

2. **RECEIVING PARTY DEFINED**

The term "Receiving Party" as used in this Agreement shall refer to the Receiving Party and (i) its affiliates, subsidiaries, and divisions; (ii) any corporation, limited liability company or other entity which directly or indirectly, through intermediaries or otherwise, controls or owns a controlling interest in Receiving Party and (iii) the shareholders, members, partners, directors, managers, officers, employees or agents of any of these.

3. **OWNERSHIP; DISCLOSURE OF CONFIDENTIAL INFORMATION**

- (a) All Confidential Information is owned by DEP and shall remain the property of DEP. The Confidential Information shall not be used or reproduced other than in furtherance of the Purpose. The Confidential Information may only be revealed to personnel or agents of the Receiving Party who have a need to know such Confidential Information for the Purpose, and who are under obligations of confidentiality that are at least comparable to those set forward in this Agreement.
- (b) The Receiving Party agrees to safeguard Confidential Information with the same degree of care which it protects its own most highly confidential information, which degree of care shall in any case not be less than what is reasonable under the circumstances.
- (c) Receiving Party must promptly notify DEP of any unauthorized disclosure, use, or potential disclosure or use, of Confidential Information by Receiving Party or by persons to whom Receiving Party disclosed Confidential Information, and Receiving Party must assist DEP in procuring or protecting the Confidential Information, or otherwise remedying the disclosure. Receiving Party shall be responsible for any failure by any person to whom Receiving Party disclosed Confidential Information to comply with the confidentiality obligations set forth herein.

4. **NO LICENSE**

Disclosure of the Confidential Information to the Receiving Party shall not be construed in any way whatsoever as granting to the Receiving Party a license or any other right in the Confidential Information. The grant of a license or any other right by DEP, if granted, shall be authorized only by a separate written agreement between the Parties.

5. **INJUNCTIVE RELIEF; EXPENSES**

Receiving Party specifically agrees that money damages would not be an adequate remedy for any breach of this Agreement, and DEP shall be entitled to specific performance as a remedy for any such breach. Therefore, DEP shall be entitled to injunctive relief from any court of competent jurisdiction, such relief to be available without the necessity of posting a bond, cash or otherwise. Specific performance shall not be deemed to be the exclusive remedy for any breach of any provision of this Agreement but shall be in addition to all other remedies provided by law or equity. In the event DEP engages in legal proceedings to protect its rights under this Agreement, it will be entitled to payment of all reasonable costs and expenses, including without limitation, reasonable legal fees and disbursements, incurred by it in such proceedings in the event that it prevails. No failure or delay by DEP in exercising any right hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right.

6. **RETURN OF CONFIDENTIAL INFORMATION**

Upon either (a) the request of DEP, at any time during the term of this Agreement, or (b) termination of this Agreement, the Receiving Party will cease all use of Confidential Information received hereunder and within seven (7) calendar days of such request, return all Confidential Information received from DEP and all copies thereof. Alternatively, if acceptable to DEP, the Receiving Party may certify in writing that all such Confidential Information has been destroyed.

7. **NO WARRANTY, DISCLAIMER**

Disclosure by DEP of Confidential Information does not in any way constitute any representation or warranty under this Agreement, assurance, guaranty or otherwise any kind of inducement by DEP to the Receiving Party. DEP is not obligated to disclose any particular information to Receiving Party, and does not make any representation or warranty, either express or implied, with respect to the infringement of any copyrights, trade secrets or other proprietary rights of any third party. Receiving Party acknowledges that DEP is providing Confidential Information without any representation or warranty, express or implied, as to accuracy or completeness.

8. **NON-COMPETITION**

Receiving Party shall not engage in the same type of activities or similar activities which involve the subject matter of the Confidential Information with any other organization carrying on the business of designing, developing, manufacturing, selling or distributing Plastic Injection molded parts, including but not limited to other injection molding/assembly organizations and/or suppliers to such organizations.

9. **INDEMNIFICATION**

The Receiving Party agrees to indemnify and hold harmless DEP from any damages, losses, costs or liabilities (including reasonable legal fees and costs) arising out of or from any unauthorized use or disclosure by the Receiving Party of the Confidential Information.

10. **OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS**

Any and all inventions and/or discoveries, innovations, developments, whether or not patentable, which are made or conceived, either independently or in conjunction with others which arise from the Confidential Information shall be the sole and exclusive property of DEP. Any persons who conceive or make or invent said discoveries, innovation or developments, shall without further compensation or consideration promptly execute and assign any and all applications, assignments or other instruments which DEP shall deem necessary in order to apply and obtain intellectual property rights worldwide.

11. **TERM**

- (a) This Agreement, insofar as it relates to Section 8 (non-competition), shall remain in full force and effect for a period of five years from the last date of execution indicated below (the "**Effective Date**"), unless further modified in writing, signed by both Parties.
- (b) Except as provided in Section 11(a), this Agreement shall remain in full force and effect from the Effective Date until varied by further written agreement between the Parties.

12. **JUDICIAL REVIEW DISCLOSURE**

In the event Receiving Party is requested (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation demand or similar process) to disclose any part of the Confidential Information, the Receiving Party shall notify DEP promptly of such request(s), and the information requested thereby, so that DEP may seek an appropriate protective order and/or waive in writing the Receiving Party's obligation not to disclose the Confidential Information. The Parties further agree that, if in the absence of a protective order or the receipt of a waiver hereunder, Receiving Party is nonetheless, in the opinion of its counsel, compelled to disclose all or part of the Confidential Information or else stand liable for contempt or suffer other censure or penalty from any tribunal or governmental or similar authority, Receiving Party may disclose such information without liability hereunder; provided however, that Receiving Party shall deliver to DEP written notice of the Confidential Information to be disclosed as far in advance of its disclosure as is practicable, and shall use reasonable efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such portion of the Confidential Information required to be disclosed.

13. **GOVERNING LAW AND VENUE**

This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan. Venue shall be in a court of competent jurisdiction in the state of Michigan. If a court of competent jurisdiction determines one or more provisions of this Agreement illegal or invalid, that determination shall not affect the enforceability of the remaining provisions to the extent they can be given effect without the illegal or invalid provision. Before the Parties resort to litigation to solve any dispute, the Parties agree to schedule a mandatory meeting at a mutually agreeable location, which meeting will be attended by a senior official of the respective organizations. At that meeting, each side will present its dispute and the senior officials agree to enter into good faith negotiations in an attempt to resolve the dispute. In the event the matter is not resolved, the Parties retain all applicable remedies available in law or equity, including litigation.

14. **MISCELLANEOUS**

- (a) **Entire Agreement.** This Agreement constitutes the sole agreement of the Parties with respect to its subject matter. It supersedes any prior written or oral agreements or communications between the Parties. It may not be modified except in a writing signed by the Parties.
- (b) **No Assignment.** Neither Party may assign this Agreement without the other Party's prior written consent.
- (c) **Successors and Representatives.** This Agreement binds and inures to the benefit of the Parties and their respective successors and (where permitted) assignees.
- (d) **Notices.** All notices and other communications required or permitted under this Agreement must be in writing and must be sent to the Party at that Party's contact information set forth below or at whatever other address the Party specifies in writing.
- (e) **Status of Parties.** The Parties are independent contractors and this Agreement does not obligate either Party to enter into a contract, subcontract, teaming agreement, joint venture, partnership, or other business relationship with the other Party.
- (f) **Counterparts.** This Agreement may be signed in counterparts, and by facsimile or electronic (including PDF) signature, each one of which is considered an original, but all of which together constitute one and the same instrument.

Receiving Party

Signed: _____ Address: _____
Printed Name: _____ City, State, Zip: _____
Title: _____ Phone: _____
E-mail: _____ Fax: _____
Date: _____, 20____

Diversified Engineering & Plastics, LLC

Signed: _____ Address: 1801 Wildwood Avenue
Printed Name: _____ City, State, Zip: Jackson, MI 49202
Title: _____ Phone: 517-789-8118
E-mail: _____ Fax: 517-788-6035
Date: _____, 20____

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Rev. #	Rev. Date	<u>Reason for Document Change</u>
2	04/08/2011	ADDED NEW LOGO
3	05/01/2018	UPDATED TO CURRENT PROCESS REQUIREMENTS
4	07/16/2018	Inserted permanent address above