

**CONFIDENTIALITY, NONDISCLOSURE AND  
NON COMPETE AGREEMENT**

**CONFIDENTIALITY, NONDISCLOSURE AND NON COMPETE AGREEMENT**  
("Agreement"), made and effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ entity, with a place of business at \_\_\_\_\_, together with any of its affiliates and related parties (collectively the "Entity") and Custom Valve Concepts, Inc., a Michigan corporation with a place of business at 1363 Anderson, Clawson, Michigan 48107, together with its affiliates and related parties (collectively, the "Company").

**W I T N E S S E T H:**

**WHEREAS**, Entity and the Company, have certain technology and know-how, with respect to their business;

**WHEREAS**, the parties have entered into discussions concerning the production of certain parts;

**WHEREAS**, the parties hereto hereby acknowledge and agree that as a consequence of such discussions relating to the production of certain parts and other processes, each party may be given access to or may become acquainted with certain Confidential Information (as that term is hereinafter defined) regarding the other party; and

**WHEREAS**, Entity and the Company each desire to reflect their Agreement as to such Confidential Information by executing and delivering this Agreement.

**NOW, THEREFORE**, in consideration of the mutual premises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Confidentiality

- a. Confidential Information and Materials. Entity and the Company hereby acknowledge that as a consequence of the Company's discussions with Entity, either party (the "Disclosing Party"), may disclose or make known to the other party (the "Receiving Party"), and the Receiving Party may be given access to or may become acquainted with certain information, materials and trade secrets of the Disclosing Party, including, but not limited to, information regarding methods of operation, methods of installation, methods of distribution, the structure and organization of facilities, finances, contracts, customer lists, potential customers, business plans, supplier lists, pricing, marketing, patents, patent applications, products, skills, performance specifications, price lists, compositions, processes, equipment, technical and

other data, designs, drawings, prints, samples, trade secrets, and other information and know-how; and which the Disclosing Party regards as confidential and in the nature of trade secrets (collectively “Confidential Information”). Without regard to whether all of the foregoing matters will be deemed confidential, material and important, the parties to this Agreement hereby stipulate and agree that as between them, the same are confidential, material and/or important. Notwithstanding anything to the contrary herein, the term Confidential Information, as used herein, shall not include that which: (a) is known to the Receiving Party at the time of disclosure thereof as evidenced by written records in the possession of the Receiving Party; and/or (b) is or becomes publicly available without the breach of this Agreement by the Receiving Party; and/or (c) is subsequently disclosed to the Receiving Party by a third party who is in lawful possession of the Confidential Information and is not under an obligation of confidence to any other party with respect thereto; and/or (d) is independently developed by the Receiving Party by persons who have not had access, directly or indirectly, to the Confidential Information of the Disclosing Party.

- b. Nondisclosure Covenant. In recognition by the parties that such Confidential Information constitutes valuable and unique assets owned by, or in the custody of, the Disclosing Party, each party covenants and agrees that, during the aforesaid mutual discussions and at all times thereafter, the Receiving Party shall not use the Confidential Information of the Disclosing Party for its own account, for the account of a third party, or to the detriment of the Disclosing Party, and each party shall hold all such Confidential Information in confidence, not to use, reproduce, distribute or disclose it to anyone, directly or indirectly, either by writing or orally or otherwise, without the express written consent of the Disclosing Party. Each party further agrees to use its best efforts to protect the confidentiality of such Confidential Information, including, without limitation, conveying and/or disclosing such Confidential Information only to those persons associated with it who have a need to know such Confidential Information, and causing such persons of the Receiving Party (including, without limitation, employees and consultants) who are in possession of such Confidential Information or to whom such Confidential Information was so conveyed or disclosed to abide by the terms of this Agreement. Notwithstanding anything contained herein to the contrary, such Confidential Information may be disclosed by the Receiving Party in response to a valid order to a court, regulatory agency or other governmental body, but only to the extent and for the purposes stated in such order; provided, however, that the Receiving Party shall first notify the Disclosing Party in writing of the order and shall cooperate with the Disclosing Party if the Disclosing Party desires to contest the same and/or seek an appropriate protective order.
- c. Ownership of Confidential Information. All documents relating to the Confidential Information, as well as the Confidential Information itself, are the exclusive property of the Disclosing Party. No grant under any of the

Disclosing Party's Confidential Information is hereby given or intended, including, without limitation, any license, implied or otherwise. The parties hereto hereby agree that they do not intend that any agency or partnership relationship is being created by and/or between them by this Agreement.

- d. Return of Confidential Information. Promptly upon written request by the Disclosing Party, and/or immediately upon the termination of the Company's referenced discussions or further contractual dealings with Entity, all writings, tapes, samples, designs, prints, manuals, or other written physical manifestations of the Confidential Information, all writings and material describing, analyzing or containing any Confidential Information, and all copies thereof, which relate in any manner to or which the Receiving Party obtained directly or indirectly from Disclosing Party, shall be returned to the Disclosing Party making such request by the Receiving Party to whom such Confidential Information was so disclosed.
2. Remedies. The Receiving Party hereby acknowledges that the Disclosing Party will be irreparably damaged and that Disclosing Party will have no adequate remedy at law, in the event of any actual or threatened violation of any such covenants contained hereunder. The Receiving Party therefore, hereby agrees that the Disclosing Party shall be entitled to a decree or order by any court of competent jurisdiction enjoining such threatened or actual violation of any of such covenant, without the necessity of having to post a bond. Such decree or order, to the extent appropriate, shall specifically enforce the full performance of any such covenant by Receiving Party, and hereby consents to the jurisdiction of any such court of competent jurisdiction and authorizes the entry on such party's behalf of any required appearance for such purpose. Enforcement of any remedy under this Section 2 shall not reduce or adversely affect any other remedy which may be available to the Disclosing Party in law or in equity, and nothing herein shall prevent Disclosing Party from seeking injunctive or other relief hereunder.
  3. Covenant Not to Compete. Entity agrees that during the working relationship with the Company and until the expiration of two (2) years following such date, Entity will not, directly or indirectly, either:
    - a. have any interest in (whether as founder, member, proprietor, officer, director or otherwise), enter the employment of, act as agent, broker, licensor or distributor for or adviser or consultant to, or in any way assist (whether by solicitation of customers or employees or otherwise) any individual, partnership, joint venture, corporation, limited liability company, or other business entity directly or indirectly engaged in any business or enterprise which directly or indirectly competes with Company in the design, manufacture, sale or distribution of valves or other activities engaged in by Company at the time Entity ceases its working relationship with the Company, to the extent competitive with the Company in the markets in which it operates;

- b. attempt to cause any customer to refrain, in any respect, from maintaining or acquiring any product or service provided or offered by the Company to such customer;
- c. render services to or share in the earnings of or invest in the stock, bonds or other securities of any other entity directly or indirectly engaged in any business or enterprise in competition with the Company's business; provided, however, that Entity may own passive investments of not more than one percent (1%) of the outstanding stock, bonds, or other securities of any similar business (but without otherwise participating in such similar business) if such stock, bonds or other securities are listed on any national stock exchange or are traded and quoted on the Nasdaq National Market System;
- d. Solicit any employee or independent contractor of the Company on behalf of the entity or any other business.

The running of the period during which the restrictions set forth in this paragraph 3 apply will be tolled during the continuance of any breach or violation by Entity of its covenants and agreements contained in this paragraph, and the period will be extended by the length of time during which any such breach or violation continues.

- 4. Miscellaneous. Entity agrees that the covenants and undertakings contained in paragraph 3 relate to matters which are of a special, unique and extraordinary importance to the Company and that without such covenants and obligations the Company would be unwilling to retain Entity or to continue its working relationship as a project and service provider for the Company. Entity further acknowledges that without these covenants and obligations imposed upon it, that the Company would be unwilling and unable to expose Entity to further such information and business relationship. The Company and Entity further acknowledge and agree that a violation of any of the terms hereof would cause irreparable injury to the Company, the amount of which may be impossible to estimate or determine and which cannot be compensated adequately. Therefore, Entity agrees that, since the remedy at law for a breach or threatened breach of such covenants and obligations would be inadequate, the Company shall be entitled, as a matter of course, to an injunction, restraining order, writ of mandamus, or other equitable relief from any court of competent jurisdiction, restraining any violation or threatened violation of any such covenants and obligations by Entity, without bond, and such other persons as the court shall order. The rights and remedies provided for herein are cumulative and are in addition to rights and remedies otherwise available to the Company under any other agreement or applicable law
- 5. Miscellaneous.
  - a. Indulgences, etc. Neither the failure nor any delay on the part of either party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any

right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

- b. Controlling Law. This Agreement and all questions relating to its validity, interpretation, performance and enforcement (including, without limitation, provisions concerning limitations of actions), shall be governed by and construed in accordance with the laws of the State of Michigan, without application to the principles of conflict of laws. The parties acknowledge that without limiting the jurisdiction or venue of any other federal or state courts, each of the parties irrevocably and unconditionally (a) agrees that any suit, action or legal proceeding arising out of or relating to this Agreement may be brought in the courts of record of the State of Michigan in Oakland County or a federal court of the United States (the applicable Federal District of Michigan); (b) consents to the jurisdiction of each such court in any suit, action or proceeding; (c) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts; and (d) agrees that service of any court paper may be effected on such party by mail or in such other manner as may be provided under applicable laws or court rules in said state. The parties hereto further agree that in the event of any litigation to enforce the terms and conditions of this Agreement, the successful party shall be awarded reasonable attorneys' fees at all trial and appellate levels, costs and expenses. Reasonable attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other reasonable charges billed by the attorney to the prevailing party.
- c. Notices. All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received only when personally delivered; one day following the day when deposited with an overnight courier service or priority overnight service such as Federal Express or UPS, for next day delivery to the intended addressee; or five (5) days following the day when deposited in the United States mail, certified mail, return receipt requested, first class postage prepaid, addressed to the addresses in the first paragraph of this Agreement.
- d. Binding Nature of Agreement; No Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns provided that no party may assign or transfer its rights under this Agreement without the prior written consent of the other party hereto.

- e. Provisions Separable. The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part. If any part of this Agreement is held to be unenforceable or invalid under, or in conflict with, the applicable law of any jurisdiction, then the unenforceable, invalid or conflicting part shall be narrowed or replaced, to the extent possible, by a judicial construction in such jurisdiction that effectuates the intent of the parties regarding this Agreement and the unenforceable, invalid or conflicting part, and such part shall be deemed to be amended by such construction.
- f. Section Headings. The Section headings in this Agreement are for convenience only; they form no part of this Agreement and shall not affect its interpretation.
- g. Term. This Agreement shall be effective as of the date first written above and shall continue for a term of five (5) years, unless sooner terminated as provided below. The obligations of a party with respect to the receipt of Confidential Information hereunder shall continue during the term of this Agreement and shall continue for sixty (60) months subsequent to the expiration or termination of this Agreement, irrespective of the reasons for any such termination. The term of this Agreement may be terminated by either party hereto upon thirty (30) days prior written notice. The parties' rights and obligations which by their sense and context are intended to survive any termination or expiration of this Agreement shall so survive.
- h. Entire Agreement; Amendments. This Agreement (including any documents referred to herein) constitutes the entire agreement among the parties and supersedes any prior understandings, agreements, or representations by or among the parties, written or oral, that may have related in any way to this subject matter hereof. This Agreement may not be amended, supplemented or modified in whole or in part except by an instrument in writing signed by the party or parties against whom enforcement of any such amendment, supplement or modification is sought.
- i. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.
- j. Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and thereof strict construction shall be applied against any party. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to the rules and regulations promulgated thereunder, unless the context requires otherwise. The parties intend that each representation, warranty, and covenant contained herein shall have independent significance. If any party has breached any

representation, warranty, or covenant contained herein in any respect, the fact that there exists another representation, warranty or covenant relating to the same subject matter (regardless of the relative levels of specificity) which the party has not breached shall not detract from or mitigate the fact that the party is in breach of the first representation, warranty or covenant. This Agreement shall be neither construed against nor in favor of any of the parties hereto, but rather in accordance with the fair meaning of its content.

**IN WITNESS WHEREOF**, the parties have executed and delivered this Agreement on the date first above written.

\_\_\_\_\_  
**(Company Name)**

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

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

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

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

**Custom Valve Concepts, Inc.**

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

Name: Thomas McHenry

Title: General Manager

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