

NON-DISCLOSURE AND NON-CIRCUMVENTION AGREEMENT



This NON-DISCLOSURE AND NON-CIRCUMVENTION AGREEMENT (the “Agreement”) is made effective as of _____ by and between Ward Leonard CT LLC, a Connecticut corporation (the “Discloser”), and _____ a _____ corporation “Recipient”, and, together with the Discloser, each a “Party”, and together the “Parties”).

In consideration of the disclosure of certain confidential and proprietary information by the Discloser or its Representatives (as defined below) to the Recipient or its Representatives, some of which has already been disclosed, for the exclusive purpose of exploring a possible mutual business transaction and/or agreement between the Parties and/or their affiliates for the Recipient to design, manufacture and/or supply certain parts (“Parts”) to the Discloser or otherwise (collectively, the “Transaction”), the Parties hereby agree as follows:

1. RECIPIENT’S DUTY OF NON-DISCLOSURE

A. “Confidential Information” shall mean any technical, financial, business or other information that the Discloser or any of its Representatives discloses or makes available to the Recipient or its Representatives, including but not limited to (i) information relating to the design, manufacture and supply of parts, (ii) information relating to the design, manufacture and distribution of certain instrumentation and control equipment, including but not limited to electric motors and generators, permanent magnet motors and generators, motor controllers, electrical control components and systems, variable frequency drive systems and actuators, (iii) information relating to the Discloser’s business and the Discloser’s affiliates, clients, vendors, manufacturers, suppliers and other third parties with whom the Discloser has a relationship, (iv) items listed on Schedule A, including amendments to Scheduled A provided here after, (v) information relating to the Discloser’s operations, financial conditions, policies or procedures, business plans, investment strategies and the formulation thereof, current, future or prospective business partners or opportunities, results, prospects, products and services, ideas for new products and services, financial models or formulae, investment transactions, financial and business forecasts and estimates, contracts and agreements, negotiations, financial terms, financial statements, processes, methods, trade secrets, discoveries, ideas, concepts, know-how, specifications, techniques, drawings, blueprints, diagrams, sketches, models, samples, flow charts, data, computer programs, customer names, marketing plans, specific projects, documentation, technological information and technological designs, drawings, inventions, software, hardware, data, maps, images, reports, letters, notes, research, patents, patent applications, and any extensions or renewals thereof, and any and all other intellectual property and other information, whether in written, electronic, or verbal form, regardless of means of transmission, and disclosed, provided, delivered or otherwise made available to it in any manner whatsoever or in its possession. Confidential Information shall also include, but is not limited to,

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any discussions between the Parties and/or their respective Representatives relating to a potential Transaction, any related discussions involving any business, technologies or assets owned or licensed, in whole or in part, by the Discloser or its affiliates, partners or contract parties and any information or material marked “Confidential” or “Proprietary” or otherwise indicated to be confidential.

B. The Recipient agrees that as a recipient of Confidential Information: (i) it shall maintain in strict confidence the Confidential Information and shall use its best efforts and exercise all reasonable care to protect the Confidential Information, and in all events with at least the same degree of care as a reasonably prudent person or entity would use to protect its own confidential and/or proprietary information; (ii) it shall use any Confidential Information for the sole purpose of evaluating the Transaction and for no other purpose; (iii) it shall disclose any Confidential Information disclosed or otherwise made available to it only to those of its affiliates, directors, officers, employees, representatives and agents (collectively “Representatives”) (a) to whom it is necessary to disclose such Confidential Information solely for the purpose of evaluating the Transaction, and (b) whom the Recipient shall have advised of the terms of this Agreement, and, in the case of affiliates, representatives and agents, whom the Recipient shall have caused to execute a confidentiality agreement with the Recipient in substantially the form of this Agreement, enforceable directly by the Discloser as a named third party beneficiary; and (iv) it shall not disclose or in any way disseminate or make available to any other third party any Confidential Information disclosed, provided, delivered or otherwise made available to it in any manner whatsoever or in its possession. The Recipient shall be responsible for any breach of the terms of this Agreement by its Representatives and shall take all reasonable measures to prevent such parties from disclosing or using the Confidential Information in a manner prohibited, or not permitted, by this Agreement. The Recipient represents and acknowledges that the probability of successfully executing a Transaction by the Parties is deeply dependent on maintaining in secrecy the discussions held by the Parties. The Recipient shall promptly notify the Discloser in writing if the Recipient has reason to believe that unauthorized use, release, possession, acquisition, dissemination or disclosure of any Confidential Information has occurred, and the Recipient shall use its best efforts to cooperate with actions taken by the Discloser to protect the Discloser’s rights with respect to the Confidential Information, including enforcing the terms of any agreement between the Recipient and the individual(s) or entities responsible for such unauthorized use or disclosure. The Recipient agrees not to make any publicity release, general disclosures to third parties or other announcements concerning the Discloser, the nature of the Transaction or the Confidential Information, without the prior written consent of the Discloser.

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C. Each Party agrees that the restrictions on use and disclosure of Confidential Information under this Agreement shall not apply to information that: (i) is now, or hereafter becomes, through no act or failure to act on the part of the Recipient or its Representatives, generally known or available to the public; or (ii) was lawfully obtained by the Recipient from third parties; provided that such third parties, to the best of the Recipient's knowledge (after reasonable inquiry), were not restricted from using or disclosing such information, or obligated to keep such information confidential; or (iii) can be proven was already known in writing to the Recipient or its Representatives prior to the date hereof. In the event that the Recipient or any of its Representatives is legally required to disclose Confidential Information pursuant to the requirements of applicable law, rules, regulations, court or other governmental authority, the Recipient shall provide prompt advance notice to the Discloser, so that the Discloser may obtain a protective order. If the Discloser fails to obtain a protective order, the Recipient shall disclose such Confidential Information only to the extent that the Recipient reasonably determines, based on a written opinion of external counsel which shall be provided to the Discloser, that it is legally compelled to disclose such Confidential Information.

D. Confidential Information disclosed or made available as contemplated by this Agreement and any and all rights, titles and interests therein (including, without limitation, intellectual property rights, licenses to trademarks, inventions, copyrights or patents and other proprietary rights) are and shall remain the property of the Discloser. Nothing in this Agreement shall be construed to imply the grant of any license or other right, title or interest to the Recipient or its Representatives to make, use, sell or otherwise commercialize, or disclose or disseminate any portion of the Confidential Information. Further, the Recipient acknowledges that any Confidential Information disclosed or made available to it is provided "AS IS" and that THE DISCLOSER MAKES NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE CONFIDENTIAL INFORMATION, INCLUDING, BUT NOT LIMITED TO, THE QUALITY, ACCURACY, RELIABILITY, CORRECTNESS OR COMPLETENESS OF SUCH CONFIDENTIAL INFORMATION, AND EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES.

E. Upon the determination by either Party not to enter into the Transaction, or upon the written request of the Discloser at any time, the Recipient shall deliver to the Discloser all Confidential Information in the possession or control of the Recipient or its Representatives, including all copies, notes, packages, pictures, diagrams, computer memory media, and all other materials containing, reproducing or based upon any portion of the Confidential Information. If requested by the Discloser, the Recipient shall provide the Discloser with a certification that all Confidential Information has either been returned or destroyed, as appropriate. The return or

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destruction of the Confidential Information shall not extinguish any rights or obligations under this Agreement with respect to the Confidential Information.

2. RECIPIENT'S DUTY OF NON-CIRCUMVENTION AND RESTRICTION ON SALES

In consideration of each disclosure by the Discloser or its Representatives of Confidential Information to the Recipient or its Representatives, the Recipient and its Representatives shall not attempt in any manner to commercially exploit the Confidential Information, including the Discloser's business contacts or business opportunities, except as specifically permitted by the fifth sentence of this Section 2 and on terms and conditions mutually agreed between the Discloser and the Recipient. In particular, the Recipient agrees not to contact or engage, directly or indirectly, in any commercial, contractual or employment relationship, or otherwise enter into any agreement, with any person or other entity identified in the Confidential Information as a business contact, customer, client or contract party, except through a contractual agreement with, or expressly approved in writing by, the Discloser. In addition, the Recipient and its Representatives shall not attempt in any manner to commercially exploit any business opportunities contained or described in or derived from the Confidential Information, except through a contractual agreement with, or expressly approved in writing by, the Discloser. In each case described in the previous two sentences of this Section 2, the Recipient must notify the Discloser of the intent to enter into such a relationship or agreement in writing. In addition, the Recipient agrees to sell Parts and other parts whose designs and/or manufacturing processes reflect or include Confidential Information, including any component, service or replacement parts related thereto, or parts substantially identical in functionality to such Parts, only to the Discloser. The Recipient shall not have any right to sell or distribute Parts, or parts substantially identical in functionality to such Parts, to any third party without the prior written consent of the Discloser. All product designs created by the Recipient as well as product information and data that are paid for by the Discloser in the purchase price of the parts or that are otherwise provided by the Discloser are the intellectual property solely of the Discloser and are included as Confidential Information. The Recipient shall not disseminate information relating to such product designs, or design or sell a similar version of any the Discloser's designs provided to the Recipient, to any party other than the Discloser unless directed to do so in writing by an authorized officer of the Discloser.

This duty of non-circumvention and restriction on sales applies to all Confidential Information.

3. SURVIVAL; REMEDY

A. This Agreement shall expire on the tenth (10th) anniversary of the date hereof, regardless of whether or not the Parties enter into the Transaction; provided that Sections 1, 2 and 3(B) hereof shall survive the termination or expiration of this Agreement.

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B. The Recipient acknowledges that the unauthorized use or disclosure of the Confidential Information or any breach of this Agreement by the Recipient or its Representatives would cause the Discloser to suffer irreparable injury not compensable by monetary damages. Accordingly, the Recipient agrees that the Discloser will have the right to obtain, without the posting of any bond or security, specific performance or other injunctive or equitable relief from a court of competent jurisdiction as may be necessary or desirable to prevent, curtail or remedy any such unauthorized use or disclosure, whether threatened or actual. Further, the Recipient agrees to pay to the Discloser or third parties designated by the Discloser all damages, claims, costs, losses or liabilities, including attorneys' fees and expenses, arising out of, related to or resulting from any disclosure, dissemination or use of the Confidential Information of the Discloser by the Recipient or its Representatives in a manner not authorized under this Agreement, or any other violation of this Agreement or any agreement entered into by a Representative pursuant to Section 1(B) of this Agreement. The Discloser's rights set forth in this paragraph shall be in addition to, and without prejudice to, any other rights that the Discloser may have hereunder, whether at law or in equity.

4. NOTICES

All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified; (b) when sent by confirmed facsimile if sent during normal business hours of the recipient, and if not, then on the next business day; (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid (with respect to deliveries in the United States only); or (d) two (2) days after deposit with an internationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the address and/or facsimile number listed below, or such other address as may be provided from time to time by notice to the other Party and the other parties hereto in accordance with this Section 4.

If to the Discloser:
Ward Leonard CT LLC
401 Watertown Road
Thomaston, Connecticut 06787
Attn.: Yoram Shahar
Tel.: (860) 283-5801
Fax: (860) 283-8226
Email: yshahar@wardleonard.com

If to the Recipient:

Atten: _____
Tel.: _____
Fax: _____
Email: _____

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5. MISCELLANEOUS

A. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflict of laws provisions. In the event of any dispute arising between the parties concerning this Agreement, its enforceability or interpretation, the same shall be settled in an arbitration pursuant to the commercial rules of the American Arbitration Association (the “AAA”) by a single arbitrator in Hartford, Connecticut, to be mutually appointed by the Parties (or, if none, as designated by the AAA pursuant to its rules).

B. If any provision (or portion thereof) of this Agreement is invalid, illegal or incapable of being enforced by any applicable rule, law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any provision (or portion thereof) is invalid, illegal or incapable of being enforced, such provision (or portion thereof) shall be construed by the judicial body with appropriate jurisdiction by limiting and reducing such provision (or portion thereof) so as to be enforceable to the maximum extent under applicable law and consistent with the original intent of the Parties.

C. This Agreement shall not be changed, modified, amended or discharged except by an instrument in writing signed by authorized representatives of each Party specifically referencing this Agreement. No delay or failure on the part of either Party in the exercise of any right granted under this Agreement, or available at law or equity, shall be construed as a waiver of such right. All waivers must be in writing, signed by the Party against which such waiver is to be binding, and shall in no way impair the rights of the Party in any other respect or at any other time.

D. This Agreement sets forth the entire agreement and understanding between the Parties as to the subject matter hereof and merges and supersedes all prior discussions, agreements and understandings of any kind and every nature between the Parties with respect to such subject matter. Any and all prior arrangements, representations, promises, understandings and conditions in connection with such subject matter, and any representations, promises or conditions not expressly incorporated herein or expressly made a part hereof, shall not be binding upon either Party.

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E. Neither Party may assign or transfer any of its rights, benefits or remedies or delegate or transfer any of its obligations under this Agreement without the prior written consent of the other Party. Any assignment in violation of this paragraph shall be null and void.

F. This Agreement shall not establish any relationship or partnership, joint venture, employment, franchise or agency between the Parties and shall not be construed to create any obligation on the part of either Party to retain the services of the other Party, to compensate the other Party in any manner or to enter into any contract, agreement or business arrangement with the other Party.

G. This Agreement may be executed in one or more counterparts, each of which counterparts (including counterparts delivered by facsimile, e-mail or by other electronic transmission) shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

H. The individual signing this Agreement on behalf of each Party does hereby represent and warrant that he or she respectively has been and is on the date of this Agreement duly authorized by all necessary appropriate corporate action to execute this Agreement of behalf of his respective principals.

I. This Agreement shall be binding not only for the direct Party but also to include any and all related companies or legal entities, including but not limited to any and all subsidiaries and/or holding companies and affiliates; provided that such other companies or other entities may not receive Confidential Information except to the extent expressly provided above.

[Signature Page Follows]

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

WARD LEONARD CT LLC

By: _____

Date: _____

Name: _____

Title: _____

Company: _____

By: _____

Date: _____

Name: _____

Title: _____

Please send completed and signed NDA to :
E-Mail: fmcallister@wardleonard.com
Fax: 860 283 8226