

# MUTUAL CONFIDENTIALITY AGREEMENT

(Also known as Non-Disclosure Agreement, NDA)

**AGREEMENT between:**

**Company:**

**Snap-on Company:**

and

(hereinafter referred to as "Snap-on")

(hereinafter referred to as "Company")

**WHEREAS**, each party represents that it has developed and possesses certain information including technical and/or business information, some of which it considers to be Confidential ("Confidential Information").

**WHEREAS**, the parties desire to evaluate the possibility of entering into a business arrangement relating to

(the "Purpose").

**WHEREAS** during the course of their dealings with each other in connection with such activities, the parties may periodically disclose to one another Confidential Information only in support and furtherance of the Purpose.

NOW THEREFORE, the parties hereto agree to the following:

1. All information to be treated as Confidential Information shall be marked by the disclosing party as "Confidential." Information disclosed in oral or visual form that is to be treated as Confidential Information shall be identified as "Confidential" at the time of disclosure and shall be confirmed as Confidential Information by written notice within twenty (20) days after disclosure.
2. Each party shall disclose ("Disclosing Party") only as much of its Confidential Information to the other party ("Recipient") as is necessary to further the Purpose.
3. Confidential Information shall be used only for the Purpose. Recipient agrees to keep in confidence and not disclose to any third party any Confidential Information received from the Disclosing Party during the course of their dealings with each other. Confidential Information may be disclosed to employees of Recipient who have a need to know such information and who have legally enforceable nondisclosure obligations to the Recipient. Confidential Information shall not be reproduced in

any form except as required to accomplish the Purpose.

With Snap-on's prior written approval, a Company that is also a first tier supplier, may disclose the confidential Information to its sub-supplier (contractor) who have a need to know such information and who have signed legally enforceable nondisclosure obligations at least as restrictive as the terms of this Agreement.

4. Nothing in this Agreement shall require either party to receive or accept disclosure of Confidential Information from the other.
5. The Recipient's obligation to maintain the Disclosing Party's Confidential Information in confidence does not apply to any portion of such Confidential Information that, as a whole,
  - a. Is approved for release by written authorization of the Disclosing Party; or
  - b. Is or becomes public knowledge through no wrongful act of the Recipient; or
  - c. Is already known by the Recipient, as documented by Recipient's records; or
  - d. Is lawfully obtained by the Recipient from third parties; or
  - e. Is developed by the Recipient independently of the Disclosing Party's Confidential Information; or
  - f. Is disclosed to others by the Disclosing Party without a confidentiality restriction; or
  - g. Is disclosed pursuant to law, regulation or lawful order or process. In such event, the Recipient shall promptly notify the Disclosing Party of the disclosure requirement, to permit the Disclosing Party to oppose or limit such disclosure.

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6. All Confidential Information is provided "AS IS," without warranty or guarantee of any kind as to its accuracy, completeness, operability, fitness for particular purpose, or any other warranty, express or implied. Neither party shall be liable to the other for any damages, loss, expense or claim of loss arising from use of or reliance on the Confidential Information of the other.
7. The terms of confidentiality under this Agreement shall not be construed to limit either party's right to independently develop or acquire products without the use of the other party's Confidential Information.
8. This Agreement and the fact that the parties are cooperating and that discussions are taking place are deemed to be Confidential Information.
9. This Agreement shall have a term of five (5) years. Each party's obligation hereunder (as a recipient) to maintain in confidence any specific item of Confidential Information received from the other party shall terminate five (5) years after disclosure of the specific item of Confidential Information, except for trade secret information, which shall not be disclosed for so long as the disclosing party maintains it as a trade secret.
10. Nothing contained in this Agreement shall be construed as preventing or prohibiting either party from disclosing its own Confidential Information to third parties.
11. Upon the request of the Disclosing Party, the Recipient will promptly return or destroy the Confidential Information it received, in whatever form, without retaining any copies or excerpts thereof, provided, however, that the Receiving Party's counsel may retain one copy of the returned or destroyed items for archival purposes.
12. If Company is a permanent resident of the U.S., or a corporation, partnership or entity existing under the laws of the U.S., Snap-on and Company shall attempt amicably to resolve any controversy, dispute or difference arising out of any dealings under this Agreement, failing which either party may initiate litigation. Litigation may be brought only in the U.S. District Court for the Eastern District of Wisconsin, Milwaukee Division or, if such court lacks subject matter jurisdiction, in a Wisconsin state court in Kenosha County. The parties submit to the jurisdiction of said courts and waive any defense of *forum non conveniens*. The parties waive all rights to jury trials.
13. If Company is a permanent resident of a country other than the U.S., or is a corporation, partnership or entity existing under the laws of any country other than the U.S., the parties shall attempt to amicably resolve any controversy, dispute or difference arising out of any dealings under this Agreement. If those efforts are unsuccessful, then the parties agree any controversy, dispute or difference shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (the "ICC Rules") by one or more arbitrators appointed in accordance with such ICC Rules. The place for arbitration shall be Milwaukee, Wisconsin, U.S. and proceedings shall be conducted in the English language. The award shall be final and binding on both Snap-on and Company, and the parties hereby waive the right of appeal to any court for amendment or modification of the arbitrator's award. Any claim shall be made by filing a demand for arbitration within two (2) years following the aggrieved party's first knowledge of the occurrence first giving rise to the claim. Each party shall bear all of its own costs of arbitration, except that the fees of the arbitrator shall be divided equally between the parties. The arbitrator shall have no authority to amend or modify the terms of this Agreement or to award punitive or exemplary damages, and the award may be enforced by judgment.
14. Each party shall have the right to seek from the U.S. District Court for the Eastern District of Wisconsin, Milwaukee Division or, if such court lacks subject matter jurisdiction, in a Wisconsin state court in Kenosha County, provisional remedies including, but not limited to, temporary restraining orders or preliminary injunctions at any time, whether before, during, or after arbitration. The parties submit to the jurisdiction of said courts and waive any defense of *forum non conveniens*. Seeking any such provisional remedies shall not be deemed to be a waiver of either party's right to compel arbitration.
15. Confidential Information may be used only as provided herein. Each party shall retain ownership of all rights, including all intellectual property rights, in its Confidential Information. No other right, immunity or license to the Confidential Information, either expressed or implied, is granted by either party to the other pursuant to this Agreement under any patent, patent application, copyright, trademark or other intellectual property right, now or hereafter owned or controlled by either party.
16. Any notice provided in connection with this Agreement shall be given in writing by certified mail, prepaid, return receipt requested, directed to the parties at the following addresses.

Snap-on	Company:
At: (Address)	At: (Address)
_____	_____
_____	_____

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Attn: \_\_\_\_\_

Attn: \_\_\_\_\_

17. This Agreement shall be governed by the laws of the State of Wisconsin without giving effect to conflicts of laws provisions.
18. "Snap-on Company" shall mean any member of the group consisting of Snap-on Incorporated and all of its direct and indirect subsidiaries and affiliated companies. The Snap-on Company party to this Agreement is entering this Agreement on behalf of itself, and to the extent applicable and appropriate, any other Snap-on Company which delivers Confidential Information.
19. The parties agree not to furnish to one another any trade secret, proprietary know-how or confidential information acquired from third parties. Further,

each party represents and warrants that it is free to divulge, without any obligation to or violation of the rights of any third party, any and all information which it will demonstrate, divulge or in any other manner make known to the other pursuant to this Agreement. Each party shall exonerate, indemnify and hold harmless the other from and against any and all liability, loss, cost, expense, damage, claims or demands for actual violation of the rights of any third party in any trade secret, proprietary know-how or other confidential information by reason of the other's use or receipt of Confidential Information disclosed hereunder.

### SNAP-ON:

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

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

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

Snap-on Company: \_\_\_\_\_

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

### COMPANY:

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

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

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

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