

MUTUAL CONFIDENTIALITY AGREEMENT

THIS MUTUAL CONFIDENTIALITY AGREEMENT (this "Agreement") is made and entered into as of the ___ day of _____ 200_____ by and between MERCHANT SCHMIDT, INC., a Wisconsin corporation, and _____, a _____.

RECITAL

In connection with the parties' activities under the Supply Agreement between the parties dated as of the date hereof (the "Supply Agreement"), the parties may disclose to each other Confidential Information (as defined below). The parties desire to confirm in writing their mutual understanding regarding a party's use of Confidential Information received hereunder.

In consideration of the recital and the mutual covenants set forth below, the parties agree as follows:

AGREEMENT

1. Definition of Confidential Information. The term "Confidential Information" means, with respect to a party disclosing information (the "Disclosing Party"), all nonpublic information of the Disclosing Party that is confidential or proprietary in nature, including, without limitation, the following information: (a) information concerning the Disclosing Party's business, technology, trade secrets, products, employees, customers, marketing plans, financial information, services and business affairs; (b) any written or computer-based information, any knowledge gained through observation of or access to the facilities, computer systems and/or books and records of the Disclosing Party, any materials derived from or based upon Confidential Information disclosed by the Disclosing Party; and (c) any third-party information the Disclosing Party is obligated to keep confidential. Notwithstanding the foregoing, the parties acknowledge and agree that oral information furnished hereunder that otherwise constitutes Confidential Information shall be deemed Confidential Information only if the Disclosing Party identifies such oral information as confidential prior to disclosure and then summarizes such information in a written memorandum that is marked "confidential" and is delivered to the Recipient (as defined in Section 2 below) within 15 days after the disclosure is made.

2. Restrictive Covenant. The parties acknowledge and agree that Confidential Information is proprietary and confidential to the Disclosing Party and the Disclosing Party would suffer great loss and irreparable harm if the party receiving Confidential Information hereunder (the "Recipient") or any of the Recipient's officers, directors, employees, agents, subcontractors or consultants ("Representatives") improperly uses or discloses Confidential Information of the Disclosing Party. Any Confidential Information given to the Recipient or its Representatives is provided solely for the purpose of assisting the Recipient in performing its obligations under the Supply Agreement. The Recipient agrees to, and agrees to cause its Representatives to, (a) keep confidential all Confidential Information received hereunder, (b) not use the Confidential Information received hereunder for any purpose other than in connection with its performance under the Supply Agreement, and (c) not disclose any Confidential Information received hereunder to any third party (other than to Representatives who have a need to know such information in connection with the purpose specified in clause (b) of this Section), except with the prior written consent of the Disclosing Party. The Recipient acknowledges that it shall be responsible for the breach by any of its Representatives of the restrictions set forth in this Agreement.

3. Public Information. The restrictions on use and disclosure of Confidential Information which are contained in this Agreement shall not apply to any information or material which the Recipient can demonstrate: (a) becomes generally available to the public other than as a result of disclosure by the Recipient or any of its Representatives; (b) was available, as indicated by the Recipient's contemporaneous written records, to the Recipient on a non-confidential basis prior to its disclosure by the Disclosing Party; (c) becomes available to the Recipient or its Representatives on a non-confidential basis from a third party who was not itself bound by a confidentiality or similar agreement and who is otherwise free to disclose such information; or (d) is independently developed by the Recipient or its Representatives without reference to or use of Confidential Information received hereunder.

4. Disclosures to Governmental Entities. The Recipient may disclose Confidential Information received hereunder as required to comply with binding orders of governmental entities that have jurisdiction over it, provided that the Recipient (a) gives the Disclosing Party reasonable written notice to allow the Disclosing Party to seek a protective order or other appropriate remedy, (b) discloses only such information as is required by the governmental entity, and (c) uses commercially reasonable efforts to obtain confidential treatment for any Confidential Information so disclosed.

5. Ownership of Confidential Information. All Confidential Information is and will remain the exclusive property of the Disclosing Party. The Disclosing Party's disclosure of Confidential Information will not constitute an express or implied grant to the Recipient or its Representatives of any rights to or under the Disclosing Party's patents, copyrights, trade secrets, trademarks or other intellectual property rights.

6. Notice of Unauthorized Use. The Recipient shall notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement by the Recipient or any of its Representatives. To the extent the unauthorized use is by the Recipient and/or any of its Representatives, the Recipient shall, at its expense, use commercially reasonable efforts to help the Disclosing Party regain possession of such Confidential Information and prevent its further unauthorized use.

7. Disposition of Information. Upon request by the Disclosing Party, the Recipient shall deliver all tangible Confidential Information received hereunder, and copies thereof, to the Disclosing Party and shall erase all embodiments of such Confidential Information from all storage devices owned or controlled by the Recipient, including, but not limited to, random access memory (RAM) devices, read-only memory (ROM) devices and disk drives. The Recipient agrees to promptly certify to the Disclosing Party in writing (signed by an officer of the Recipient if the Recipient is an entity) its fulfillment of its obligations under this Section 7.

8. No Representation and Warranty. Neither party has made or makes any representation or warranty in this Agreement as to the accuracy or completeness of Confidential Information disclosed hereunder. Nothing contained in this Agreement shall be construed to require either party to disclose any particular Confidential Information.

9. Specific Enforcement. The Disclosing Party shall be entitled to an injunction or injunctions to prevent breaches of any provisions of this Agreement and may specifically enforce such provisions in any action instituted in any court having appropriate jurisdiction. These specific remedies are in addition to any other remedy to which the Disclosing Party may be entitled at law or in equity.

10. Export Laws and Regulations. The Recipient shall adhere to the U.S. Export Administration Laws and Regulations and shall not export or re-export any technical data or products received from the Disclosing Party or the direct product of such technical data to any proscribed country listed in the U.S. Export Administration Regulations unless properly authorized by the U.S. Government.

11. Term; Effect of Termination. This term of this Agreement shall commence on the date hereof and shall continue in effect until such time as the Supply Agreement terminates. Notwithstanding the foregoing, (a) each party's obligations hereunder with respect to the other party's Confidential Information shall survive termination of this Agreement for a period of five years and (b) with respect to trade secrets, each party's obligations hereunder shall survive termination of this Agreement for a period of five years or as long as such Confidential Information constitutes a trade secret, whichever period is longer. Termination of this Agreement shall not relieve a party from any liability associated with the breach by such party of any of its obligations hereunder that occurs prior to termination.

12. Waiver. The waiver by either party of any breach of any provision of this Agreement or the failure by either party at any time to enforce any right or remedy available to it under this Agreement, with respect to any breach or failure by the other party, shall not be construed to be a waiver of such right or remedy with respect to any other prior, concurrent or subsequent breach or failure. No waiver of any rights under this Agreement shall be effective unless made in writing.

13. Severability. If a provision of this Agreement is held invalid under any applicable law, such invalidity will not affect any other provision of this Agreement that can be given effect without the invalid provision. Further, all terms and conditions of this Agreement will be deemed enforceable to the fullest extent permissible under applicable law and, when necessary, the court is requested to reform any and all terms or conditions to give them such effect.

14. Miscellaneous. This Agreement constitutes the entire understanding between the parties as to the Confidential Information and merges all prior discussions between them relating thereto. No amendment or modification of this Agreement shall be valid or binding on the parties unless it is made in writing and signed on behalf of each of the parties by their respective duly authorized officers or representatives. The provisions of this Agreement shall be governed by and construed in accordance with the internal laws of the State of Wisconsin, U.S.A. without regard to the principles of conflicts of law. This Agreement may be executed by facsimile and in counterpart copies.

[Signature Page to follow]

The parties have executed this Agreement as of the date set forth above.

MERCHANT SCHMIDT, INC.

BY _____
Print Name:
Title:

BY _____
Print Name:
Title: