



CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (this “**Agreement**”), which is effective as of the date of the last signature below (the “**Effective Date**”), is executed by and between Douglas Dynamics, L.L.C. (the “**Disclosing Party**”), and _____ (the “**Receiving Party**”). Douglas Dynamics, L.L.C. includes all subsidiary companies including Fisher, L.L.C., Trynex International, L. L. C., Henderson Products, Inc. and Dejana Truck Equipment. The Disclosing Party and the Receiving Party are collectively referred to as “**Parties**” and respectively as a “**Party**”.

RECITALS

- A. The Disclosing Party and the Receiving Party desire to discuss or enter into a business relationship pursuant to which the Receiving Party will supply goods or services to the Disclosing Party or the Receiving Party will distribute goods or services on behalf of the Disclosing Party (in either case, the “**Business Relationship**”);
- B. In the course of the Business Relationship the Receiving Party acknowledges that it may have access to certain Confidential Information (as hereinafter defined) of the Disclosing Party;
- C. The Receiving Party agrees that it is critical that the Disclosing Party’s Confidential Information be kept confidential and not be used in any manner other than as contemplated by this Agreement in furtherance of the Business Relationship; and
- D. The obligations of the Receiving Party hereunder were and are important to the Disclosing Party in the decision of the Disclosing Party to enter into the Business Relationship.

NOW, THEREFORE, the Parties agree as follows:

1. Confidential Information

- a. Subject to Section 2 below, “**Confidential Information**” shall mean any and all information, materials and/or documents disclosed by the Disclosing Party in furtherance of the Business Relationship that the Disclosing Party believes are either non-public, confidential or proprietary in nature, as indicated by a “Confidential” marking for written materials, or, if disclosed orally, a written summary of such information sent to the Receiving Party within thirty (30) days of oral disclosure designating the orally disclosed information as “Confidential.”

- b. Confidential Information shall specifically include without limitation any and all drawings, test reports, CAD data, prototypes of parts, development contracts, organizational charts and any other internal information of the Disclosing Party, quote and cost information, samples, processing parameters, pricing, supply sources, sales and marketing information, studies and plans, customer lists, business and financial information, manufacturing equipment and processes, laboratory equipment and processes, software, source code, trade secrets, know how, inventions, ideas, specifications, volumes, quality control equipment and processes, and any and all analyses, compilations, data, studies or other information, materials and/or documents prepared or derived, in whole or part, therefrom.
- c. As used herein, the terms “Disclosing Party” and “Receiving Party” encompass their respective parent companies, subsidiaries, branches, divisions, affiliates, directors, officers, agents and employees.

2. Exceptions to Confidential Information

- a. Confidential Information shall not include information, materials or documents that:
 - (i) are or become generally available to the public other than as a result of disclosure by the Receiving Party in violation of this or another obligation of confidentiality,
 - (ii) become available from a third-party entitled to disclose such information, materials or documents;
 - (iii) were known to the Receiving Party before disclosure by the Disclosing Party, as evidenced by written records, or
 - (iv) the Receiving Party can show by written records was developed by it or its consultants or agents independently of and without reference to the Confidential Information received from the Disclosing Party hereunder.
- b. Confidential Information shall not be deemed to be public within this Section 2 merely because such information is embraced by more general information in the public domain or in the Receiving Party’s possession or by a single disclosure containing part but not all of the information. Disclosure of Confidential Information as required by law or court order to any government or agency thereof shall not be deemed a breach of the Agreement and the Receiving Party shall promptly notify the Disclosing Party of any such required disclosure.

3. Disclosure and Use of Confidential Information

- a. The Receiving party’s hereby covenants and agrees that Confidential Information of the Disclosing party’s will be kept confidential, will not be disclosed or used by the Receiving party’s other than in furtherance of the Business Relationship, and will be disclosed to and used by only those employees, consultants or agents of the Receiving Party who have a need to know such information to assist the

Receiving Party in furthering the Business Relationship and who have first agreed in writing to be bound by the terms of this Agreement.

- b. The Receiving Party will instruct all persons to whom it discloses any Confidential Information of the Disclosing Party as permitted under the provisions of Section 3.a. above, that they are not to disclose the Confidential Information to any third party (including but not limited to customers, suppliers, contractors of the Receiving Party). Upon the written request of the Disclosing Party, the Receiving Party will identify all persons to whom the Confidential Information has been disclosed, and will obtain written confidentiality agreements from such persons, which agreements will be in a form similar to this Agreement. The Receiving Party shall be responsible to the Disclosing Party for any breach hereof by their respective employees, consultants or agents to which it has disclosed the Confidential Information of the Disclosing Party.
- c. The Receiving Party shall not analyze, attempt to analyze or have analyzed any Confidential Information of the Disclosing Party for the purpose of obtaining information relating to the composition of such Confidential Information, or otherwise perform, attempt to perform or have performed any reverse engineering or alteration on the Confidential Information of the Disclosing Party.

4. **Standard of Protection**

The Receiving Party shall use efforts to protect the Confidential Information commensurate with those that it employs for the protection of its own corresponding sensitive information, which shall in any event be no lesser a standard than the type of efforts that would be taken by a careful business for the protection of its commercial and technical secrets.

5. **Intellectual Property**

In this Agreement, “**Intellectual Property**” shall mean any and all (by whatever name or term known or designated) tangible and intangible intellectual and industrial property rights now in existence or hereafter existing anywhere in the world including without limitation, any invention, discovery, design or utility model rights, any copyright, trade mark, service mark, trade name, mask works, database right, commercial or Confidential Information, know-how or trade secret, and any other rights of a similar nature or effect whether or not any of the same are registered or patented under the laws of any country or international agreement together with the right to claim priority under the laws of any country or international agreement.

6. **Ownership of Intellectual Property and Confidential Information**

- a. All materials, information or other documents, whether Confidential Information or not, and all copies, summaries and other tangible embodiments of all or parts thereof created by the Receiving Party shall be and shall remain the property of

the Disclosing Party. No license is granted to the Receiving Party by this Agreement other than as expressly stated herein.

- b. The Receiving Party shall promptly return or destroy and cease to use all materials, information or other documents constituting any portion of the Confidential Information or the Intellectual Property if requested in writing by the Disclosing Party and shall otherwise handle such materials in accordance with its document retention policy or customary document retention practices.
- c. It is acknowledged that any Intellectual Property right in the whole and every part of the Confidential Information of the Disclosing Party belongs to the Disclosing Party, and that Intellectual Property right is protected under intellectual property right laws and international treaties of the United States of America, the People's Republic of China and other countries, and that illegal reproduction of the materials or documentation can result in civil damages and criminal penalties, in addition to other remedies available under this Agreement.
- d. The Receiving Party further agrees to promptly disclose to the Disclosing Party any and all inventions, improvements or discoveries (the “**Improvements**”) conceived or made, whether solely or jointly with others, with the use of Confidential Information, and to assign, and does hereby assign, all right, title and interest in and to all such Improvements to the Disclosing Party, and to assist the Disclosing Party in perfecting title in and to such inventions and in the preparation, filing and prosecution of any patent applications therefore, including executing any and all documents appurtenant thereto.

7. **Rights and Remedies Upon Breach**

If the Receiving Party hereto breaches or threatens to commit a breach of any provision of this Agreement, then the Disclosing Party shall have the following rights and remedies, each of which rights and remedies shall be independent of the other and severally enforceable, and all of which rights and remedies shall be in addition to, and not in lieu of, any other rights and remedies available to the Disclosing Party under law:

- a. The right and remedy to have this Agreement specifically enforced by any court of competent jurisdiction, including, without limitation, the right of entry against the Receiving Party of restraining orders and injunctions against violations, threatened or actual.
- b. The right to require the Receiving Party to compensate the direct or indirect damages incurred by the Disclosing Party as the result of violating any provision of this Agreement.
- c. Reimbursement for all costs and expenses, including reasonable attorney fees, to the Disclosing Party in any action brought to enforce any term(s) of this Agreement.

8. Representations and Warranties

The Disclosing Party represents and warrants that it is the sole and exclusive owner of its Confidential Information and has the sole and exclusive right to disclose and use the Confidential Information in its business; further represents and warrants that there are no proceedings instituted, pending or threatened which challenge its ownership of or right to disclose or use the Confidential Information. Otherwise, the Disclosing Party makes no representation or warranty about the Confidential Information disclosed to the Receiving Party, including but not limited to the accuracy thereof.

9. Entire Agreement; Modification

This Agreement sets forth the entire agreement and understanding of the Parties concerning the subject matter hereof and supersedes all prior agreements, arrangements and understandings relative to said subject matter. No term or provision hereof may be changed, modified, terminated or discharged, in whole or in part, except by a writing which is dated and signed by all Parties hereto. No waiver of any of the provisions of this Agreement or of any of the rights of a Party hereto shall be effective or binding unless in writing and signed by the Party claimed to have given or consented to such waiver.

10. Binding Effect of Provisions; Assignment

The terms and provisions of this Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective successors and assigns. Each Party represents and warrants that the person signing below has the authority to enter into a binding contract on behalf of the Party.

11. Applicable Law and Dispute Resolution

This Agreement shall be governed by and construed in accordance with the laws and regulations of the State of Wisconsin. All disputes or breach of this Agreement shall first be submitted to non-binding mediation to address any controversy or claim arising out of or relating to this agreement or relating to any changes or addendums to this agreement. The mediation shall be conducted by and according to Mediation Rules and Procedures of the State of Wisconsin before a mutually selected mediator, or if the parties can not agree upon a mediator, by mediation administered by the American Arbitration Association under its Commercial Mediation Rules. The parties shall be bound by the terms and conditions as set forth in the Settlement Agreement that will be executed by the parties. Both parties shall share the cost of the mediation process although personal attorneys and witnesses or specialists are direct responsibility of each party and their fees and expenses will be the responsibility of the individual parties.

12. Term of Agreement

This Agreement shall remain in effect indefinitely with respect to all Confidential Information and Intellectual Property relating to or arising out of the Business Relationship.

This Agreement has been executed by each Party's respective authorized representative as of the dates set forth below.

The Disclosing Party

The Receiving Party

Douglas Dynamics, L.L.C.

By: _____

By: _____

Name:

Name:

Title:

Title:

Date:

Date: