



## Valmark Industries, Inc.

7900 National Drive • Livermore California 94550 • Phone (925) 960-9900 • Fax (925) 960-0900

---

### CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (“Agreement”) is entered into and effective this \_\_\_\_ day of June, 2004, by and between Valmark Industries, Inc., a Delaware Corporation (“Valmark”), and \_\_\_\_\_, (together with its direct and indirect parent companies, subsidiaries, affiliates and related parties collectively “Recipient”).

1. Confidential Information. As used in this Agreement, the term “Confidential Information” shall mean all information, whether or not reduced to writing and regardless of its form, means of communication or source, and whether or not designated as “Confidential”, used by, belonging to, or relating to Valmark, or any direct or indirect subsidiary or affiliate of Valmark (collectively, Valmark and each such person or entity are referred to herein as the “Valmark Parties” and individually as a “Valmark Party”), which is not generally known to the public or to the industry in which any of the Valmark Parties is or may become engaged, including, without limitation, any and all business, technical, marketing, financial or other information relating to any of the Valmark Parties, and any and all methods, products, formulas, processes, standards, inventions, improvements, derivative works, original works of authorship, business strategies, records, samples, reports, molds, specifications, designs, technology, customers or customer lists, personnel data, computer programs, data bases and programs and software applications (including source code and object code), pricing information, contracts, files, copies, records, research and development plans, supplier lists, internal policies and procedures, and strategies related thereto, and any other information which by its nature should be treated as confidential, and all copies and duplications of any such information, as well as all analyses, programs, proposals, compilations, forecasts, studies or other documents, information and/or materials prepared by Recipient, which contain, incorporate by reference or reflect any Confidential Information.

2. Exclusions. The term “Confidential Information” shall not include information which: (i) was known to Recipient prior to disclosure by the disclosing Valmark Party, as evidenced by a written document; or (ii) was publicly available at the time of the disclosure by the disclosing Valmark Party, or becomes publicly available after such disclosure through a printed publication through no direct or indirect fault of Recipient.

3. Use of Confidential Information. Recipient recognizes the Confidential Information constitutes the valuable, proprietary information of the respective Valmark Parties and/or comprises the trade secrets of the respective Valmark Parties and is the exclusive property of the respective Valmark Parties. Consequently, Recipient agrees to use the Confidential Information only for the purposes of evaluating a potential business relationship with Valmark, pursuant to the terms and conditions of this Agreement, and during the term of this Agreement and at all times thereafter Recipient specifically agrees:

(a) not to, directly or indirectly, without the express prior written consent of Valmark, communicate, copy, disclose or make available to any person or entity, except for Recipient’s employees and agents having a need to know such Confidential Information in connection with the purposes permitted hereunder, and then only if any such employee or agent agrees in writing to be bound by this Agreement as if it were Recipient. Recipient shall be responsible for any unauthorized use or disclosure of any Confidential

Information by any employee or agent of Recipient. Recipient shall at all times operate in strict compliance with any written instructions given by any of the Valmark Parties to Recipient respecting the Confidential Information;

(b) to take any and all actions at all times to safeguard all Confidential Information made available to Recipient so that such Confidential Information is not exposed to, or taken by, any unauthorized person or entity;

(c) that in the event Recipient receives a request to disclose all or any part of the Confidential Information under the terms of a valid and enforceable subpoena or order issued by a court of competent jurisdiction, Recipient shall: (i) immediately notify Valmark of such request and provide Valmark copies of all documents relating to the same; and (ii) use its best efforts to cooperate with the respective Valmark Party to seek a protective order or otherwise prevent the disclosure of the Confidential Information; and

4. Return or Destruction of Confidential Information. Upon written notice from Valmark, Recipient will promptly destroy or return to Valmark, or to such other person as Valmark may designate, all property and information furnished by any of the Valmark Parties or by other persons at the request of any of the Valmark Parties to Recipient, including any property and information considered by any of the Valmark Parties to be Confidential Information, and Recipient will not retain any copies, extracts or other reproductions, in whole or in part, of such material. Upon Valmark's request, Recipient will promptly destroy all copies of the written Confidential Information, and certify such destruction to Valmark in writing. All Confidential Information, including, without limitation, any oral Confidential Information will continue to be subject to the terms of this Agreement.

5. Equitable Remedies and Disputes. Recipient acknowledges and agrees that the Valmark Parties' remedies at law for a breach or threatened breach of any of the provisions of this Agreement would be inadequate and, in recognition of that fact, in the event of any such breach or threatened breach, it is agreed that, in addition to its remedies at law, each of the Valmark Parties will be entitled to, and Recipient agrees not to oppose any such Valmark Party's request for, equitable relief in the form of specific performance, temporary restraining order, temporary or permanent injunction without the necessity of posting bond, including an injunction restraining Recipient from disclosing, in whole or in part, any Confidential Information, or any other equitable remedy which may then be available; provided, nothing herein contained will be construed as prohibiting any Valmark Party from pursuing any other remedies available to it for such breach or threatened breach, including recovery of damages from Recipient. The prevailing party in any litigation to enforce the terms of this Agreement or to prevent or remedy a breach of this Agreement shall be entitled to recover from the other party, in addition to all remedies available at law and equity, its costs and attorneys' fees, including expert or accountants' fees, incurred as a result of such threatened or actual breach.

6. Acknowledgement. As between the parties, Recipient acknowledges the respective Valmark Parties' ownership of all patent, trademark, copyright, trade secret rights and all other intellectual property rights and proprietary rights in the Confidential Information.

7. Governing Law. This Agreement shall be interpreted in accordance with the laws of the State of California, without regard to conflicts of law principles. The parties agree that any action or proceeding to enforce or arising out of this Agreement may be commenced in the state court, or in the United States District Court, in San Francisco, California. The parties irrevocably consent to the personal jurisdiction of such courts, and agree that venue will be proper in such courts and waive any objections based upon *forum non conveniens*.

8. Term. The term of this Agreement shall be from the date stated above until all Confidential Information is publicly disclosed, unless terminated earlier in writing by Valmark, provided however that Section 6 shall survive any termination or expiration of this Agreement, notwithstanding the reason for such termination or expiration.

9. Severability. In the event any one or more of the provisions of this Agreement is invalid or otherwise unenforceable, the enforceability of the remaining provisions shall be unimpaired.

10. Counterparts. This Agreement may be executed in counterparts. A copy or facsimile of signature shall be deemed an original signature.

11. Third Party Beneficiaries. Each of the respective Valmark Parties are third party beneficiaries hereto and shall be entitled to the rights, benefits, protections and remedies set forth in this Agreement.

12. Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes and cancels all prior oral or written understandings or agreements. No modification, amendment, supplement to or waiver of this Agreement shall be binding upon the parties hereto unless made in writing and duly signed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the first date written above.

**RECIPIENT**

**VALMARK INDUSTRIES, INC.**

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

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

Date:

Date: