

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement ("**Agreement**") is made on _____ by and between _____ ("**Potential Buyer**") and **Industrial Sales and Service Distributor (actual name of company to be disclosed upon signing of document)**, a Michigan corporation ("**Company**").

In connection with the consideration by Potential Buyer of a possible acquisition of the Company (the "**Transaction**"), Potential Buyer has requested access to certain information, properties and personnel of Company. Potential Buyer agrees to the terms and conditions set forth in this Agreement:

- Confidential and Proprietary Nature of the Information.** Potential Buyer acknowledges the confidential and proprietary nature of the Confidential Information (as defined below), agrees to hold and keep the Confidential Information as provided in this Agreement and otherwise agrees to the restrictions and obligations in this Agreement.
- Confidential Information.** As used in this Agreement, the term "Confidential Information" means and includes any and all information concerning the business and affairs of Company, however documented, or which is otherwise obtained from review of Company's documents or property or discussions with Company's Representatives or agents by Potential Buyer or by its Representatives (including current or prospective joint investors or lenders) irrespective of the form of the communication, and also includes all notes, analyses, compilations, studies, summaries and other material prepared by Potential Buyer or Potential Buyer's Representatives containing or based, in whole or in part, upon any information included in the foregoing that have been or may hereafter be disclosed to Potential Buyer by Company or by the directors, officers, employees, agents, consultants, advisors, agents or other representatives, including legal counsel, accountants and financial advisors ("Representatives") of COMPANY.
- Restricted Use of Confidential Information.** Potential Buyer agrees that the Confidential Information (a) will be kept confidential by Potential Buyer and Potential Buyer's Representatives and (b) without limiting the foregoing, will not be disclosed by Potential Buyer or Potential Buyer's Representatives to any person (including current or prospective financing sources) except with the specific prior written consent of an individual to be designated (the "**Company Contact**") or except as expressly otherwise permitted by this Agreement. It is understood that Potential Buyer may disclose Confidential Information to only those of Potential Buyer's Representatives who (a) require such material for the purpose of evaluating the Transaction and (b) are informed by Potential Buyer of the confidential nature of the Confidential Material and the obligations of this Agreement. Potential Buyer further agrees that Potential Buyer and Potential Buyer's Representatives will not use any of the Confidential Information for any reason or purpose other than to evaluate and to negotiate the Transaction. Potential Buyer also agrees to be responsible for enforcing this Agreement as to Potential Buyer's Representatives and to take such action, legal or otherwise, to the extent necessary to cause them to comply with this Agreement and thereby prevent any disclosure of the Confidential Information by any of Potential Buyer's Representatives (including all actions that Potential Buyer would take to protect its own trade secrets and confidential information) except as permitted by this Agreement.
- Nondisclosure of Transaction.** Except as expressly permitted by Section 3 and except as expressly permitted by a definitive agreement with respect to the Transaction, if any, entered into between the parties, neither Potential Buyer or its Representatives will disclose to any person the fact that the Confidential Information has been disclosed to Potential Buyer or Potential Buyer's Representatives or that Potential Buyer or Potential Buyer's Representatives have inspected any portion of the Confidential Information or that any discussions or

negotiations are taking place concerning the Transaction; provided, however, Potential Buyer and its Representatives may make such a disclosure if, and solely to the extent that, COMPANY has already done so or Potential Buyer has received the written opinion of its outside counsel that such a disclosure must be made by Potential Buyer in order that it not commit a violation of law, and further provided, Potential Buyer and its Representatives shall consult with COMPANY, to the extent reasonably practicable, before making any such disclosure, and any such permitted disclosure shall not affect or impair Potential Buyer's obligations of confidentiality with respect to the Confidential Information.

5. Company Contact. All requests by Potential Buyer or Potential Buyer's Representatives for Confidential Information, meetings with Company's personnel or Representatives or inspection of Company's properties must be made to the Company Contact.

6. Exceptions. All of the foregoing obligations and restrictions do not apply to that part of the Confidential Information that Potential Buyer demonstrates (a) was or becomes generally available to the public prior to, and other than as a result of, a disclosure by Potential Buyer or Potential Buyer's Representatives or (b) was available, or becomes available, to Potential Buyer on a non-confidential basis prior to its disclosure to Potential Buyer by Company or Company's Representative, but only if (i) the source of such information is not bound by a confidentiality agreement with Company or is not otherwise prohibited from transmitting the information to Potential Buyer or Potential Buyer's Representatives by a contractual, legal, fiduciary or other obligation and (ii) Potential Buyer provides Company with written notice of such prior possession either (A) prior to the execution and delivery of this Agreement or (B) if Potential Buyer later becomes aware of (through disclosure to Potential Buyer or otherwise through Potential Buyer's work on the Transaction) any aspect of the Confidential Information of which Potential Buyer had prior possession, promptly upon Potential Buyer becoming aware of such aspect.

7. Legal Proceedings. If Potential Buyer or any of Potential Buyer's Representatives becomes legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, civil or criminal investigative demand or similar process) to make any disclosure that is prohibited or otherwise constrained by this Agreement, Potential Buyer or such Representative, as the case may be, will provide Company with prompt notice of such legal proceedings so that it may seek an appropriate protective order or other appropriate relief or waive compliance with the provisions of this Agreement. In the absence of a protective order or Potential Buyer's receiving such a waiver from Company, Potential Buyer or its Representative is permitted (with Company's cooperation but at Potential Buyer's expense) to disclose that portion (and only that portion) of the Confidential Information that Potential Buyer or the Representative is legally compelled to disclose, provided, however, that Potential Buyer and Potential Buyer's Representatives must use reasonable efforts to obtain reliable assurance that confidential treatment will be accorded by any person to whom any Confidential Information is so disclosed.

8. Return or Destruction of Confidential Information. If Potential Buyer determines that it does not wish to proceed with the Transaction or if Company notifies Potential Buyer that it does not wish Potential Buyer to consider the Transaction any further, then (a) Potential Buyer (i) shall promptly deliver to the Company Contact all documents or other materials disclosed by Company or any of Company's Representatives constituting Confidential Information, together with all copies and summaries thereof in the possession or under the control of Potential Buyer or Potential Buyer's Representatives and (ii) will destroy materials generated by Potential Buyer or Potential Buyer's Representatives that include or refer to any part of the Confidential Information, without retaining a copy of any such material or (b) alternatively, if the Company Contact requests or gives his prior written consent to Potential Buyer's request, Potential Buyer will destroy all documents or other matters constituting Confidential Information in the

possession or under the control of Potential Buyer or Potential Buyer's Representatives. Any such destruction pursuant to the foregoing must be certified by an authorized officer of Potential Buyer in writing to Company (and such certification shall include a list of the destroyed materials).

9. **No Obligation to Negotiate or Enter a Transaction.** Company reserves the right, in its sole discretion, to reject any and all proposals made by Potential Buyer or Potential Buyer's Representatives with regard to a Transaction and to terminate discussions and negotiations with Potential Buyer and Potential Buyer's Representatives at any time. Neither Potential Buyer nor Company shall have rights or obligations of any kind whatsoever with respect to the Transaction by virtue of this Agreement other than for the matters herein. Without limiting the preceding sentences, nothing in this Agreement requires either Potential Buyer or Company to enter into a Transaction or to negotiate such transaction for any specified period of time.

10. **No Representations or Warranties.** Company retains the right to determine, in its sole discretion, what information, properties and personnel it wishes to make available to Potential Buyer, and neither Company nor its Representatives make any representation or warranty (express or implied) concerning the completeness or accuracy of the Confidential Information, except pursuant to representations and warranties that may be made in a definitive agreement for the Transaction, if any, between the parties.

11. **Remedies.** Potential Buyer agrees to indemnify and hold Company and its Shareholders and its Representatives harmless from any damages, loss, cost or liability (including legal fees and the cost of enforcing this indemnity) arising out of or resulting from any disclosure by Potential Buyer or Potential Buyer's Representatives of the Confidential Information other than as expressly permitted by this Agreement. In addition, because an award of money damages (whether pursuant to the foregoing sentence or otherwise) would be inadequate for any breach of this Agreement by Potential Buyer or Potential Buyer's Representatives, and any such breach would cause Company irreparable harm, Potential Buyer also agrees that, in the event of any breach or threatened breach of this Agreement, Company will also be entitled, without the requirement of posting a bond or other security, to equitable relief, including injunctive relief and specific performance. Such remedies will not be the exclusive remedies for any breach of this Agreement but will be in addition to all other remedies available at law or equity to Company.

12. **Non-Circumvention** Potential Buyer acknowledges that Broker is the only procuring cause in any transaction that may arise between Potential Buyer and Company in the sale of assets or licensing for Company. Further, Potential Buyer agrees not to circumvent nor go around Broker to complete transaction with Company.

13. **Miscellaneous.**

a. **Person.** The term "person" means any individual, corporation (including any nonprofit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union or other entity or governmental body.

b. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect. If any of the covenants or provisions of this Agreement are determined to be unenforceable by reason of its extent, duration, scope or otherwise, then the parties contemplate that the court making such determination shall reduce such extent, duration, scope or other provision and enforce them in their reduced form for all purposes contemplated by this Agreement.

c. Costs. Potential Buyer agrees that if it is held by any court of competent jurisdiction to be in violation, breach or nonperformance of any of the terms of this Agreement, then it will promptly pay to Company all costs of such action or suit, including reasonable attorneys' fees.

d. Section Headings. Construction. The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding Section or Sections of this Agreement unless otherwise specified. All words used in this Agreement will be construed to be of such gender or number as the circumstances require.

POTENTIAL BUYER:

Corporate Name (if any)

By: _____

Its: _____

Please Print Name _____

SELLER

COMPANY: _____
a Michigan corporation

By: _____

Its: _____