

## MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

**THIS MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT** (the "Agreement") is made effective as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between PINES Engineering, a division of Ajax Tocco Magnethermic Corporation, an Ohio corporation, located at 29100 Lakeland Blvd. Wickliffe, OH 44092 and its affiliated companies, and \_\_\_\_\_, a \_\_\_\_\_ located at \_\_\_\_\_ (the "Company") for the purpose of preventing the unauthorized disclosure and/or use of certain confidential and proprietary information which may be disclosed hereunder.

As a condition to, and in consideration of Ajax Tocco and the Company furnishing confidential and proprietary information to each other, **THE PARTIES AGREE AS FOLLOWS:**

### 1. Purpose of Disclosure

The parties are willing to provide each other with certain Confidential Information (as defined below) for the purpose of enabling Ajax Tocco to provide and the Company to evaluate quotations concerning the supply by Ajax Tocco of various products and services (the "Purpose"). In this Agreement, the party disclosing Confidential Information is referred to as the "Disclosing Party" and the party receiving Confidential Information is referred to as the "Recipient".

### 2. Definition of Confidential Information

For the purposes of this Agreement, "Confidential Information" shall refer to all of the information about the Disclosing Party disclosed by the Disclosing Party to the Recipient or the Recipient's employees, agents or representatives in the course of discussions between the Recipient and the Disclosing Party, which is identified by the Disclosing Party as proprietary or confidential at the time disclosed including, without limitation, all of the following: product specifications; data; know-how; formulas; compositions; processes; designs; sketches; photographs; samples; prototypes; research and development; manufacture or distribution methods and processes; the identity or other information about actual or potential customers; product pricing, sales, costs and other financial data; sources of supply for products, raw materials, and components; plant and production equipment descriptions; computer software and programs; databases; internal reports; memoranda, notes, analyses, compilations and studies, and other data, information, materials or intangibles that relate to a party's business and/or products, whether owned by the Disclosing Party or owned by third parties and rightfully in the possession of the Disclosing Party.

### 3. Exceptions to Definition of Confidential Information

Confidential Information shall not include: (i) such information as is disclosed in any public filings by the Disclosing Party or which is contained in press releases issued by the Disclosing Party, (ii) such information as otherwise becomes generally available to the public other than as a result of a violation of this Agreement, (iii) such information as can be established as having been known by the Recipient prior to its disclosure by the Disclosing Party, (iv) such information as becomes available to the Recipient from a third party free of any confidentiality agreement with the Disclosing Party, or (v) such information that is shown to have been independently developed by the Recipient without reference to Confidential Information supplied by the Disclosing Party.

#### **4. Limits on Disclosure and Use of Confidential Information**

The Recipient will keep all Confidential Information disclosed by the Disclosing Party strictly confidential, and will restrict disclosure to such of its employees, agents or representatives who have a need to know such Confidential Information in order for the Recipient to carry out the Purpose. Such employees, agents and representatives shall be informed by the Recipient of the confidential nature of such information and shall be directed by the Recipient to treat such information confidentially. The Recipient will not use or permit to be used any of the Disclosing Party's Confidential Information, except for the Purpose referred to above, and will be responsible for any breach of this Agreement by its employees, agents and representatives.

#### **5. Return of Confidential Information**

The Recipient shall return to the Disclosing Party any and all records, notes and other written, printed or tangible materials, including copies thereof, pertaining to the Disclosing Party's Confidential Information within ten (10) days following the written request of the Disclosing Party, or alternatively, destroy any materials pertaining to the Disclosing Party's Confidential Information and provide the Disclosing Party with a statement documenting such destruction, save and except that one (1) copy for the Recipient's legal archives, and any electronic back-up or archival storage copies made in accordance with the Recipient's standard procedures may be retained solely for purposes of disaster recovery and compliance with records retention policies, which retained copies shall continue to be subject to the restrictions contained herein.

#### **6. Legally Required to Disclose**

In the event that the Recipient or anyone to whom the Disclosing Party transmits any Confidential Information becomes legally compelled to disclose any of the Confidential Information, the Recipient will provide the Disclosing Party with prompt notice so that the Disclosing Party may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Agreement. In the event that such protective order or other remedy is not obtained, or that the Disclosing Party waives compliance with the provisions of this Agreement, the Recipient shall furnish only that portion of the Confidential Information which is legally required to be disclosed.

