

THIS AGREEMENT is entered into and is effective as of (Date – mm/dd/yyyy) \_\_\_\_\_,

between Ames Rubber Manufacturing Company, Inc. (Supplier) a California corporation, and

(Customer Name) \_\_\_\_\_, (Customer), A (corporation, partnership, LLC, other) \_\_\_\_\_

Located at (Customer Address) \_\_\_\_\_

The parties acknowledge that (Supplier) and (Customer) are engaged in a business relationship wherein certain Proprietary Information as defined below of (Supplier) and (Customer) may be disclosed to the other party. In consideration of the mutual covenants set forth below, (Supplier) and (Customer) each agree as follows:

### **I. Definitions.**

(A) As used herein, the term “Proprietary Information” means any information which is disclosed by one party (the “Disclosing Party”) to the other party (“Recipient”) related to the business of the Disclosing Party which

(i) derives economic value, actual or potential, from not being generally known to or readily ascertainable by other persons or entities who can obtain economic value from its disclosure or use, or is otherwise non-public, proprietary, and confidential in nature, and

(ii) is the subject of efforts by the Disclosing Party which are reasonable under the circumstances to maintain its secrecy, including without limitation:

- (1) marking any information reduced to tangible form clearly and conspicuously with a legend identifying its confidential or proprietary nature;
- (2) identifying any oral presentation or communication as confidential immediately before, during or after such oral presentation or communication; or
- (3) otherwise treating such information as confidential.

(B) Assuming the criteria in Section 1(A) above are met, Proprietary Information includes, but is not limited to, technical and non-technical data related to the formulas, patterns, designs, compilations, programs, inventions, methods, techniques, drawings, processes, finances, actual or potential customers and suppliers, research, development, existing and future products, and employees of the Disclosing Party. Proprietary Information also includes information which has been received by (Supplier) or (Customer) from a third party, which information (Supplier) or (Customer) is obligated to treat as confidential.

(C) The term “Proprietary Information” does not include any data or information which:

- (1) was already known by the Recipient at the time of disclosure hereunder by the Disclosing Party;
- (2) is disclosed by the Recipient pursuant to a requirement of a governmental agency or of law without similar restrictions or other protections against public disclosure or is required to be disclosed by operation of law; provided, however, that Recipient shall have first given written notice of such required disclosure to Disclosing Party, made a reasonable effort to obtain a protective order requiring that the Proprietary Information so disclosed be used only for the purposes for which disclosure is required and

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taken reasonable steps to allow the Disclosing Party to seek to protect the confidentiality of the information required to be disclosed; or,

- (3) is or becomes generally known to the public without breach of this Agreement by the Recipient;
- (4) is received by the Recipient from a third party without restriction on disclosure and without, to the knowledge of the Recipient, a breach of an obligation of confidentiality running directly or indirectly to the other party to this Agreement;
- (5) is approved for release to the general public or to a particular third party by a written authorization of the Disclosing Party; or
- (6) is independently developed by the Recipient without use, directly or indirectly, of information received from Disclosing Party.

**II. Confidentiality Obligation.** Each of the parties hereto (a) must use the same care and discretion as it employs with its own confidential and proprietary information (but in no event less that reasonable care and discretion) to maintain in confidence and prevent disclosures of the Proprietary Information, and (b) must not use, reproduce, distribute or disclose the Proprietary Information except as expressly permitted herein or otherwise specifically authorized in writing by the Disclosing Party.

**III. Permitted Disclosures.** Disclosures of the Proprietary Information of the Disclosing Party may be made only to employees, agents or independent contractors of the Recipient who are directly involved in activities involved in the business relationship between (Supplier) and (Customer) and who have a specific need to know such information, and who are obligated to hold the information in confidence and otherwise to comply with the terms of this Agreement. The Recipient agrees to promptly furnish to the Disclosing Party, upon request, a list of the Recipient's employees, agents and independent contractors having had access to the Proprietary Information.

**IV. Return of Materials.** All Proprietary Information, including without limitation all drawings, specifications and other information disclosed hereunder, shall remain the property of the Disclosing Party. Within ten (10) days following the Recipient's receipt of a written request from the Disclosing Party, the Recipient must deliver to the Disclosing Party all tangible materials originally delivered to the Recipient which contain or embody the Proprietary Information and must certify to the Disclosing Party that all copies and other materials containing or embodying the Proprietary Information have been destroyed.

**V. No Grant of Rights.** Except as expressly herein provided, this Agreement shall not be construed as granting or conferring to either party, either expressly or impliedly, any rights, licenses or interests in or with respect to any Proprietary Information of the other party, nor shall this Agreement create any exclusive business relationship or other rights or obligations between the parties.

**VI. Termination.** This agreement and the obligations of confidentiality set forth herein shall commence on the date first above written and shall continue (a) with respect to Proprietary Information which qualifies as a trade secret under applicable law, at all times thereafter, and (b) with respect to all other Proprietary Information, for a period of (3) years after the date of disclosure of such information.

**VII. Continuation of Obligations.** The rights and obligations of the parties will inure to the benefit of, will be binding upon, and will be enforceable by the parties and their lawful successors.



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**VIII. Miscellaneous.** No modifications of this Agreement or waiver of any of its terms will be effective unless set forth in writing signed by the party against whom it is sought to be enforced. This Agreement will be governed by and construed in accordance with the laws of the State of California. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, this agreement has been executed and delivered as of the date first above written.

(Supplier) - Ames Rubber Manufacturing

(Customer) - \_\_\_\_\_

By: \_\_\_\_\_

Timothy Brown  
President

By: \_\_\_\_\_

Name and Title