



## Rock West Composites, Inc.

### Mutual Non-Disclosure Agreement

This Agreement is made as of the date of the last signature below, (the “Effective Date”) by and between the undersigned, with respect to the discussion of any financial, business and/or technical information in relation to a potential transaction with respect to the product and/or services of and/or related to the design, development and manufacture of the equipment and services of the respective party’s businesses.

**1. Definition of Confidential Information** “Confidential Information” means any non-public oral, written, graphic or machine-readable information provided by one party or its Representatives to the other hereunder in connection with the Purpose, before or after the Effective Date, including, but not limited to, (i) that is or which relates to trade secrets, know-how, processes, ideas, inventions (whether patentable or not), product development plans, forecasts, strategies, business plans and strategies, agreements with third parties, services, customers, marketing or finances of the disclosing party or its Representatives, (ii) any and all information developed or produced by the receiving party that is derivative of such information provided by the disclosing party or its Representatives, and (iii) the existence of the Purpose and any disclosures related thereto and the terms of any agreement entered into between the parties or their Representatives in connection with the Purpose.

#### **2. Non-Disclosure of Confidential Information**

(a) Each party agrees not to use any Confidential Information disclosed to it by the other party for its own use or for any purpose other than to carry out discussions concerning, and the undertaking of, mutually agreed activities requiring the exchange of the Confidential Information **for the purpose of determining the feasibility of contracting with Rock West Composites for carbon fiber or other composites manufacturing** (the “Purpose”). Neither party shall disclose or permit disclosure of any Confidential Information of the other party to third parties, other than its directors, officers, employees, consultants, legal counsel, contractors, Affiliates and agents (collectively, “Representatives”) who are required to have the information in order to carry out the discussions regarding the Purpose or otherwise have a need to know in connection with the Purpose. Each party agrees that it shall take, and shall cause its Representatives to take, all reasonable measures to protect the secrecy of and avoid disclosure or unauthorized use of Confidential Information of the other party, by using at least the same degree of care that the receiving party uses to protect its own Confidential Information, but not less than a commercially reasonable degree of care. As used herein, a party’s “Affiliate” means any legal entity directly or indirectly controlling, controlled by, or under common control with such party. Each party agrees to notify the other of any actual or suspected misuse, misappropriation or unauthorized disclosure of Confidential Information by such party or its Representatives. Any failure by a party’s Representatives to keep the Confidential Information strictly confidential and/or any disclosure by its Representatives of the Confidential Information to any person that would constitute a breach of this Agreement if such Representative were a signatory hereto will constitute a breach of this Agreement by such party.

(b) Notwithstanding the above, neither party shall have liability to the other regarding any Confidential Information of the other which the receiving party can prove:

(i) was in the public domain at the time it was disclosed or has entered the public domain

- through no fault of the receiving party;
- (ii) was known to the receiving party, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure;
- (iii) is disclosed with the prior written approval of the disclosing party;
- (iv) was independently developed by or for the receiving party without use in any way of disclosing party's Confidential Information; or
- (v) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that the receiving party shall provide prompt notice of such court order or requirement to the disclosing party to enable disclosing party to seek a protective order or otherwise prevent or restrict such disclosure.

(c) The receiving party agrees to use, and to cause its Representatives to use, the Confidential Information of the disclosing party only for the Purpose, and for no other purpose whatsoever without the prior written consent of the disclosing party. Nothing in this Agreement is intended to grant any rights or license to either party or its Representatives under any patent, copyright, trademark, trade secret or any other intellectual property right of the other party, nor shall this Agreement grant any party or its Representatives any license or rights in or to the Confidential Information and materials of the other party, except as expressly set forth herein. Neither party or its Representatives shall decompile, disassemble or otherwise reverse engineer any Confidential Information of the other party (or any portion thereof) or attempt to determine any source code, algorithms, methods or techniques embodied in such Confidential Information (or any portion thereof).

(d) The Parties may disclose Confidential Information received under this agreement to their subcontractors provided that such subcontractors (i) have an absolute need to know to perform their tasks with respect to the Purpose, (ii) have entered with the disclosing Party into a non-disclosure agreement which includes substantially similar confidentiality obligations as this NDA, (iii) have been identified and that all subcontracted tasks in the Purpose have been notified by the disclosing party in writing to the other party, and (iv) have been approved by the other party. In the event the other party agrees to the disclosure, the disclosing party shall be responsible for its subcontractors' compliance with all provisions of this NDA and the disclosing party shall remain fully liable to the other party for any unauthorized disclosure of Confidential Information by the disclosing party's subcontractor(s).

