

## MUTUAL NON-DISCLOSURE AGREEMENT

This Agreement is between \_\_\_\_\_, having offices located at \_\_\_\_\_, and Vacuum Process Engineering, Inc., having offices located at 110 Commerce Circle, Sacramento, CA 95815 ("VPE").

To further the prospective business relationship between the parties, it is necessary and desirable that certain confidential and proprietary information related to the (recipient): \_\_\_\_\_ is disclosed to VPE;

It is also understood that VPE is skilled in the art of process engineering and vacuum manufacturing practices and it is contemplated that in anticipation of services to be rendered, VPE may need to disclose certain confidential and proprietary information regarding its manufacturing and processing engineering techniques;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed:

1. That for the purpose of this Agreement Confidential and Proprietary Information ("Information") includes, but is not limited to, (whether or not reduced to writing); discoveries, ideas, materials, concepts in various stages of development, designs, drawings, specifications, techniques, systems, models, data, source code, object code, documentation, diagrams, flow charts, research, development, processes, procedures, "know-how", marketing techniques and materials, marketing and development plans, customer names and other information related to customers, price lists, pricing policies, and financial information.

2. The obligations under this Agreement with respect to the use and secrecy of the Information shall remain in full force and effect until such Information becomes generally known to, or readily ascertainable by proper means by the public; the receiving party shall:

- a. Restrict the disclosure of Information solely to those of its directors, officers, and employees ("Recipients") on a need to know basis;
- b. Restrict the disclosure of Information to third parties to those who have agreed in writing to be bound by the terms of this Agreement prior to disclosure, and in no event shall such disclosure be made without the prior written consent of the furnishing party;
- c. Use the same degree of care to protect the Information as is used with its own most valuable trade secrets;
- d. Use the Information only for the purpose hereunder; and
- e. Secure prior written approval from the furnishing party before disclosing any Information to others.

3. Information furnished in tangible form shall not be duplicated by the receiving party except for purposes of the Agreement. Upon the furnishing party's request, the receiving party shall return all Confidential Information received in written and/or tangible form, including copies, reproductions or other media containing such Confidential Information within five (5) days of such request. At the furnishing party's option, any documents or other media developed by the receiving party containing Information shall be destroyed by the receiving party. The receiving party shall advise the furnishing party in writing of such destruction within ten (10) days thereafter.

4. All Information provided hereunder shall be deemed to be Confidential and Proprietary unless the furnishing party shall declare otherwise in writing.

5. Notwithstanding anything to the contrary herein, the receiving party shall have no obligation to preserve the confidentiality of any Information which:

- a. is or hereafter becomes available to the public generally through no act, omission, or breach of the receiving party;
- b. was previously known to the receiving party free of any obligation to keep it confidential, as shown by written records;
- c. was independently developed by the receiving party independent of any Information furnished hereunder;
- d. is received from a third party who is rightfully in possession of such Information and who is free of any obligation concerning the use or the disclosure of such Information.

6. Disclose of Confidential Information may be made pursuant to a requirement of law, or of judicial or administrative process, provided that the receiving party shall promptly inform the furnishing party in advance of such disclosure so that the furnishing party may seek a protective order or other appropriate restrictive measure regarding the disclosed Confidential Information.

7. Nothing contained in this Agreement shall be construed as granting or conferring any rights by license or otherwise to any information, the disclosing party retains all rights, title and interest in and to their Information.

8. It is understood and agreed that each party does not solicit any changes in the organization, business practice, services or products discussed by the other party; that the exchange of information should not be construed as evidencing an intent by either party to purchase any products or services of the other party or act as an encouragement to expend funds in development or research efforts by the party.

9. The parties agree not to disclose their participation in this undertaking, the existence or terms and conditions of the Agreement, or the fact that discussions are being held with the other party, to others, except as necessary for the parties to make and fulfill their prospective business agreement.

10. Communications between the parties shall not be in violation of the proprietary rights of any third party.

11. No failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder or at law or equity.

12. It is acknowledged that the Information disclosed may include the most valuable trade secrets of the disclosing company and should either party breach this agreement, it is agreed that there will not be any adequate remedy at law and, therefore, without limiting any other remedy available at law or equity, an injunction, specific performance or other form of equitable relief or money damages or any combination thereof shall be available. In any action successfully brought to enforce its rights hereunder shall also be entitled to recover its reasonable attorney's fees and costs of the action from the breaching party.

13. Nothing in this Agreement shall be construed or implied to obligate either party to furnish any specific type of Information.

14. Nothing in this Agreement shall be construed as granting a license or other right, express or implied, with respect to any patent, know-how, show-how or other intellectual property or proprietary right. The transmission of Information shall likewise not be construed as any type of license or representation, warranty, assurance, guaranty or inducement by either party with respect to infringement of any patent or other proprietary right.

15. This Agreement shall commence as of the date the last signature is affixed hereto and shall continue for a period of five (5) years thereafter.

16. This Agreement is not assignable.

17. This Agreement may not be superseded, amended, or modified except by written agreement.

18. All information disclosed is provided "as is" and without any warranty, express, implied or otherwise, regarding its accuracy, performance or otherwise.

19. The receiving party shall not export, directly or indirectly, any technical data acquired from the transmitting party under this Agreement or any products utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires any export license or other Governmental approval without first obtaining such license or approval.

20. This Agreement shall be governed and construed in accordance with the laws of the State of California and shall benefit and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written.

VACUUM PROCESS ENGINEERING, INC.

110 Commerce Circle  
Sacramento, CA 95815  
USA

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Customer Name:

\_\_\_\_\_

Customer Address:

\_\_\_\_\_

\_\_\_\_\_

Country: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_