



MAC Trailer Enterprises, Inc.
MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This MUTUAL CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT (“Agreement”) is entered into and effective as of _____, 202__ (the “Effective Date”), by and between **MAC TRAILER ENTERPRISES, INC.**, an Ohio corporation with a place of business located at 14599 Commerce Street N.E., Alliance, Ohio 44601 (“MAC”), and _____, a(n) _____ with a place of business located at _____ (the “Company”). MAC and the Company are sometimes referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

RECITALS

A. MAC and the Company are considering entering into discussions relating to a possible business relationship for one or more opportunities that might include, but are not limited to, the procurement or development of products, machines, processes, materials, or equipment (the “Proposed Transactions”);

B. In connection with the Parties’ discussions, undertaking and evaluating the Proposed Transactions, and related negotiations, each Party may furnish or disclose or otherwise make accessible certain of its Confidential Information (defined below) to the other Party;

C. Each Party may also have access to and work with the other Party’s employees or Related Entities;

D. A Party that discloses its Confidential Information under this Agreement is referred to herein as the “Disclosing Party,” and the Party receiving such Confidential Information under this Agreement is referred to herein as the “Restricted Party;”

E. Each Party deems it necessary to obtain the assurances provided in this Agreement from the other Party prior to making any such disclosure of Confidential Information, and each Party is willing to make such assurances to the other Party; and

F. Each Party recognizes, acknowledges, and agrees that each Disclosing Party’s Confidential Information is a valuable asset owned by the Disclosing Party (or its Related Entities) and, as a result thereof, the execution and delivery of this Agreement is a condition to the Disclosing Party’s disclosure of Propriety Information.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing Recitals and of the mutual promises, covenants, and agreements set forth below, the Parties agree as follows:

MAC Trailer Enterprises, Inc
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1. Recitals. The Parties acknowledge that the Recitals set forth above are true and correct, and the Recitals are hereby incorporated into and deemed a part of this Agreement.

2. Definition of Confidential Information.

(a) As used in this Agreement, “Confidential Information” means all data and information of, relating to, regarding, or in any way connected to the Disclosing Party or any Related Entity of the Disclosing Party, or any customer of the Disclosing Party, provided to or obtained by the Restricted Party, whether prior to or after the Effective Date, , whether in tangible or intangible form, in whatever medium provided, whenever and however disclosed, whether written, oral, recorded or visually observed, and whether marked or identified as confidential or not, including, but not limited to: (i) patents, trademarks, trade secrets, copyrights, inventions, discoveries, improvements, patented and unpatented technology, know-how, innovations, writings, works, and other Intellectual Property (defined below) and proprietary rights; (ii) marketing strategies, plans, financial information, projections, operations, sales estimates, business plans and performance results relating to the past, present, or future business activities of Disclosing Party, its affiliates, subsidiaries and affiliated companies; (iii) plans for products or services, customer lists, supplier lists, current and anticipated customer requirements, price lists, (iv) any scientific or technical information, invention, design, process, procedure, formula, concepts, reports, product specifications, data, compositions, works-in-progress, sketches, photographs, graphs, drawings, samples, improvement, technology, method, and past, current, and planned research and development; (v) computer software, source code, object code, flow charts, databases; (vi) development or manufacturing information, equipment, tooling, machinery, designs, processes, procedures, formulae or improvements; (vii) information that is not public and could be used by a competitor or supplier to make production, pricing, or marketing decisions; (viii) any samples exchanged, including any data and results relating to such samples; (ix) any other information that should reasonably be recognized as confidential information of the Disclosing Party; and (x) all information, memoranda, notes, records, analyses, compilations, studies or other documents or materials, whether prepared by the Parties or others, that contain, reflect, or is derived from all or any portion of any of the foregoing information. Confidential Information need not be novel, unique, patentable, copyrightable, or constitute a trade secret in order to be designated Confidential Information. The Restricted Party acknowledges that the Confidential Information is proprietary to the Disclosing Party, has been developed and obtained through great efforts by the Disclosing Party, and the Disclosing Party regards all of its Confidential Information as trade secrets. Information about the existence or status of any Proposed Transactions will also constitute Confidential Information under this Agreement.