**3. Return of Materials** Any Confidential Information and copies, reproductions or summaries thereof shall be promptly returned to the disclosing party or destroyed by the receiving party within thirty (30) days after the written request of the disclosing party, provided that the receiving party may maintain a copy of such materials or documents as it is required to retain for legal, regulatory or audit purposes and provided further that the receiving Party shall not be required to destroy any system back-up media such as copies of any computer records or files containing Confidential Information which have been created pursuant to automatic archiving or back-up procedures on secured central storage servers and which cannot reasonably be deleted. The delivery or destruction of such Confidential Information shall not relieve the receiving party of its obligation of confidentiality in accordance with the terms hereunder or any other obligations hereunder.

**4. Term and Termination** This Agreement shall have a term of two (2) years from the date first set forth above. Either party may terminate this Agreement prior to the end of such term by giving advanced written notice to the other party. The commitments made by each party pursuant to this

Agreement shall survive any termination or expiration of this Agreement for a period of five (5) years following such termination or expiration, except for trade secrets for which the confidentiality obligations shall extend until the information is no longer secret.

**5. Export Laws; Data Protection.** Any Confidential Information, or any part thereof, provided under this Agreement (including but not limited to when incorporated into an item, software, technology, service or any other deliverable) may be subject to export control laws and regulations, and the parties acknowledge that diversion contrary to such export control laws and regulations is prohibited. Any export, transfer or use of such Confidential Information shall be made in compliance with the relevant export control laws and regulations. Each party agrees to provide such information that the other party reasonably requests to verify compliance with this provision. Any party providing Confidential Information that is subject to U.S. export laws shall notify the receiving Party, prior to disclosing any data to the receiving party, that such Confidential Information is subject to export control laws and regulations and the export classification of such data.

If applicable, each party, at its own expense, shall ensure that it complies with, and will assist the other party to comply with, the requirements of all legislation and regulatory requirements in force from time to time relating to the use of personal data, and the privacy of electronic communications, including, without limitation, the Data Protection Act 2018 or any successor legislation and the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy. If applicable, each party hereto further agrees to only use the personal data disclosed in connection with this Agreement for the Purpose.

**6. Miscellaneous.**

(a) This Agreement does not create an agency, partnership or similar relationship between the parties. Furthermore, both parties acknowledge and agree that the exchange of information under this Agreement shall not commit or bind either party to any present or future contractual relationship (except as specifically stated herein). Neither party may assign this Agreement or its rights or obligations hereunder without the prior written consent of the other Party. The terms and conditions of this Agreement and any amendments hereto or waivers hereof shall inure to the benefit of and be binding upon the respective permitted successors and assigns of the parties. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision will be ineffective to the extent of such unenforceability without invalidating the remaining provisions of this Agreement and, if possible, considering the nature of such unenforceability, the parties agree to renegotiate such provision in good faith.

(b) This Agreement shall be governed by the laws of the State of California, without regard to applicable conflicts of law principles. The parties each agree and acknowledge that any violation or threatened violation of this Agreement shall cause irreparable injury to the disclosing party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the disclosing party shall be entitled to seek injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by the receiving party, without the necessity of proving actual damages or of posting a bond.

(c) Any term of this Agreement may be amended only with the written consent of the parties. Failure to enforce any provision of this Agreement by a party shall not constitute a waiver of any term hereof by such party.

(d) The Confidential Information disclosed under this Agreement is delivered "as is" and the disclosing party makes no representation of any kind with respect to the accuracy, completeness, operability, or non-infringement of such Confidential Information or its suitability or fitness for any

particular use; provided, however, that each party warrants that it has the right to make the disclosures of its Confidential Information under this Agreement.

(e) All notices required to be sent by either party under this Agreement shall be deemed given: (i) when sent by confirmed facsimile or telecopy, (ii) upon receipt, after being mailed postage prepaid by certified or registered mail, return receipt requested, or (iii) personal or overnight courier service, to the party to be notified.

(f) The prevailing party in any action sought to enforce or interpret this Agreement shall be entitled to recover reasonable attorney's fees and costs in conjunction with such legal proceeding.

(g) This Agreement constitutes the entire agreement between such parties pertaining to the subject matter hereof.

**ROCK WEST COMPOSITES, INC.**

**a California corporation**

7625 Panasonic Way

San Diego, CA 92154

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

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

Signature: \_\_\_\_\_

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

**COMPANY NAME:** \_\_\_\_\_

**Company type:** \_\_\_\_\_

Company address: \_\_\_\_\_

\_\_\_\_\_

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

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

Signature: \_\_\_\_\_

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