



**Midstate**  
**Tool & Supply, Inc.**

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## CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY & NON DISCLOSURE AGREEMENT (the "Agreement"), dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Midstate Tool & Supply, a Pennsylvania Corporation. Its principal place of business located at 121 Halbritter Drive, Altoona PA 16601, (hereinafter "Midstate") and \_\_\_\_\_ (hereinafter "\_\_\_\_\_") is entered into by the parties, who agree as follows:

### 1. Principal Definitions

The term "Disclosing Party" shall mean any party hereunder which discloses "Confidential Information" (as defined in Paragraph 2 below) to "Receiving Party," which shall mean any part hereunder receiving Confidential Information from a Disclosing Party. Any party to this Agreement for purposes of this Agreement shall be considered as a Receiving Party and a Disclosing Party as the context of this Agreement shall require.

### 2. Confidential Information, Representatives

Midstate is prepared to make available to \_\_\_\_\_ certain confidential, non-public, or proprietary information, and \_\_\_\_\_ may make available to Midstate certain confidential, non-public, or proprietary information (collectively the "Confidential Information"). The term "Confidential Information" means and includes any all of the items, regardless of form, that is disclosed to the Receiving Party, including, but not limited to, information about its business and affairs, business discussions and negotiations, products, data, specifications, know-how, processes, designs, samples, program materials, ideas, operating information, marketing and sales information, customer list, customer information and requirements, vendor information, pricing, supplier lists, business plans, analyses, studies, associate personnel information and software and programs. As a condition to the Confidential Information being furnished to the Receiving Party and its directors, officers, partners, employees, agents, advisors, attorneys, accountants, consultants, bankers, and financial advisors (collectively "Representatives"), the Receiving Party agrees to treat the Confidential Information in accordance with the provisions of this Agreement and to take, or to abstain from taking, certain other actions hereinafter set forth.

### 3. Excluded Information

The term "Confidential Information" shall not include information that: (i) is or becomes publicly available other than as a result of acts by the Receiving Party in breach of this Agreement; (ii) is in the Receiving Party's possession before disclosure by the Disclosing Party or is independently derived by the Receiving Party without the aid, application or use of the Confidential Information, as to which the Receiving Party shall have the burden of proof; (iii) is disclosed to the Receiving Party by a third party on a non-confidential basis; or (iv) counsel for the Receiving Party advises must be disclosed by law.

### 4. Non-Disclosure of Confidential Information

The Receiving Party and its Representatives shall use the Confidential Information solely for the purpose of the parties considering a proposed transaction, provided that nothing contained in this Agreement shall be construed, by implication or otherwise, as an obligation to enter into any further agreement relating to the Confidential Information. The Receiving Party shall keep the Confidential Information confidential and shall not otherwise disclose or use any of the Confidential Information in any manner whatsoever; provided, however, that (i) the Receiving Party may make any disclosure of information contained in the Confidential Information to which the Disclosing Party gives it prior written consent, and (ii) any information contained in the Confidential Information may be disclosed to the Receiving Party's Representatives who need to know that information for the purpose agreed to between the parties and who agree to be bound by the terms of this Agreement. The Receiving Party shall be responsible for any breach of this Agreement by any of its Representatives. In protecting such Confidential Information from disclosure, the Receiving Party shall use at least the same level of care that the Receiving Party uses to protect its own proprietary information of a similar nature, but in no event shall the Receiving Party use less than reasonable care in protecting the Confidential Information.

### 5. Nondisclosure

Without the prior mutual written consent of parties, neither party nor their Representatives shall disclose to any other person and/or organization that it has received the Confidential Information and/or reveal any of the terms of engagement between the parties which prompts the exchange of Confidential Information.

6. Return or Destruction of Confidential Information

Promptly upon the written request of the Disclosing Party, the Receiving Party will return all copies of the Confidential Information to the Disclosing Party. Further, upon the written request of the Disclosing Party, all notes, studies, reports, memoranda, and other documents prepared by the Receiving Party or its Representatives that contain or reflect the Confidential Information shall be returned to the Disclosing Party or destroyed, with such destruction certified by the Disclosing Party by an appropriate office of the Receiving Party.

7. Subpoena or Court Order

If the Receiving Party or anyone to whom it discloses the Confidential Information receives a request to disclose all or any part of the Confidential Information under the terms of a subpoena or other issued by a court of competent jurisdiction or by a government agency, the Receiving Party shall: (i) promptly notify the Disclosing Party of the existence, terms, and circumstances surrounding such a request; (ii) consult with the Disclosing Party on the advisability of taking steps to resist or narrow that request; (iii) if disclosure of that Confidential Information is required, furnish only such portion of the Confidential Information as the Receiving Party is advised by counsel is legally required to be disclosed; and (iv) cooperate with the Disclosing Party, at the Disclosing Party's expense, in its efforts to obtain an order or other reliable assurance of confidential treatment of that portion of the Confidential Information that is required to be disclosed.

8. Disclaimer of Warranty

Neither the Disclosing Party nor its Representatives has made any representation or warranty regarding the accuracy or completeness of the Confidential Information. The Receiving Party agrees that neither the Disclosing Party nor its Representatives shall have any liability to the Receiving Party or any of the Representatives results from the Receiving Party's use of the Confidential Information.

9. Remedies

The Receiving Party acknowledges that if this Agreement is breached, the Disclosing Party could not be made whole by monetary damages. Accordingly, the Disclosing Party, in addition to any other remedy to which it may be entitled by law or in equity, shall be entitled to an injunction to prevent breaches of this Agreement, and to an order compelling specific performance of this Agreement. The Receiving Party shall indemnify and reimburse the Disclosing Party for all costs and expenses, including reasonable attorney's fees, incurred by the Disclosing Party if it successfully enforces the obligations of the Receiving Party and its Representatives hereunder.

10. Survival

All obligations of this Agreement shall continue in full force and effect and survive the termination of this Agreement for a period of three (3) years after the execution of this Agreement.

11. Entire Agreement

This Agreement represents the entire understanding and agreement of the parties hereto and may be modified or waived only by a separate writing expressly so modifying or waiving this Agreement. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile or electronically scanned signatures shall have the same effect as original signatures.

12. No Waivers

No failure or delay by the Disclosing Party in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other of further exercise thereof or the exercise or any right, powers, or privilege hereunder.

13. Governing Law

This Agreement shall be governed and construed in accordance with the internal laws of the State of Pennsylvania, without regard to conflict or choice of laws principles. In the event any legal action becomes necessary to enforce or interpret the terms of this Agreement, the parties hereto agree that such action will be brought in the courts of Pennsylvania, and that the parties hereby submit to the jurisdiction and venue of said courts.

14. Captions

The captions contained in this Agreement are for convenience only and shall not affect the construction or interpretation of any provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals to be effective on the day and year first written.

**Disclosing Party**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**Receiving Party**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_