

## CONFIDENTIALITY AGREEMENT

This is a Confidentiality Agreement (the "Agreement") made as of \_\_\_\_\_, 20\_\_, between **Philadelphia Gear Corporation**, a Pennsylvania corporation ("PGC") with offices located at 901 E. 8<sup>th</sup> Avenue, Suite 100, King of Prussia, PA 19406, and \_\_\_\_\_ Supplier Name with offices located at: \_\_\_\_\_ Supplier Address.

### Background

\_\_\_\_\_ Supplier Name and PGC are in the business relationship of supplier and customer; respectively; for the supply of goods and/or services either manufactured to PGC design and/or specifications or to a manufacturer's standard design and/or specifications. The parties hereto expect that in furtherance of this business relationship they will need to and will disclose to each other certain information that the disclosing party considers to be confidential and proprietary. The parties desire to enter into this Confidentiality Agreement to set forth their mutual understanding with respect to such information, which is being disclosed predicated upon mutual compliance with and in reliance upon this Confidentiality Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound, PGC and \_\_\_\_\_ Supplier Name agree as follows:

**1. Definition of Confidential Information.** "Confidential Information" means information in any form, including but not limited to all oral, written, visual and digital information (including, but not limited to, information gleaned by observation during visits to the disclosing party's facilities) concerning the disclosing party's business, finance or operations, including but not limited to, any information relating to the disclosing party's financial statements, analyses, budgets, forecasts, evaluations (including demand projections), projects, processes, products (and including, as to specific processes or products, information relating to the formulation, composition, methods of manufacture, potential uses or other technical or scientific features), business, plans, programs, plants, trade secrets, manufacturing, raw material ordering and usage, marketing, research and development, technology, equipment and other assets, samples, prototypes, drawings, computations, compilations, data, databases, know-how, concepts, intellectual property, costs, profits, sales, customer lists, customer requirements, internally-developed methods of customer solicitation, the identity of and other facts relating to existing or prospective customers, arrangements with customers or suppliers, price quotations, invoices, quantitative reports, quality assurance reports, and possible acquisitions or divestitures received from the disclosing party, from its representatives or from a third party at the direction of the disclosing party; *provided, however*, that the following shall not constitute Confidential Information:

(a) Information that is now in the public domain or subsequently enters the public domain other than as a result of an unauthorized disclosure by the receiving party or any of its representatives;

(b) Information that was known by the receiving party prior to receipt from the disclosing party and was legitimately in its possession, without any existing obligation to keep such information confidential;

(c) Information that the receiving party lawfully obtains from any third party having the right to disclose such information and which the receiving party is not under any obligation (to the disclosing party or otherwise) to keep confidential; and

(d) Information that the receiving party can prove that it has independently acquired or develop without the use of any confidential information received from the disclosing party.

**2. Use of Confidential Information.** The receiving party agrees that it will not, without the written permission of the disclosing party, which may be granted or withheld in the disclosing party's sole discretion, use the Confidential Information, or any alterations or modifications thereof (including but not limited to changes in composition), for any reason other than to enable the receiving party to use it for the purposes set forth in the Background section of this Agreement. In particular, unless specifically requested to do so by the disclosing party, the receiving party shall be prohibited from analyzing the composition of, or modifying, changing, merging, adapting, translating, reverse engineering, decompiling, disassembling or preparing derivative works based on, any samples provided as part of the Confidential Information.

**3. Return of Materials.** Except as necessary to further the purposes for which the Confidential Information is being disclosed pursuant to this Agreement, the receiving party shall not make or use any notes or memoranda relating to any Confidential Information, nor shall it transcribe, reproduce or make copies of any Confidential Information. Upon the request of the disclosing party, the receiving party shall return to the disclosing party any Confidential Information in written or other tangible form which it has received or compiled and which is within its possession or control. In addition, each party shall destroy all copies of any analyses, notes, memoranda, diagrams, compilations, studies or other documents that it has prepared containing or reflecting any Confidential Information. The receiving party shall not retain any copies or summaries of such Confidential Information unless expressly approved in writing by the disclosing party or required by regulatory authorities.

**4. Ownership of Confidential Information.** Each party recognizes and agrees that the Confidential Information received from the other party shall remain solely such other party's property and constitute proprietary property and valuable trade secrets of such other party. Neither party hereto intends or understands this Agreement to be granting any intellectual property rights, or any license or right, express or implied, under any patent or other intellectual property rights, nor as representing any commitment by either party to enter into any license or other agreement by implication or otherwise. The receiving party disclaims any ownership of the Confidential Information received from the disclosing party and, in the event that any of such Confidential Information is or becomes the subject of a patent application, patent, copyright or trade or service mark application filed by the disclosing party under the laws of any country, the receiving party agrees and acknowledges that the disclosing party will have all the rights and

remedies available to it under the law as a result of said patent applications, patents or copyright or trade or service mark application.

**5. Protection of Confidential Information.** Each party hereby agrees that it will hold the Confidential Information in strict confidence and will take all reasonable precautions to prevent unauthorized disclosure of the Confidential Information. The receiving party agrees to institute and maintain appropriate security measures in order to carry out the purpose of this Agreement, including, without limitation, limiting the disclosure of the Confidential Information to those employees in the receiving party's organization who have a need to know, and who have signed confidentiality agreements with the receiving party which by their terms make them applicable to the Confidential Information and this Agreement. The receiving party will inform each such employee of his or her obligations under this Agreement before providing such access or making such disclosure, and will use its best efforts to ensure compliance by each such employee with those obligations. No disclosure of Confidential Information shall be made to non-employees of the receiving party without the prior written consent of the disclosing party, and any such subsequent disclosure, if permitted by the disclosing party, shall be governed by this Agreement.

**6. Confidential Information of Third Parties.** Each party recognizes and acknowledges that certain confidential information of the other party's clients and suppliers may be made available to or utilized by the receiving party in the course of the relationship described in the Background section of this agreement, and that such confidential information may be subject to non-disclosure or secrecy agreements with such clients and suppliers. Such confidential information of clients and suppliers shall be subject to the restrictions of this Agreement on the same basis as if such confidential information were confidential information of the disclosing party (or, if non-disclosure or secrecy agreements of such client is disclosed to the receiving party, on the basis set forth therein), irrespective of whether the receiving party executes a joinder to such non-disclosure or secrecy agreements of such client and irrespective of whether disclosure of such confidential information to the receiving party was in fact permitted.

**7. Compulsion of Materials.** In the event that either party receives a request to disclose all or part of the Confidential Information, or to take any other action prohibited by this Agreement, pursuant to a valid and effective subpoena, civil investigative or discovery demand, interrogatories, request for information or production of documents, order of a court of competent jurisdiction or governmental entity or similar process, such party will promptly notify the other party in writing of the existence, terms and circumstances surrounding such request, so that the other party may seek a protective order or other appropriate remedy or waive compliance with this Agreement as to the Confidential Information. If such protective order or other remedy is not obtained within a reasonable time or if the other party waives compliance with the provisions hereof, the party receiving the disclosure request may furnish only that portion of the Confidential Information or take only such action as is legally required (in the written opinion of counsel) and will exercise reasonable efforts to assure that confidential treatment will be accorded the Confidential Information.

**8. Equitable Relief.** As each party recognizes and agrees that the Confidential Information received from the other party shall remain solely such other party's property and

constitute proprietary property and valuable trade secrets of such other party, the parties acknowledge that failure to comply with the terms of this Agreement may cause immediate and irreparable damage, and that monetary damages would not provide an adequate remedy for such breach. Therefore, both parties agree that in addition to any other remedies at law or in equity available for breach of this Agreement, the non-breaching party may be entitled to specific performance, injunctive relief, or other equitable relief to prevent such damage or further damage regarding its own Confidential Information. Furthermore, the prevailing party in such litigation shall, in addition to any other remedies the prevailing party may obtain, be entitled to recover from the other party its reasonable legal fees and out of pocket costs incurred by such party in enforcing or defending its rights hereunder.

**9. Term.** The obligations of the parties under this Agreement shall indefinitely survive the conclusion of the business relationship between the parties described herein.

**10. Notices.** Any notice, demand or other communication given or made under or in connection with the matters contemplated by this Agreement shall be in writing and shall be delivered personally, by reputable overnight courier service (all fees pre-paid), or sent by pre-paid first class (certified) mail to the other party's address set out above (as may be amended by either party from time-to-time). Notice shall be effective upon receipt or refusal of delivery, which shall be established by the courier or mail receipt.

**11. Entire Agreement; Modifications; Waiver.** This Agreement embodies the entire understanding between the parties regarding the subject matter hereof and supersedes all prior agreements and understandings between the parties (whether written or oral) relating thereto. No modification shall be effective unless made in writing and signed by a duly authorized representative of each party. It is the intention of the parties that the provisions of this Agreement be enforced to the fullest extent permissible under the laws and public policies of each jurisdiction in which such enforcement is sought, but that the unenforceability (or the modification to conform with such laws and public policies) of any provision hereof shall not render unenforceable or impair the remainder of this Agreement, which shall be deemed amended to delete or modify, as necessary, the invalid or unenforceable provisions. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, personal representatives, executors and administrators. No failure or delay by either party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

**12. No Assignment.** This Agreement shall not be assigned or transferred by either party without the prior written consent of the other party, which it may withhold or grant in its sole discretion.

**13. Power and Authority.** Each party hereto represents and warrants to the other that it has full corporate power and authority to make, execute, deliver and perform this Agreement, that the person executing this Agreement on behalf of such party has full power, authority and capacity to do so, and as such, this Agreement has been duly executed and delivered by such

party and constitutes the legal, valid and binding obligation of such party, enforceable against it in accordance with its terms.

**14. Governing Law.** This Agreement shall be governed by and construed under the laws of the Commonwealth of Pennsylvania of the United States of America applicable to contracts made and performed entirely within the Commonwealth.

**15. Incorporation of Background.** The portion of this Agreement entitled "Background" is incorporated into and forms a part of this Agreement as if fully set out within the body of the Agreement.

IN WITNESS WHEREOF, the authorized representatives of the parties hereto have set their hands as of the date first above written.

PHILADELPHIA GEAR CORPORATION

By: \_\_\_\_\_  
Print Name:  
Title:

\_\_\_\_\_  
*Supplier Name*

By: \_\_\_\_\_  
Print Name:  
Title: