


ENERPAC 	Title: Mutual NON-Disclosure Agreement		Global
	Doc number: P-PUR-30592	Revision: 2.0	Date: Jan 2021



Mutual Non-Disclosure Agreement Procedure

Intellectual Property Category:				
	1	2	3	4
4 - UNRESTRICTED - Free distribution to all parties				
2.0	Jan 2021	Mark Boardman	Mark Boardman	Quality Steering Committee
1.0	Aug 2020	Mark Boardman	Mark Boardman	Quality Steering Committee
Rev No	Rev Date Month/Year (MM/YYYY)	Prepared (Initial, surname and department)	Approved (Doc Owner(s)) (Initials, surnames and departments)	Approved HSSEQ (Initial, surname, dept)
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THIS AGREEMENT ("Agreement") is made this th day of, 20.. ("Effective Date") by and between:

Enerpac [Enerpac legal entity] a company organized under the laws of [COUNTRY] with offices located at [address, postal code, country] with company number [company number];
and

[client name] a company organized under the laws of [COUNTRY] with offices located at [address, postal code, country] with company number [company number].

(Individually a Party and together Parties)

WHEREAS:

Each Party possesses certain Confidential Information which the other Party has a desire to evaluate with respect to the purpose defined below.

Each Party has determined that this Agreement will facilitate their discussions with respect to the Purpose, and in furtherance thereof agrees to be bound by the provisions of this Agreement.

The Parties therefore agree as follow

1 Purpose of Disclosure.

The Parties intend to disclose Confidential Information in furtherance of a potential or existing business relationship related to Parties' discussion and correspondences regarding [description purpose / project] (hereinafter referred to as the "Purpose").


2 Confidential Information.

"Confidential Information" means any information or data, except Excluded Information, that has been or is hereafter disclosed or provided by a Party (the "Disclosing Party") to the other Party (the "Recipient") with respect to the Purpose that (i) if in tangible form or other media convertible to readable form is clearly marked as proprietary, confidential or private when disclosed, or (ii) if oral or visual, is identified as proprietary, confidential, or private when disclosed or identified as such within thirty (30) days thereafter, or (iii) by its very nature constitutes information of a type that a reasonable business person would conclude was intended by the Disclosing Party to be treated as proprietary, confidential, or private (as illustrated below), regardless of whether such information was marked or identified as proprietary, confidential, or private.

Confidential Information may include without limitation: (i) technical or nontechnical information in any form, technical specifications, all source code, object code, screen displays, printed computer output, flowcharts, drawings or sketches, models, know-how processes, algorithms, software programs, databases, formulae in any form, and all notes, memoranda or recordings, or video graphic, alphanumeric, audio phonic or telephonic data, regardless of who prepared such work or on which medium it is stored; (ii) product, marketing or sales plans, customer lists, financial information or projections, and business policies or practices, analyses, compilations, or studies prepared by Disclosing Party, or information others provided to the Disclosing Party that the Disclosing Party is obligated to treat as confidential, regardless of the type of media on which it is stored; and (iii) any extracts, summary, report, analysis, materials antecedent to the development of any of the aforementioned, and any derivative work thereof.

3 Excluded Information.

The term "Excluded Information" means any information, however designated, that: (i) at the time of disclosure is publicly known other than through a breach of this Agreement by the Recipient; (ii) can be demonstrated by the Recipient by written documentation to have been already known by the Recipient without any obligation to hold it in confidence; (iii) is lawfully received by the Recipient from a source other than the Disclosing Party, which source is not itself known by the Recipient to be bound by a confidentiality agreement with the Disclosing Party; (iv) can be demonstrated by the Recipient to have been independently developed and evidenced by written documentation by the Recipient without the use of Confidential Information of the Disclosing Party; or (v) is authorized in writing by the Disclosing Party to be released from the confidentiality obligations herein or approved for release by written authorization of the Disclosing Party, but only to the extent of such authorization.

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4 Affiliates.

The terms "Disclosing Party" and "Recipient" include each Party's corporate affiliates, and its officers, directors and employees that disclose or receive Confidential Information. An "Affiliate" is one who is controlled by, controls or is under common control of, another.

