

MUTUAL NONDISCLOSURE AGREEMENT

This NONDISCLOSURE AGREEMENT, dated as of _____, 20____
is between

Air Barrier Association of America, Inc.

(hereinafter "ABAA")

having its principal place of business at
1600 Boston-Providence Hwy, Walpole, MA, 02081

and

(hereinafter "Disclosing Party")

having its principal place of business at

BACKGROUND

- A. The Air Barrier Association of America Inc. (ABAA) includes references to different manufacturer's materials on the website of ABAA and in various documents produced by ABAA.
- B. To include a specific material from a manufacturer, ABAA requires a copy of test reports or other technical information that is proprietary to that manufacturer; and
- C. Each of the parties hereto wishes to ensure that all such trade secrets, know-how and confidential information are treated in a strictly confidential manner by the party receiving such information.

TERMS

NOW THEREFORE, in consideration of the premises and covenants contains herein, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Confidential Information. The confidential information disclosed under this Agreement is described as Disclosing Party's business and technical information that is not generally known to the public and includes, but is not limited to, product specifications and designs, technical data, manufacturing materials, production machinery, plant layout and design,

quality assurance methods, discoveries, inventions, know-how, copyrights, concepts and ideas, whether patentable or not, including without limitation the nature and result of research, development and manufacturing, computer software, source and object codes, flowcharts, algorithms, report forms, compilers, design concepts and related documentation, manuals, business operations, pricing and cost data, customer lists, supplier lists, marketing information, marketing plans, financial information, product samples and any and all other records and information (collectively, "Confidential Information"). Any information disclosed by Disclosing Party to ABAA, whether written or oral, in whatever form or medium shall be considered Confidential Information subject to Section 5.

2. Nondisclosure. Except with the prior written consent of the Disclosing Party or as specifically provided herein, ABAA shall not disclose or permit the disclosure to any third party any Confidential Information.
3. Restricted Use of Confidential Information. ABAA shall limit the dissemination of any Confidential Information to its affiliates / service providers and their representatives who need to know such information and who are informed of their obligation to maintain the confidential nature of such information solely for the purposes of assisting ABAA fulfill its function. ABAA agrees to be responsible for any breach of their Agreement by its affiliates or service providers.
4. Permitted Exception. ABAA shall not be under any obligation under this agreement with respect to any Confidential Information of the Disclosing Party that:
 - (a) is or becomes generally available to the public other than as a result of a breach of this Agreement by the ABAA or any of its affiliates or representatives;
 - (b) is known to the ABAA or any of its affiliates or representatives at the time of disclosure;
 - (c) was received by the ABAA or any of its affiliates after the time of disclosure hereunder on a non-confidential basis from a third party who had a legal right to make use of such Confidential Information.In order to rely on any of the foregoing permitted exceptions, the ABAA shall immediately advise the Disclosing Party upon receipt of any Confidential Information, that a permitted exception applies and shall provide reasonable details of such permitted exception.
5. No Grant of License. Nothing in this Agreement shall be constructed as granting or implying any right or license to use any Confidential Information disclosed hereunder, and all Confidential Information disclosed or otherwise acquired by the ABAA shall remain the property of the Disclosing Party.
6. Return of Information. Upon the discontinuance of this agreement, ABAA shall immediately discontinue the reference of these materials and upon the request of the Disclosing Party, promptly, but at least within ninety (90) days of request, return or destroy all written or other tangible materials that contains any Disclosing Party's Confidential Information that were made available or supplied to ABAA by the Disclosing Party (including all copies or reproductions of such materials). Any materials prepared by ABAA or any of its affiliates or representatives that include Confidential Information or that contain references to the Confidential Information shall be destroyed, and such destruction shall be certified in writing to the Disclosing Party by an authorized representative of the ABAA who has supervised the destruction.
7. Test Materials and Samples. All test materials and samples furnished by the Disclosing Party shall remain the property of the Disclosing Party. In the event that ABAA performs or has performed tests and experiments on the materials or samples provided by the Disclosing Party, ABAA shall provide a copy of the tests reports to the Disclosing Party.

All test and performance results shall be Confidential Information subject to the terms of this Agreement.

8. Disclosure Required by Law. In the event that the ABAA becomes legally compelled under applicable law or court order to disclose any Confidential Information, ABAA agrees to provide the Disclosing Party with prompt notice of such request(s) so that the Disclosing Party may seek an appropriate protective order or other appropriate remedy and/or waive ABAA's compliance with the provisions of this agreement. If the Disclosing Party has not obtained a protective order or other appropriate remedy within a reasonable period of time after notice by the ABAA, or if the Disclosing Party waives compliance with the provisions of this Agreement, ABAA agrees to furnish only that portion of the Confidential Information that, in the reasonable opinion of ABAA's counsel, is legally required to be furnished.
9. Relationship of Parties. It is not the intention of the parties to this Agreement to create, nor shall this Agreement be constructed as creating any joint venture, partnership or agency relationship between the parties so as to render either party liable to the other party for anything more than the performance of its respective obligations hereunder.
10. Equitable Relief. ABAA acknowledges that its unauthorized disclosure or use of the Disclosing Party's Confidential Information will have a material adverse effect on the disclosing party for which damages may be difficult to ascertain. ABAA therefore agrees that in addition to and not in lieu of any other rights or remedies the Disclosing Party may have, the Disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of this Agreement.
11. Other Remedies. Each party retains all rights and remedies afforded under the patent and other statutory laws of any relevant jurisdiction and of the common law, including without limitation any laws designed to protect proprietary or confidential information.
12. No Assignment. ABAA shall not assign any of its rights or obligations hereunder, and any such purported assignment shall be null and void.
13. Notices. All notices or communications required or permitted under this Agreement shall be in writing and shall be sent by registered or certified mail, postage prepaid, or by telecopier, or recognized overnight carrier, to the intended recipient at the address and attention designated above or to such other address or attention as the ABAA may have designated in writing. Any such notice or communication shall be deemed delivered as follows: if hand delivered, on the day so delivered; if mailed, three business days after the date so mailed; if telecopied, upon written confirmation by the sending machine of effective transmission or upon telephone confirmation of receipt (provided that a confirmation copy is sent by recognized overnight carrier); and if sent by recognized overnight courier, the next business day.
14. No Waiver. No waiver of any provision, breach, or default under this Agreement shall be deemed a waiver of any subsequent provision, breach, or default, nor shall any waiver constitute a continuing waiver.
15. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
16. Entire Agreement; Amendments. This Agreement sets forth the entire understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements or undertakings, whether written or oral. This Agreement may not be amended, supplemented or rescinded except by a written instrument duly executed by each of the parties hereto.

17. Term and Termination. This Agreement shall expire or terminate 30 days following written notification from either party to the other party. Each party agrees that all of its obligations undertaken under this agreement and all of its rights and remedies shall survive and continue with respect to Confidential Information disclosed under this Agreement after termination or expiration of this Agreement for any reason: (a) with respect to Confidential Information, for a period of ten (10) years from the date of its disclosure under this Agreement; and (b) with respect to trade secrets, for so long as such information retains its status as a trade secret under applicable law.
18. Execution. This Agreement shall be executed in duplicate and shall be effective as of the date first written above.
19. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument. This Agreement shall become binding only when each party has executed and delivered to the other party hereto one or more counterparts.
20. Governing Law. This Agreement shall be governed by and constructed and enforced in accordance with the laws of the Commonwealth of Massachusetts, without giving effect to its principles or conflicts of law.

IN WITNESS OF WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the date first written above.

**AIR BARRIER ASSOCIATION OF
AMERICA, INC.**

“Manufacturer Licensee”

Per: _____

Per: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

and

Per: _____

Name: _____

Title: _____

Date: _____