

MUTUAL NONDISCLOSURE AGREEMENT

This NONDISCLOSURE AGREEMENT, dated as of _____, is
between
Air Barrier Association of America Inc. (ABAA) having its principal place of
business at 1600 Boston-Providence Hwy, Walpole, MA, 02081
and
_____ having a place of business
at _____

BACKGROUND

1. The Air Barrier Association of America Inc.(ABAA) includes references to different manufacturer's materials on the website of ABAA and in various documents produced by ABAA..
2. To include a specific material from a manufacturer, ABAA requires a copy of test reports or other technical information that is propriety to that manufacturer, and
3. Each of the parties hereto wishes to ensure that all such trade secrets, know-how and confidential information are treated in a strictly confidential manner by the party receiving such information.

TERMS

NOW THEREFORE, in consideration of the premises and covenants contains herein, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Confidential Information. Each party acknowledges that the other party has developed and is the exclusive owner of a substantial body of trade secrets, know-how, and other confidential information relating to its business, including without limitation, information regarding customers, suppliers and business arrangements, technical and business data, know-how, processes, designs and ideas (collectively, "Confidential Information").
2. Nondisclosure. Except with the prior written consent of the disclosing party or as specifically provided herein, the recipient of the disclosing party's Confidential Information (hereinafter, "Recipient") shall not, and shall direct its affiliates and their respective directors, officers, employees, agents, and other representatives (collectively, "representatives"), not to disclose or permit the disclosure to any third party of any Confidential Information disclosed to it by the disclosing party or such disclosing party's affiliates or representatives. For purposes of this Agreement, a party's "affiliates" shall include any entity that controls, is controlled by, or is under common with such party, and a party's "representatives" shall include the representatives of its affiliates.

3. Form of Disclosures. To the extent practical, Confidential Information shall be disclosed in documentary or tangible form marked "Proprietary" or "Confidential". In the case of disclosures made orally, by visual inspection, or in electronic form, the disclosing party shall have the right of, if requested by Recipient, the obligation, to confirm in writing within thirty (30) days after the disclosure is made, the nature of the disclosure and whether such disclosure contained Confidential Information intended to be protected by their Agreement.
4. Restricted Use of Confidential Information. Recipient, and its affiliates and representatives, shall use any Confidential Information disclosed to it or them solely for the purposes of ABAA. Recipient shall limit the dissemination of any Confidential Information to those of its affiliates and their respective representatives who need to know such information and who are informed of their obligation to maintain the confidential nature of such information solely for the purposes of ABAA. Recipient agrees to be responsible for any breach of their Agreement by its affiliates or representatives.
5. Permitted Exception. Recipient shall be under no obligation with respect to any Confidential Information of the other party that: (a) is or becomes generally available to the public other than as a result of a breach of their Agreement by the Recipient or any of its affiliates or representatives; (b) is known to Recipient or any of its affiliates or representatives at the time of disclosure; (c) was received by Recipient or any of its affiliates after the time of disclosure hereunder on a non-confidential basis from a third party who had a legal right to make use of such Confidential Information. In order to rely on any of the foregoing permitted exceptions, the Recipient shall immediately advise the disclosing party upon receipt of any Confidential Information, that a permitted exception applies and shall provide reasonable details of such permitted exception.
6. No Grant of License. Nothing in this Agreement shall be constructed as granting or implying any right or license to use any Confidential Information disclosed hereunder except for purposes of ABAA, and all Confidential Information disclosed or otherwise acquired by Recipient shall remain the property of the disclosing party.
7. Return of Information. Upon the discontinuance of discussions between the parties relating to the Project, or upon the request of the disclosing party, Recipient shall immediately return all written or other tangible materials that contain or refer to the disclosing party's Confidential Information that were made available or supplied to Recipient by the disclosing party (including all copies or reproductions of such materials). Any materials prepared by Recipient or any of its affiliates or representatives that contain references to the Confidential Information shall be destroyed, and such destruction shall be certified in writing to the disclosing party by an authorized representative of the Recipient who has supervised the destruction.
8. Test Materials and Samples. All test materials and samples furnished by the disclosing party shall remain the property of the disclosing party. Recipient shall perform or have performed only those tests and experiments on the materials or samples which the disclosing party may agree to in advance in writing. Recipient shall not allow the test materials or samples to be examined, tested or analyzed by a third party without the prior written consent of the disclosing party. All test and performance results shall become the property of the disclosing party and shall be Confidential Information subject to the terms of this Agreement.

