



CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT entered into as of the ____ day of _____, 2009 (“Agreement”) by and between **MANITOWOC FOODSERVICE COMPANIES, INC.**, a Nevada Corporation (“Manitowoc”) for itself and its subsidiaries, divisions and affiliates, and _____, for itself and its subsidiaries, divisions and affiliates (“Partner”).

RECITALS:

A. In order to evaluate a possible business relationship between Manitowoc and Partner (the “Potential Business Relationship”), each party may have access to certain proprietary and confidential information relating to the business, products, and financial affairs of the other party.

B. The parties would only be willing to consider the Potential Business Relationships on the condition that each party agrees to maintain in strictest confidence any and all confidential and proprietary information of the other party, including the fact that the parties may be pursuing a possible business relationship.

C. The proprietary and confidential information of each party has been established at great expense to such party and its protection is of critical importance and unique value to such party.

D. Each party has legitimate protectable interests in and to the proprietary and confidential information and such party would suffer great loss and injury if other party would disclose or use or permit to be disclosed or used any of the proprietary or confidential information except as provided in this Agreement.

AGREEMENTS:

IN CONSIDERATION of the foregoing premises and the disclosure of the proprietary and confidential information of each party to the other, the parties covenant and agree as follows:

1. **Mutual Agreement / Reciprocal Covenants.** It is the intention of the parties that this Agreement be and constitute a mutual confidentiality agreement with reciprocal covenants. To facilitate the drafting of this Agreement, each party, when disclosing confidential information to the other shall be referred to as the “Disclosing Party”, and each party, when receiving confidential information from the other shall be referred to as the “Receiving Party”, so that each party covenants to keep confidential and not disclose the Confidential Information of the other, in accordance with this Agreement.

2. **Confidential Information.**

(a) Definition. The “Confidential Information” referred to in and protected by this Agreement shall mean this agreement and all information disclosed to the Receiving Party by the Disclosing Party (including, without limitation, information disclosed prior to the date hereof)

either directly or indirectly in writing, orally, by drawings or inspection of products or equipment, or otherwise or in any way obtained by the Receiving Party relating to the Disclosing Party (whether or not obtained prior, on or subsequent to the date of this Agreement), and regardless of whether or not information is marked as being Confidential.” Such Confidential Information shall include, without limitation, trade secrets (including all trade secrets as defined in the Uniform Trade Secrets Act as proposed in the United States of America and as adopted by any state having jurisdiction over either of the parties and the enforcement of this Agreement), private or secret processes of the Disclosing Party as they exist from time to time, information, technical data, know-how, and other similar information and data, including, but not limited to the Disclosing Party’s, or any of its vendor’s or customer’s past, current and proposed or potential research, discoveries, patent applications, ideas, formulas, manufacturing data, engineering data, test data, materials, costs, tolerances, specifications, products, software, services, equipment, operations, strategies and related technology, developments, inventions, processes, methods, designs, blueprints, drawings, marketing, business plans, customers, suppliers, mailing lists, procurement and sales activities and procedures, promotion, pricing, credit and financial information and techniques. Confidential Information shall include all such information owned, discovered, developed or otherwise acquired by or on behalf of the Disclosing Party prior to, on or after the date hereof.

(b) Presumed Confidential. The parties further acknowledge and agree that all information disclosed by the Disclosing Party to the Receiving Party hereunder (including, without limitation, all information disclosed prior to the date of this Agreement) and all other information to which the Receiving Party may have access by virtue of any such disclosure shall be presumed by the parties to be the Disclosing Party’s Confidential Information except for any particular item with respect to which the Disclosing Party specifically indicates need not be treated as confidential.

(c) Exclusions. Notwithstanding the foregoing or anything to the contrary expressed or implied in this Agreement, “Confidential Information” shall not include any particular item of information as of the time that the Receiving Party provides the Disclosing Party with written evidence that:

(i) such information was in the public domain at the time of the Disclosing Party’s communication thereof to the Receiving Party;

(ii) such information entered the public domain through no act or omission of the Receiving Party subsequent to the time of the disclosure of such information to the Receiving Party;

(iii) such information was rightfully in the possession of the Receiving Party, free of any obligation of confidence on the part of the Receiving Party or any third party from whom such information was obtained by the Receiving Party, prior to the date of disclosure of such information to the Receiving Party by the Disclosing Party;

(iv) such information was supplied to the Receiving Party without restriction, by a third party who is under no obligation to the Disclosing Party or any other party to maintain such information in confidence;

(v) the Disclosing Party, by prior written waiver or consent, agreed that such information would no longer be considered as Confidential Information restricted or protected by this Agreement; or

(vi) such information was independently developed without the use of Confidential Information.

3. **Non-Disclosure.** The Receiving Party covenants and agrees not to disclose, reveal, publish or release the Confidential Information of the Disclosing Party to any third party, and the Receiving Party agrees to use its best efforts to prevent inadvertent disclosure of such Confidential Information to any third party. The Receiving Party agrees to take all reasonable precautions including the establishment of appropriate procedures and disciplines to safeguard the confidential nature of the Disclosing Party's Confidential Information. Without limiting the foregoing, the Receiving Party agrees to treat the Disclosing Party's Confidential Information with at least the degree of care that the Receiving Party treats similar materials of its own. In addition, without the prior written consent of the Disclosing Party, the Receiving Party shall not disclose to any third party either the fact that discussions or negotiations are taking place, or the conditions or other facts with respect to the Potential Business Relationship.

4. **Non-Use.** The Receiving Party agrees that it will not, at any time, directly or indirectly use or make use of any of the Confidential Information of the Disclosing Party or circulate it within its own organization except to the extent necessary for (a) negotiations, discussions and consultations with personnel or authorized representatives of the Disclosing Party relating to evaluating whether to proceed with and/or consummate a Potential Business Relationship; (b) supplying the Disclosing Party with goods or services at its order; (c) preparing bids, estimates and proposals for submission to the Disclosing Party; and (d) any purpose the Disclosing Party may hereafter specifically authorize in writing.

5. **Limited Disclosure to Employees.** Notwithstanding the foregoing, the Receiving Party may disclose certain Confidential Information to its officers and employees strictly on a "need-to-know" basis for the purposes set forth in Section 4 above, provided that all such persons shall be directed and required by the Receiving Party to maintain the Confidential Information in strictest confidence at all times hereafter in accordance with this Agreement. The obligations of the Receiving Party under this Agreement shall be binding upon the affiliates, agents, representatives, employees and officers of the Receiving Party (the "Representatives"). In this regard, the Receiving Party does hereby agree to indemnify the Disclosing Party from any loss sustained by the Disclosing Party or its affiliates as a result of the unauthorized disclosure, release or use of the Confidential Information of the Disclosing Party by any such Representative.

6. **Disclosures Required by Legal Authorities.** In the event that the Receiving Party is required by applicable law, governmental regulation, court order or similar legal process or authority, to disclose any Confidential Information of the Disclosing Party, (a) the Receiving Party shall immediately provide the Disclosing Party with written notice of the same, (b) such disclosure shall only be permitted to the least extent necessary to comply with such requirement, (c) unless the legal process or authority indicates otherwise, the Receiving Party shall make no disclosure without first receiving the Disclosing Party's reasonable directives as to such disclosure, (d) the

Receiving Party shall abide by the Disclosing Party's reasonable directives in making any such required disclosure, (e) the Receiving Party shall use its best efforts to make the required disclosure in such a way as to maintain the confidentiality of such information, and (f) notwithstanding any such required disclosure, unless the legal process or authority indicates otherwise, such information shall continue to be Confidential Information and such disclosure shall not relieve the Receiving Party from its obligations under this Agreement with respect to any other disclosure or use of such information.

7. **No Warranties.** The Disclosing Party makes no representations or warranties as to the accuracy of any of the Disclosing Party's Confidential Information. Any such representations and warranties would be set forth in a separate agreement between the parties. Consequently, except as set forth in such separate agreement (if any), the Disclosing Party will have no liability to the Receiving Party or its personnel or agents for any expense, loss, or action incurred or undertaken by the Receiving Party arising out of the receipt, use, operation or failure of any Disclosing Party Confidential Information.

8. **Embodiments; No License.** All materials, including, without limitation, documents, drawings, models, apparatus, sketches, designs, and lists, furnished to the Receiving Party by the Disclosing Party shall remain the property of the Disclosing Party and nothing contained herein shall be construed as requiring the Disclosing Party to disclose any information or materials (including Confidential Information) to the Receiving Party or as giving the Receiving Party any license or rights with respect to (a) any information or materials which may be disclosed to the Receiving Party including the Disclosing Party's Confidential Information, or (b) any patents, copyrights, trademarks, trade secrets, know-how, other proprietary rights, or other property of the Disclosing Party. Except in strict furtherance of the purposes set forth in Section 4, the Receiving Party shall not make and shall not permit to be made any copies, abstracts or summaries of any Confidential Information of the Disclosing Party without the prior written consent of the Disclosing Party. At the Disclosing Party's request, the Receiving Party shall promptly return to the Disclosing Party (or if the Receiving Party desires it shall promptly destroy and certify in writing that it has done so) all writings, documents, materials and other things owned by the Disclosing Party and/or containing any Confidential Information of the Disclosing Party along with all copies, abstracts and summaries made thereof. The Return or destruction of such documents and materials shall in no way relieve the Receiving Party of any obligation of confidentiality and non-use contained herein with respect to the Confidential Information.

9. **No Obligation.** Unless and until otherwise agreed in definitive agreement setting forth the terms of a business relationship between the parties, neither party has any legal obligation of any kind whatsoever with respect to any Potential Business Relationship or to purchase from or furnish to the other party any products or services, or to enter into any other agreement, including but not limited to, a purchase, development, or technology licensing agreement.

10. **Survival.** This Agreement and the obligations under this Agreement, shall remain in effect and govern all Confidential Information of each of the parties during the period (the "Effective Period") commencing on the date of this Agreement, and continuing during the period that there exists between the parties any business relationship of any nature, and ending upon (a) five years after the termination of all business relationships between the parties, or (b) five years after either party delivers written notice of termination of this agreement to the other. Termination

of this Agreement shall not have any effect upon each party's obligation to maintain the confidentiality of, and not to use, any trade secret of the other party for as long as such trade secrets are protected under the Uniform Trade Secret Act of the State of Wisconsin.

11. **Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Wisconsin.

12. **No Waiver.** No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such waiver or consent shall be in writing and signed by the party against whom enforcement of such waiver or consent is sought. Any consent by either party to, or waiver of, a breach by the other party, whether express or implied, shall not constitute a consent to, waiver of, or excuse for, any other, different or subsequent breach.

13. **Remedies.** The Receiving Party acknowledges that an irreparable injury may result to the Disclosing Party and its business in the event of a breach of any of the covenants of the Receiving Party contained in this Agreement. The Receiving Party also acknowledges and agrees that the damages or injuries which the Disclosing Party may sustain as a result of any such breach are difficult to ascertain and money damages alone may not be an adequate remedy to the Disclosing Party. The Receiving Party therefore agrees that if a controversy arises concerning the obligations of the Receiving Party under this Agreement, such obligations shall be enforceable in a court of equity by a decree of specific performance and the Disclosing Party shall also be entitled to any injunctive relief necessary to prevent or restrain any violation of the provisions of this Agreement. Such relief, however, shall be cumulative and nonexclusive and shall be in addition to any other remedy to which the Disclosing Party may be entitled. This Agreement does not in any way limit the Disclosing Party's rights under the laws of unfair competition, trade secret, copyright, patent, trademark or any other applicable law(s), which are in addition to the rights under this Agreement.

14. **Invalid Provisions.** If any term, condition or covenant of this Agreement or the application of such term, covenant or condition to either party or any circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

15. **Amendment.** No amendment to this Agreement shall be effective unless it is in writing and signed by a duly authorized representative of each of the parties.

16. **Authority.** Each party acknowledges that it has full power and authority to enter into and perform this Agreement, and that the individual or individuals executing this Agreement on behalf of such party have been properly authorized and empowered to enter into this Agreement. EACH PARTY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY IT.

17. **No Partnership.** The parties do not intend and expressly deny that any employment, agency, joint venture, partnership or other such relationship is or has been created between them by this Agreement.

18. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to subject matter hereof, and supersedes any and all prior understandings, arrangements and agreements between the parties hereto, whether oral or written, with respect to the subject matter hereof.

THIS AGREEMENT has been executed by the parties as of the date first above written.

MANITOWOC FOODSERVICE COMPANIES, INC

By: _____
[NAME]
[TITLE]

[PARTNER}

By: _____

Name: _____

Title: _____