Notwithstanding anything herein to the contrary, Confidential Information does not include information that: (i) is generally known by or available to the public without breach of this Agreement; or (ii) can be shown by the Restricted Party to have been provided by a third party that is not under a duty of confidentiality to the Disclosing Party with respect to such information; or (iii) can be shown by the Restricted Party to have been independently developed by employees, consultants or agents of the Restricted Party without breach of this Agreement.



(b) As used herein, “Intellectual Property” means all patentable and un-patentable inventions, processes, mask works, works of authorship or expression, including computer programs, data collections and databases, and trade secrets.

(c) As used herein, “Related Entity” or “Related Entities” means and includes, with respect to a Party, any Person that (i) is a parent or subsidiary of a Party, (ii) a Party directly or indirectly owns or controls, (iii) is under common control with such Party, where control may be by either management authority, contract, or equity interest, or (iv) is under common ownership with a Party. For purposes of this definition, the concept of “ownership” means ownership of an equity interest, and the concept of “control” means the power, directly or indirectly, to direct (or cause the direction of), manage, oversee, and/or restrict the affairs, assets, or business or cause the direction of the management and policies of another.

3. Restrictions on Use of Confidential Information. The Restricted Party covenants and agrees to keep all Confidential Information confidential and to use the Confidential Information solely in connection with participating in, evaluating, and/or undertaking the Proposed Transactions and not for any purpose other than as authorized by this Agreement without the prior written consent of an authorized representative of the Disclosing Party. The Restricted Party will limit disclosure of Confidential Information to employees, agents, advisors, or representatives (collectively, “Representatives”) who are actively and directly participating in, evaluating, and/or undertaking the Proposed Transactions, and then only to the extent necessary in order to assist or perform on behalf of the Restricted Party in connection therewith. The Restricted Party further covenants and agrees to: (a) inform its Representatives of the confidential nature of the Confidential Information, take necessary steps to cause its Representatives to observe the terms of this Agreement, and assume full liability for acts or omissions by its Representatives that are inconsistent with the Restricted Party’s obligations under this Agreement; (b) use the Confidential Information solely for the purpose of evaluating and/or undertaking the Proposed Transactions, and for no other purpose whatsoever; (c) keep all Confidential Information strictly confidential by using the same degree of care it uses in safeguarding its own confidential information, but not less than a reasonable degree of care; (d) not use the Confidential Information in any way detrimental to the Disclosing Party including, without limitation, for any purpose competitive with or harmful to the business of the Disclosing Party; and (e) not copy or reverse engineer any Confidential Information.

4. Compelled Disclosure of Confidential Information. Notwithstanding anything to the contrary in this Agreement, the Restricted Party may disclose Confidential Information pursuant to any governmental, judicial, or administrative order, subpoena, discovery request, regulatory request, or similar method, provided that the Restricted Party promptly notifies the Disclosing Party in writing of such demand for disclosure so that the Disclosing Party, at its sole cost and expense, may seek a protective order or other appropriate remedy to preserve the confidentiality of the Confidential Information; and in the event of any such compelled disclosure the Restricted Party will disclose only that portion of the Confidential Information that, in the written opinion of its legal counsel, is required to be disclosed. The Restricted Party agrees that it will not oppose, and shall cooperate with, efforts by the Disclosing Party with respect to any such request for a protective order or other relief.