5 Non-Disclosure.

The Recipient shall, and shall cause its employees, agents, contract employees ("employees") and affiliates to: (i) use the Confidential Information only for the Purpose; (ii) restrict disclosure of the Confidential Information to employees with a "need to know" in furtherance of the Purpose and not disclose it to any other person or entity without the prior written consent of the Disclosing Party; (iii) advise those employees and affiliates to whom it provides Confidential Information of their obligations with respect thereto; (iv) protect the Confidential Information using the same degree of care it uses to protect its own Confidential Information, but in no event less than a reasonable degree of care; and (v) make a limited number of copies of the Confidential Information as necessary with respect to the Purpose, and ensure that all markings identifying the information as confidential or proprietary are reproduced in full on such copies. (vi) shall not be entitled to disclose any Confidential information to any third party, or representatives or any affiliate that competes with the Disclosing Party of the Disclosing Party's affiliates.

6 Impermissible Uses.

Except as authorized in this Agreement, the Recipient will not use or disclose the Disclosing Party's Confidential Information, in whole or in part, for any purpose other than the Purpose, including but not limited to, the manufacture, repair (or enable a third party to manufacture or repair), alter, modify, decompile, disassemble, reverse engineer, translate or create derivative works of the Disclosing Party's products.

7 Legally Required Disclosure.

If the Recipient becomes legally compelled by judicial or administrative actions to disclose any Confidential Information, the Recipient will provide the Disclosing Party with prompt written notice so that the Disclosing Party may seek a protective order or other appropriate remedy, or waive compliance with the provisions of this Agreement. The Recipient will not oppose action by, and will cooperate with, the Disclosing Party, at the Disclosing Party's sole expense, to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information. If the Disclosing Party fails to obtain such protective order or other remedy, or if the Disclosing Party waives compliance with the requirements of the preceding sentence, the Recipient will disclose only that Confidential Information that it is legally required to disclose, and will exercise commercially reasonable efforts, at Disclosing Party's expense, to obtain reliable assurance that the Confidential Information so disclosed will be accorded confidential treatment.

8 Ownership of Confidential Information.


Each Party's Confidential Information, including intellectual property, will remain its exclusive property. It is understood that no license, patent, copyright, trademark or other proprietary right is granted by this Agreement. The disclosure of Confidential Information and materials, which may accompany the disclosure, shall not result in any obligation to grant the Recipient rights therein.

9 Return of Confidential Information.

Upon the Disclosing Party's written request at any time, the Recipient will promptly return to the Disclosing Party or destroy, at the Disclosing Party's sole option, all copies of documents (in any media) containing the Disclosing Party's Confidential Information except for all memoranda, notes, and other writings the Recipient prepared based on the Disclosing Party's Confidential Information, which shall be promptly destroyed, except one copy of all Confidential Information may be retained in each for archival, evidentiary and compliance purposes. If the Recipient has destroyed any of the Disclosing Party's Confidential Information, it may respond to a return request by delivering a written notice signed by an authorized officer to the Disclosing Party stating that such Confidential Information was destroyed.

10 No Warranty or Representation.

THE PARTIES ACKNOWLEDGE AND AGREE THAT ALL CONFIDENTIAL INFORMATION IS PROVIDED ON AN "AS IS" BASIS, AND THAT THE DISCLOSING PARTY HAS NOT MADE ANY EXPRESS OR IMPLIED WARRANTY WHATSOEVER WITH RESPECT TO CONFIDENTIAL INFORMATION INCLUDING WITHOUT LIMITATION, WARRANTIES OF ACCURACY, COMPLETENESS, PERFORMANCE INFRINGEMENT OR MISAPPROPRIATION OF PATENT, COPYRIGHT, TRADE SECRET, PRIVACY, MORAL, PUBLICITY OR OTHER RIGHTS OF OTHERS.

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11 Irreparable Harm.

The Recipient acknowledges that a violation of this Agreement would cause irreparable harm to the Disclosing Party for which no adequate remedy at law may exist and therefore agrees that, in addition to any other remedies available whether at law or in equity, the Disclosing Party may be entitled to injunctive relief, including an ex parte temporary restraining order, to enforce the terms of this Agreement without posting bond or other form of security and without having to prove damages. The Receiving Party will notify the Disclosing Party in writing immediately upon the occurrence of any such unauthorized release or other breach of which it is aware.

12 Independent Development.

The Recipient may currently or in the future be developing information internally, or receiving information from other parties that may be similar to the Disclosing Party's Confidential Information. Accordingly, nothing in this Agreement shall be construed as a representation or inference that the Recipient will not develop or have developed products or services that, without violation of this Agreement, might compete with the products, processes, systems, or matter contemplated by such Disclosing Party's Confidential Information. The Parties agree that any intellectual property rights which belongs to or is vested in a Party shall remain the sole and exclusive property of that Party.

13 Relationship of the Parties: No Obligation.

Nothing in this Agreement shall be construed as creating an agency, partnership or joint venture relationship between the Parties. This Agreement is solely for disclosing and protecting Confidential Information and neither Party promises to provide the other Party with Confidential Information. The decision to provide any Confidential Information is within the sole discretion of the Disclosing Party. Each Party bears its own costs and expenses incurred or in connection with this Agreement provided, however, that in the event of dispute the prevailing Party shall be entitled to payment of attorney's fees by the non-prevailing Party.

14 Export Restrictions.

The Recipient will adhere to all applicable laws, regulations, and rules relating to the export of the Disclosing Party's technical data, and will not export or re-export, directly or indirectly or in a "deemed" fashion, any technical data, or any products received from Disclosing Party, or the direct product of such technical data, to any proscribed country or person listed in or pursuant to such applicable laws, regulations, and rules, unless properly authorized.

15 Term and Termination.

This Agreement shall be effective as of the Effective Date and shall continue for a period of three (3) years from its Effective Date, unless terminated earlier by either Party upon thirty (30) days prior written notice. All obligations undertaken respecting Confidential Information disclosed hereunder before termination or expiration shall survive termination or expiration for a period of three (3) years.

16 Assignment.


This Agreement may not be assigned by either Party without the prior written consent of the other. Notwithstanding the foregoing, either Party may assign its rights under this Agreement to the successor-in-interest of all or substantially all of that Party's business to which this Agreement pertains, if those to whom such Party assigns such rights are not direct competitors and undertake the assigning Party's duties under this Agreement. Notwithstanding the foregoing, no permitted assignment shall relieve the assigning Party of its obligations hereunder with respect to Confidential Information disclosed to it before the assignment. Any assignment in violation of this paragraph shall be void. This Agreement shall be binding upon the Parties' respective successors and permitted assigns.

17 Notices.

Any notice required or permitted to be given hereunder will be in writing and in English, and shall be effective when received and shall be sufficient if in writing and if personally delivered or sent by overnight courier or certified mail, return receipt requested, to the other Party identified to receive such notice at its address set forth above or at such other address as a Party may by notice specify to the other Party.

18 Severability.

If any provision of this Agreement shall be held invalid or unenforceable, such provision shall be deemed deleted from this Agreement and replaced by a valid and enforceable provision that so far as legally permissible achieves the Parties' intent in agreeing to the original provision. The remaining provisions of this Agreement shall continue in full force and effect.

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19 Authority.

Each Party warrants and represents to the other that it possesses all necessary powers, rights and authority to lawfully make any disclosure subject to this Agreement and that the person signing this Agreement on behalf of the Party and its corporate affiliates has been properly authorized to enter into this Agreement.

20 Counterparts and Facsimile.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and both of which taken together shall be deemed to constitute the same instrument. The Parties may deliver this Agreement via facsimile or electronic transmission. Each Party agrees that the delivery of the Agreement via facsimile or electronic transmission shall have the same force and effect as delivery of original signatures and that each Party may use such facsimile signatures as evidence of the execution and delivery of the Agreement by both Parties to the same extent that original signatures could be used.

21 Governing Law.

This Agreement shall be governed and interpreted in accordance with the laws of England and Wales. Parties shall use their best efforts to settle amicably any dispute arising out of or in connection with the interpretation, breach or enforcement of this Agreement. In the event a Party is of the opinion that an amicable settlement cannot be reached, the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with said Rules. The venue of arbitration shall be London, United Kingdom. The arbitration shall be conducted in the English language. No Party shall be released from performing its obligations hereunder because arbitration proceedings have been initiated.

22 Entire Agreement.

This Agreement represents the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior communications, agreements and understandings relating thereto. The provisions of this Agreement may not be modified, amended, or waived, except by a written instrument duly executed by both Parties.

Enerpac entity name.


[entity name]

Signature

Signature

Printed Name and Title

Printed Name and Title

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23 Revision History

Rev No	Reason for change
1.0	Created and released
2.0	Brand Image Changed