9. Disclosure Required by Law. In the event that the Recipient becomes legally compelled (by interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, Recipient agrees to provide the disclosing party with prompt notice of such request(s) so that it may seek an appropriate protective order or other appropriate remedy and/or waive Recipient's compliance with the provisions of this agreement. If the disclosing party as not obtained a protective order or other appropriate remedy within a reasonable period of time after notice by Recipient, or if the disclosing party waives compliance with the provisions of this Agreement, Recipient agrees to furnish only that portion of the Confidential Information that, in the reasonable opinion of Recipient's counsel, is legally required to be furnished.
10. Relationship of Parties. It is not the intention of the parties to this Agreement to create, nor shall this Agreement be constructed as creating any joint venture, partnership or agency relationship between the parties so as to render either party liable to the other party for anything more than the performance of its respective obligations hereunder. The parties agree that unless a definitive agreement between them with respect to the Project has been executed and delivered, neither party will be under any legal obligation of any kind whatsoever with respect to the Project by virtue of this Agreement or any other written or oral expression with respect to the Project by its respective affiliates or representatives, except as specifically provided herein. This Agreement does not grant nor shall it be interpreted so as to grant any party any exclusive rights in respect of the Project until a definitive agreement has been signed and exchanged between the parties hereto.
11. Equitable Relief. Recipient acknowledges that its unauthorized disclosure or use of the disclosing party's Confidential Information will have a material adverse effect on the disclosing party for which damages may be difficult to ascertain. Recipient therefore agrees that in addition to and not in lieu of any other rights or remedies the disclosing party may have, the disclosing party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of this Agreement.
12. Other Remedies. Each party retains all rights and remedies afforded under the patent and other statutory laws of any relevant jurisdiction and of the common law, including with limitation any laws designed to protect proprietary or confidential information.
13. No Assignment. Recipient shall not assign any of its rights or obligations hereunder, and any such purported assignment shall be null and void.
14. Notices. All notices or communications required or permitted under this Agreement shall be in writing and shall be sent by registered or certified mail, postage prepaid, or by telecopier, or recognized overnight carrier, to the intended recipient at the address and attention designated above or to such other address or attention as the recipient may have designated in writing. Any such notice or communication shall be deemed delivered as follows: if hand delivered, on the day so delivered; if mailed, three business days after the date so mailed; if telecopied, upon written confirmation by the sending machine of effective transmission or upon telephone confirmation of receipt (provided that a confirmation copy is sent by recognized overnight carrier); and if sent by recognized overnight courier, the next business day.
15. No Waiver. No waiver of any provision, breach, or default under this Agreement shall be deemed a waiver of any subsequent provision, breach, or default, nor shall any waiver constitute a continuing waiver.

16. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
17. Entire Agreement; Amendments. This Agreement sets forth the entire understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements or undertakings, whether written or oral. This Agreement may not be amended, supplemented or rescinded except by a written instrument duly executed by each of the parties hereto.
18. Term and Termination. Either party may terminate discussions relating to the project and this agreement at any time upon written notice to the other party. Unless earlier terminated in writing by one of the parties hereto, the term of this agreement shall be three (3) years from the date first written above. Notwithstanding the foregoing, Recipient's obligations of non-disclosure and restricted use of Confidential Information shall survive any such termination for an additional period of (10) year.
19. Execution. This Agreement shall be executed in duplicate and shall be effective as of the date first written above.
20. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument. This Agreement shall become binding only when each party has executed and delivered to the other party hereto one or more counterparts.
21. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of the project, without giving effect to its principles or conflicts of law.

IN WITNESS OF WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the date first written above.

ABAA

Manufacturer

Per: _____

Per: _____

Name: _____

Name: _____

Title: _____

Title: _____