5. Ownership. Under no circumstances will the Restricted Party obtain any ownership interest or other right, title, or interest in or to any Confidential Information of the Disclosing Party as a result of this Agreement, whether by implication, estoppel, or otherwise. Further, nothing contained in this Agreement shall be construed as granting or conferring, by implication or otherwise, any right, title, or ownership, by license or otherwise, in or to either Party's Intellectual Property or proprietary rights. Disclosure hereunder of Confidential Information does not waive any rights the Disclosing Party may have with respect thereto as a trade secret under common or statutory law, nor waive any privilege the Disclosing Party may have with respect thereto including the attorney-client privilege. All use of Confidential Information by the Restricted Party shall be for the benefit of the Disclosing Party, and any modifications or improvements thereof by the Restricted Party, including but not limited to any innovations, ideas, processes, materials, designs, technology, machines, or devices (patentable or not) derived or resulting from the Disclosing Party's Confidential Information shall be the sole property of the Disclosing Party and are hereby assigned to the Disclosing Party. The Restricted Party further agrees to execute any additional documents reasonably necessary and requested by the Disclosing Party to evidence such an assignment.

6. Return or Destruction of Confidential Information. The Restricted Party shall immediately return and redeliver to the Disclosing Party all tangible material embodying any of the Disclosing Party's Confidential Information provided to the Restricted Party and all notes, summaries, memoranda, drawings, manuals, records, excerpts or information deriving therefrom, and all other documents or materials (and all copies of any of the foregoing, including "copies" that have been converted to computerized media in the form of image, data, word processing, or other types of files either manually or by image capture) based on or including any Confidential Information, in whatever form of storage or retrieval, upon (a) the termination or expiration of this Agreement; or (b) the Disclosing Party's request. Alternatively, the Restricted Party may, with the Disclosing Party's written consent, immediately destroy any of the foregoing in a manner commensurate with the sensitivity of such information. Upon the Disclosing Party's request, the Restricted Party shall certify such destruction in writing by an authorized officer of the Receiving Party supervising the destruction.

7. Remedies. The Parties acknowledge and agree that due to the nature of the Disclosing Party's Confidential Information, money damages would not be a sufficient remedy for any breach of this Agreement, and any such breach may allow the Restricted Party or third parties to unfairly compete. Accordingly, upon any breach of this Agreement, the Disclosing Party shall be entitled seek injunctive and other equitable relief in addition to all other remedies available at law or in equity. In any action or proceeding arising out of or in connection with this Agreement, the non-prevailing Party shall pay the reasonable costs and expenses (including reasonable attorneys' fees and expert fees) incurred by the prevailing Party. The Restricted Party will notify the Disclosing Party, in writing, immediately upon discovery of, or upon becoming aware of, any unauthorized use or disclosure of the Disclosing Party's Confidential Information or any other breach of this Agreement.

8. No Representations or Warranties. Although the Disclosing Party will endeavor to include in the Confidential Information known to the Disclosing Party that it believes to be appropriate and relevant for the purpose of the Proposed Transactions, the Restricted Party acknowledges and agrees that the Disclosing Party does not make any representation or warranty as to the accuracy,



completeness, condition, suitability, or performance of the Confidential Information (except such representations and warranties as may be contained in any definitive agreements entered into after the date of this Agreement with respect to the Proposed Transactions), and the Disclosing Party shall have no liability whatsoever to the Restricted Party resulting from the Restricted Party's use of the Confidential Information. Further, neither Party is under any obligation under this Agreement to disclose any Confidential Information.

9. Non-Solicitation. Each Party agrees that, from the Effective Date and for a period equal to six (6) months after the termination of any relationship between the Parties for any reason, it will not directly or indirectly (a) solicit or actively seek to hire any employee of the other Party whose name becomes known to it through the Confidential Information or the Parties' relationship; or (b) solicit or encourage any such employees described in (a) to terminate his or her relationship with the other Party. This Section will not prohibit either Party from hiring an employee of the other Party as a result of such employee responding to a general solicitation or advertisement for employment by the hiring Party.

10. Non-Interference. The Restricted Party shall not interfere in any way with or disrupt any known business relationship that the other party has with existing suppliers or vendors with the intent of causing a breach or termination of such known business relationship.

11. Scope of this Agreement. Neither Party is or will be under any legal obligation of any kind whatsoever to negotiate or consummate any Proposed Transactions by virtue of this Agreement or the disclosure of any Confidential Information. Each Party reserves the right, in its sole and absolute discretion, to reject any and all proposals and to terminate discussions and negotiations with respect to any Proposed Transactions at any time. This Agreement does not create a joint venture or partnership between the Parties. This Agreement does not create any exclusive arrangement between the Parties, and each Party is free to conduct business with any third parties provided that such Party does not violate its obligations under this Agreement.

12. Term. The terms of this Agreement shall be effective for a period of three (3) years following the Effective Date, or such longer period as the Parties may mutually agree in writing. If a Proposed Transaction goes forward, the non-disclosure provisions of any applicable transaction documents entered into between the Parties (or their Related Parties) for the Proposed Transaction shall supersede this Agreement; but if no such provision included in said transaction documents, then the terms of this Agreement shall control for the duration of said Proposed Transaction.

13. Relationship of Parties. This Agreement is entered into solely for the purpose of protecting the Parties' respective Confidential Information and shall not be deemed to evidence any other business or contractual relationship between the Parties. Without limiting the foregoing, nothing in this Agreement shall be construed to constitute the Parties as partners, joint venturers, or co-owners nor to create an employer-employee relationship.

14. Waivers. No failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, and no single or partial exercise thereof shall preclude any other or further



exercise thereof or the exercise of any right, power or privilege hereunder. No waiver of this Agreement or any provision hereof will be effective unless the same is set forth in a writing signed by an authorized representative of the waiving Party, and then such waiver or consent will only be effective in the specific instance and for the purpose for which it is given.

15. Severability. Although the Parties consider the restrictions contained in this Agreement to be reasonable for the purpose of protecting the Confidential Information, if any such restriction is found by a court of competent jurisdiction to be unenforceable, such provision will be modified, rewritten, or interpreted to include as much of its nature and scope as will render it enforceable. If it cannot be so modified, rewritten, or interpreted to be enforceable in any respect, it will not be given effect and the remainder of the Agreement will be enforced as if such provision were not included.

16. Governing Law. The validity, construction and performance of this Agreement shall be governed and construed in accordance with the laws of the State of Ohio applicable to contracts made and to be wholly performed within such state, without giving effect to any conflict of laws provisions thereof. The Federal and State courts located in Stark County, Ohio shall have sole and exclusive jurisdiction over any disputes arising under or in any way related to the terms of this Agreement, and each Party (a) consents to personal jurisdiction therein; and (b) waives the right to object to personal jurisdiction or venue in such courts.

17. Assignment. The Restricted Party may not assign this Agreement or its rights or obligations hereunder without the Disclosing Party's prior written consent, which may be withheld in the Disclosing Party's sole and absolute discretion. The terms and conditions of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, executors, administrators, successors, and permitted assigns.

18. Entire Agreement; Amendments. This Agreement, including and incorporating herein by reference the Recitals stated above, contains the entire understanding between the Parties relating to the subject matter hereof and supersedes all oral statements and prior writings with respect thereto. No amendment, modification, change, or variation of any of the terms and conditions of this Agreement will be valid or enforceable unless the same is in writing and signed by authorized representatives of both Parties.

19. Authority. By signing below, each Party represents that: (a) the execution and delivery by such Party of this Agreement has been duly authorized by all appropriate company action; (b) such Party has the full right, power, and authority to enter into, and the ability to perform its obligations under, this Agreement; and (c) this Agreement has been duly executed and delivered by each Party and is a legal, valid, and binding agreement of each Party, enforceable in accordance its terms.

20. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same Agreement. The Parties agree that electronic signatures are valid and effective and that an electronically stored copy of this Agreement constitutes proof of the signature and contents of this Agreement, as though it were an original.



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IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Effective Date set forth above.

MAC TRAILER ENTERPRISES, INC.,
an Ohio corporation

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____