#### **7. No Rights or Licenses**

The Recipient hereby acknowledges that title to the Confidential Information including ownership rights to patents, copyrights, or other legally protectable proprietary rights (collectively "intellectual property") in connection therewith is and shall remain the exclusive property of the Disclosing Party. Nothing contained in this Agreement shall be construed as granting, by implication, estoppel or otherwise, any licenses or rights to any intellectual property (present or future) of either the Disclosing Party or the Recipient.

#### **8. No Representations or Warranties**

The Disclosing Party makes no representation, extends no warranty of any kind (either express or implied), assumes no responsibility and shall have no liability or obligation whatsoever with respect to (a) the adequacy, accuracy or utility of any information obtained by the Recipient under this Agreement, or (b) the use by the Recipient of any information obtained by the Recipient under this Agreement.

#### **9. Injunctive Relief**

The parties understand and acknowledge that any disclosure or misappropriation of any of the Confidential Information of the other party in violation of this Agreement may cause the Disclosing Party irreparable harm, the amount of which may be difficult to ascertain and, therefore, agrees that the Disclosing Party shall have the right to apply to a court of competent jurisdiction for an order restraining any such further disclosure or misappropriation and for such other relief as the Disclosing Party shall deem appropriate, such right of the Disclosing Party to be in addition to the remedies otherwise available to the Disclosing Party at law or in equity.

## **10. Reasonableness of Restrictions**

Each Party agrees that it has carefully considered the nature and extent of the restrictions upon it and the rights and remedies conferred upon the parties under this Agreement, and each hereby acknowledges and agrees that the covenants contained in this Agreement are supported by good and valuable consideration, are reasonable in time and are reasonably necessary to protect the legitimate business interests of the other Party.

## **11. No Export**

Neither Party shall export, directly or indirectly, any technical data acquired under this Agreement, or any products utilizing such data, to any country for which the U.S. Government or any agency thereof, at the time of export, requires an export license or other governmental approval without first obtaining such license or approval.

## **12. Notices**

All notices must be in writing and addressed to the relevant Party at its address set forth in the preamble (or to such other address such Party specifies in accordance with this Section 12). All notices must be personally delivered or sent prepaid by nationally recognized courier or certified or registered mail, return receipt requested, and are effective upon actual receipt.

## **13. Jurisdiction (Ohio)**

The validity, interpretation and construction of this Agreement shall be governed by the substantive laws of the State of Ohio. The Parties consent to the jurisdiction of the courts of the State of Ohio and agree they will not contest such jurisdiction or assert that such jurisdiction is not a convenient forum.

## **14. Binding upon Successors**

This Agreement and each of the covenants, terms, provisions, and agreements contained herein shall be binding upon, and inure to the benefit of, the permitted successors, representatives, administrators and assigns of the parties.

## **15. Entire Agreement; Amendment**

This Agreement constitutes the entire understanding and agreement of the parties with respect to the disclosure of Confidential Information, and supersedes all prior and contemporaneous agreements or understandings, inducements or conditions, expressed or implied, written or oral, between the parties relating to the subject matter hereof. Any term or provision of this Agreement may be amended upon the written agreement of both of the parties.

## **16. Severability; Waiver**

The provisions of this Agreement shall be deemed severable, and if a provision of this Agreement is found to be invalid or unenforceable, the remaining provisions shall remain in full force and effect. Failure of a party to enforce at any time any provision of this Agreement or to exercise any right provided for herein shall not in any way be construed to be a waiver of such provision or right or in any way affect the validity of this Agreement or any part hereof, or limit, prevent or impair the right of the party to subsequently enforce such provision or exercise such right.

## **17. Attorney Fees**

Should suit be brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover, as an element of the costs of suit and not as damages, reasonable attorneys' fees to be fixed by the court (including without limitation, costs, expenses and fees on any appeal).

**18. Term of Agreement**

Unless earlier terminated by the written agreement of the parties, this Agreement shall remain in effect for a period of five (5) years from the date of the execution hereof. The obligations of nondisclosure and nonuse shall survive any termination of this Agreement.

**19. Headings**

The headings of this Agreement are inserted for convenience of reference and do not define, limit or describe the scope or intent of this Agreement or any particular provision.

**20. Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be an original and both of which when taken together shall be considered one and the same instrument.

**IN WITNESS WHEREOF**, the parties hereto have entered into this Agreement effective as of the date set forth above.

PINES Engineering, a division of  
Ajax Tocco Magnethermic Corporation

(Company Name)

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

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

Paul Znidar  
Director of Sales and Marketing

Name and Title