

## CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement ("**Agreement**") is made on \_\_\_\_\_ by and between \_\_\_\_\_ ("**Potential Buyer**") and **Metal Fabricating Company** (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:

- 1. 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.
- 2. 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.
- 3. 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.
- 4. 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.
- 5. 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

6. **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.

7. **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).

8. **No Obligation to Negotiate or Enter a Transaction.** Company agrees to provide all information, properties and personnel to Potential Buyer that Potential Buyer deems necessary in normal due diligence proceedings to make an informed decision on whether to move forward or not into a Transaction Agreement. Company represents and warrants that any and all information, irrespective of the form of communication, to include but not limited to, written, verbal or analysis, to be complete, accurate and up to date.

9. **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.

10. **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.

11. **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.

## **12. 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, Potential Buyer agrees to cease and desist with such violation, breach or non-performance.

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: \_\_\_\_\_