



## NON-DISCLOSURE AND NON-COMPETE AGREEMENT

This Agreement, effective as of \_\_\_\_\_ (“Effective Date”), between \_\_\_\_\_ (“Sub Contractor”) and Flinchbaugh Engineering, Inc., (“Company”) 4387 Run Way, York, PA 17406.

Business Purpose. In connection with a business relationship between the parties, each may disclose confidential or proprietary information (“Information”) to the other. Company may utilize Sub Contractor’s services to satisfy ongoing customer requirements. Sub Contractor agrees not to pursue a commercial relationship with any of the Company’s customers where confidential information has been disclosed.

1. Information. For purposes of this Agreement:
  - (a) Information includes, but is not limited to, technical information, trade secrets, know-how, inventions, processes, engineering drawings, customer contacts, pricing, business requirements and other confidential or proprietary information of the providing party.
  - (b) Information does not include anything which the receiving party can demonstrate: i) was in the public domain at the time of disclosure hereunder, or came into the public domain through no act or fault of the receiving party; ii) was already known to the receiving party at the time of its disclosure by the providing party; iii) has been publicly disclosed, or disclosed without obligations of confidentiality, by the providing party; iv) was independently developed by or for the receiving party without the use of the providing party’s Information; or v) properly came into the receiving party’s possession on a non-confidential basis, from a source under no obligation to maintain its confidentiality.
  - (c) The party seeking to exclude anything from the definition of Information shall bear the affirmative burden of establishing, with documentary evidence, any of the conditions in (b) above. No information shall be deemed to be entirely in the public domain merely because any part of it is embodied in general disclosures or because individual features, components, or combinations thereof are, or become, publicly known.
- 2) For a period of five years from the effective date, Sub Contractor shall not:
  - a) Compete directly or indirectly with the Company in the metal machining and assembly field at accounts and projects where confidential information has been shared under this agreement.
  - b) Actively solicit, divert, take away, or induce customers of the Company where Sub Contractor has quoted, manufactured on behalf of company, or otherwise benefited from Company’s disclosure of confidential information.
- 3) Obligation of Confidentiality. Each party agrees that with respect to the other party’s Information, it will: a) keep the Information confidential and not disclose it without the providing party’s permission; b) not duplicate any Information, in whole or in part, except as necessary to the parties’ purposes; c) immediately notify the providing party, in writing, of any unauthorized use or disclosure of Information.



- 4) Reasonable Care. Each party shall take reasonable precautions to prevent the unauthorized disclosure or use of Information provided to it. A party will be considered to have met this obligation if it treats the providing party's Information with the same degree of care with which it safeguards its own confidential and proprietary information from disclosure or misuse, but with no less than reasonable care.
- 5) Compelled Disclosure. Nothing in this Agreement will prevent a receiving party from disclosing Information as required by order of a court or governmental entity of competent jurisdiction; provided that, before complying with such order, the receiving party: a) asserts the confidentiality of the Information sought; and b) immediately notifies the providing party of the order, in writing, so the providing party may seek to prevent or limit any required disclosure. In any event, the receiving party shall disclose only so much of the Information as it is legally compelled to disclose, and will take reasonable steps to obtain assurances that any Information it must disclose will be treated confidentially to the extent possible.
- 6) Term. The "Term" of this Agreement shall be one (1) year from the Effective Date. Only Information provided to a party during the Term will be protected under this Agreement. Either party may terminate this Agreement at any time on thirty (30) days written notice. However, a receiving party's obligations of non-disclosure, and the providing party's rights and remedies including Sub Contractor's non-compete agreement, will survive for a period of five (5) years after the Effective Date.
- 7) Return of Information. After the Term of this Agreement, or at any time upon the request of the providing party, a receiving party shall cease any use of the other party's Information, and shall either return such Information to the providing party or certify in writing that such Information has been destroyed.
- 8) No Implied Rights or License. All right, title, and interest in and to Information shall remain in the providing party. Nothing in this Agreement, nor any action or omission by either party, shall be construed to convey any right, title, or interest in any Information, or any license to use, sell, exploit, copy, or further develop any Information, nor is any license granted or implied under any form of intellectual property in which the providing party has any right, title, or interest. Neither party has any obligation to disclose any Information to the other, nor to negotiate or enter into any agreement or relationship with the other.
- 9) Warranty Exclusion. ALL INFORMATION IS PROVIDED ON AN "AS IS" BASIS, AND THE PROVIDING PARTY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.
- 10) Governing Law; Disputes. This Agreement shall be governed by, and interpreted in accordance with, the laws of the Commonwealth of Pennsylvania (excluding its choice of law principles). In dealing with Information, the parties agree to comply with applicable laws and regulations governing the use and distribution of technical data, including U.S. export laws and regulations.
- 11) Remedies. The parties acknowledge that due to the unique nature of the Information, any actual or threatened breach of this Agreement may cause irreparable injury to the providing party, for which a remedy at law may be inadequate. Therefore, the providing party shall be



entitled to seek equitable or injunctive relief, in addition to other remedies to which it may be entitled at law or equity. In any action for equitable relief, the parties agree to waive any requirement for the posting of a bond or security.

- 12) Miscellaneous. a) This Agreement contains the entire understanding between the parties concerning the exchange and protection of Information, and supersedes all prior or contemporaneous communications, agreements, and understandings between the parties on that subject. This Agreement may not be modified in any manner except by written amendment executed by each of the parties hereto, and no action or omission shall be construed as a waiver unless expressly stated in writing by the waiving party; b) this Agreement is binding on the parties, and their respective officers, directors, employees, agents, successors, and permitted assigns. However, neither party's rights or obligations under this Agreement may be assigned without the express written consent of the other party, and any attempted assignment will be void. Assignment is permitted to any entity acquiring control of a party or of substantially all its assets; c) each party shall bear all the costs and expenses it may incur in complying with this Agreement; d) the provisions of this Agreement which, by their terms, impose continuing obligations and grant continuing rights, including Sections 2, 3, 4, 5, 7, 10, and 11, will survive the expiration or termination of this Agreement; e) if any provision of this Agreement is held invalid or unenforceable, the remaining provisions shall continue in force; and f) the headings used in this Agreement are for convenience only, and shall not be construed as having any binding effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate originals by their duly authorized representatives, as of the day and year first above written.

FLINCHBAUGH ENGINEERING, INC.

By:

By:

Name:

Name:

Title:

Title:

Date:

Date: