

Confidentiality & Non-Disclosure Agreement

This Confidentiality Agreement (this “**Agreement**”),

effective as **[DATE]** (the “**Effective Date**”),

is entered into by and between

HEYCO-Werk USA

a Virginia corporation having its principal place of business at

300 Industrial Park Way, Emporia , Virginia 23847 (the “**Discloser**”)

And

[RECIPIENT]

a **[STATE OF ORGANIZATION]** **[ENTITY TYPE]** having its principal place of business at

[ADDRESS] (the “**Recipient**”, and together with the Discloser, the “**Parties**”, and each, a “**Party**”).

WHEREAS, in connection with any business proposals or transactions entered into between the parties (the "Purpose"), the Discloser desires to share certain information with the Recipient that is non-public, confidential, or proprietary in nature; and

WHEREAS the Discloser wishes to protect and preserve the confidentiality of such information.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set out herein, and for other good and valuable consideration, the recipient and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Confidential Information. Except as set out in Section 2 below, “**Confidential Information**” means all non-public, confidential, or proprietary information, including, but not limited to, any trade secrets, disclosed before, on, or after the Effective Date, by the Discloser to the Recipient or its affiliates, or to any of the Recipient’s or its affiliates’ employees directors, partners, shareholders, members, managers, agents, independent contractors, service providers, and sublicensees, subcontractors, attorneys, accountants, or financial advisors (collectively, “**Representatives**”), whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as “confidential”.

Confidential Information includes, without limitation:

- a) all information concerning the past, present, and future business affairs of the Discloser and its affiliates, including without limitation, finances, customer information, supplier information, products, services, organizational structure and internal practices, forecasts, sales and other financial results, records and budgets, and business, marketing, development, sales, and other commercial strategies;

- b) all unpatented inventions, ideas, methods, and discoveries, trade secrets, know-how, unpublished patent applications, and other confidentiality intellectual property;
- c) all designs, specifications, documentation, components, source code, object code, images, icons, audiovisual components, and objects, schematics, drawings, protocols, processes, and other visual depictions, in whole or in part, of any of the foregoing;
- d) any third-party confidential information included with, or incorporated in, any information provided by the Discloser to the Recipient or its Representatives;
- e) all other information that would reasonably be considered non-public, confidential, or proprietary given the nature of the information and the Parties' businesses; and
- f) all notes, analyses, compilations, reports, forecasts, studies, samples, data, statistics, summaries, interpretations, and other materials (the "Notes") prepared by or for the Recipient or its Representatives that contain, are based on, or otherwise reflect or are derived, in whole or in part, from any of the foregoing.

2. Exclusions from Confidential Information. Except as required by applicable federal, state or local law regulations Confidential Information shall not include information that:

- a) at the time of disclosure is, or thereafter becomes, generally available to and known by the public other than as a result of directly or indirectly, any violation of this Agreement by the Recipient or any of its Representatives;
- b) at the time of disclosure is, or thereafter becomes, available to the Recipient on a non-confidential basis from a third-party source, as established by documentary evidence, provided that such third party is not and was not prohibited from disclosing such Confidential Information to the Recipient by any legal, fiduciary, or contractual obligation to the Discloser;
- c) was known by or in the possession of the Recipient, as established by documentary evidence, before being disclosed by or on behalf of the Discloser under this Agreement; or
- d) was or is independently developed by the Recipient, as established by documentary evidence, without reference to or use of, in whole or in part, any Confidential Information.

The Recipient shall have the burden of proving by clear and convincing evidence that any exclusion it claims under this Section 2 applies.

3. Recipient Obligations. The Recipient shall:

- a) protect and safeguard the confidentiality of all such Confidential Information with at least the same degree of care as the Recipient would protect its own Confidential Information, but in no event with less than commercially reasonable degree of care;
- b) not use the Confidential Information, or permit it to be accessed or used, for any purpose other than the Purpose, or otherwise in any manner to the Discloser's detriment, including without limitation, to reverse engineer, disassemble, decompile, or design around the Discloser's proprietary services, products, and/or confidential intellectual property;
- c) not disclose any such Confidential Information to any person or entity, except to the Recipient's Representatives who:
 - (i) need to know the Confidential Information to assist the Recipient, or act on its behalf, in relation to the Purpose or to exercise its rights under the Agreement;
 - (ii) are informed in writing by the Recipient of the confidential nature of the Confidential Information; and
 - (iii) are subject to confidentiality duties or obligations to the Recipient that are no less restrictive than the terms and conditions of this Agreement;
- d) comply with all applicable on-site access, remote access, and related security rules and procedures of the Discloser;
- e) fully cooperate with the Discloser in any effort undertaken by the Discloser to enforce its rights related to any such unauthorized disclosure;
- f) be responsible for any breach of this Agreement caused by any of its Representatives; and
- g) notify the Discloser in writing immediately of any misuse, misappropriation, or unauthorized disclosure of Confidential Information that comes to the Recipient's attention.

4. Additional Confidentiality Obligations.

- a) Except as required by applicable federal, state, or local law or regulation, or otherwise as mutually agreed in writing by the Parties, the Recipient shall not, and shall not permit its Representatives to, disclose to any person:
 - (i) that the Confidential Information has been made available to the Recipient or its Representatives, or that it has inspected any portion of the Confidential Information;
 - (ii) that discussions or negotiations may be or are underway between the Parties regarding the Confidential Information or the Purpose, including the status thereof; or
 - (iii) any terms, conditions, or other arrangements that are being discussed or negotiated in relation to the Confidential Information or the Purpose.
- b) Except with the prior written consent of the Discloser, neither the Recipient nor its Representatives shall contact any representative, customer, or supplier of the Discloser with respect to the Confidential Information or the Purpose, other than Purchasing Department.

5. Recipient Representations and Warranties. The Recipient represents and warrants that:

- a) the performance of its obligations herein does not and will not violate any other contract or obligation to which the Recipient is a party, including covenants not to compete and confidentiality agreements;
- b) it is not legally or contractually prohibited from:
 - (i) discussing a potential relationship with the Discloser;
 - (ii) receiving information about a potential relationship with the Discloser; or
 - (iii) entering into a principal agreement with the Discloser; and
- c) it has implemented and will continue to maintain sufficient information security protocols to secure and protect the confidentiality of all Confidential Information in the Recipient's or its Representatives' possession or control.

6. Required Disclosure. Any Disclosure by the Recipient or its Representatives of any Confidential Information under applicable federal, state, or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction (each a "**Legal Order**") shall be subject to this Section 6. Before making any such disclosure, the Recipient shall provide the Discloser with:

- a) prompt written notice of such Legal Order so that the Discloser may seek a protective order or other remedy; and
- b) reasonable assistance in opposing such disclosure or seeking a protective order or other limitations on disclosure.

If, after providing such notice and assistance as required herein, the Recipient remains subject to a Legal Order to disclose any Confidential Information, the Recipient (or its Representatives or other persons to whom such Legal Order is directed) shall disclose no more than that portion of the Confidential Information which, on the advice of the Recipient's legal counsel, such Legal Order specifically requires the Recipient to disclose and shall use commercially reasonable efforts to obtain assurances from the applicable court or agency that such Confidential Information will be afforded confidential treatment.

7. Return or Destruction of Confidential Information. Upon the expiration or termination of this Agreement, or at the Discloser's request at any time during the term of this Agreement, the Recipient and its Representatives shall promptly, at the Discloser's discretion, return to the Discloser all copies, whether in written, electronic or other forms of media, of the Confidential Information, or destroy all such copies and certify in writing to the discloser that such Confidential Information has been destroyed. In addition, the Recipient shall also destroy all copies of any Notes created by the Recipient or its Representatives and certify in writing to the Discloser that such copies have been destroyed.
8. Term and Termination. The term of this Agreement shall commence on the Effective Date and shall expire five years from the Effective Date Notwithstanding anything to the contrary herein:
 - a) Each Party's rights and obligations under this Agreement shall survive any expiration or termination of this Agreement for a period of 1 year from the date of such expiration or termination, even after the return or destruction of Confidential Information by the Recipient; and
 - b) With respect to Confidential Information that constitutes a trade secret under applicable law, such rights and obligations shall survive such expiration or termination until, if ever, such Confidential Information loses its trade secret protection other than due to an act or omission of Recipient or its Representatives.
9. Indemnification. The Recipient shall defend, indemnify, and hold harmless the Discloser, its affiliates, and their respective shareholders, officers, directors, employees, agents, successors, and permitted assigns from and against all losses, damages, liabilities, deficiencies, actions, judgements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, in connection with any third-party claim, suit, action, or proceeding arising out of or resulting from a breach of any representation, warranty, or obligation set forth in this Agreement by the Recipient or any of its Representatives.

10. No Discloser Representations or Warranties. The Discloser makes no representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information disclosed to the Recipient or its Representative hereunder. Neither the Discloser nor any person or entity disclosing Confidential Information on its behalf under this Agreement shall be liable to the Recipient or any of its Representatives relating to or resulting from the Recipient's use of any of the Confidential Information or any errors therein or omissions therefrom.
11. No Transfer of Rights, Title, or Interest. The Discloser hereby retains its entire right, title, and interest, including all intellectual property rights, in and to all Confidential Information. Any disclosure of Confidential Information hereunder shall not be construed as an assignment, grant, option, license, or other transfer of any such right, title, or interest whatsoever to the Recipient or any of its Representatives.

12. No Other Obligation. The Parties agree that:

- a) this Agreement does not require or compel the Discloser to disclose any Confidential Information to the Recipient;
- b) neither Party shall be under any legal or other obligation of any kind whatsoever, or otherwise be obligated to enter into any business or contractual relationship, investment, or transaction, by virtue of this Agreement, except for the matters specifically agreed to herein; and
- c) either Party may at any time, at its sole discretion with or without cause, terminate discussions and negotiations with the other Party, in connection with the Purpose or otherwise.

13. Remedies.

- a) the Recipient acknowledges and agrees that money damages would not be a sufficient remedy for any breach or threatened breach of this Agreement by the Recipient or its Representatives. Therefore, in addition to all other remedies available at law (which the Discloser does not waive by the exercise of any rights hereunder), the Discloser shall be entitled to specific performance and injunctive and other equitable relief as a remedy for any such breach or threatened breach, and the Recipient hereby:
 - (i) Waives any requirement that the Discloser secure or post any bond or show actual monetary damages in connection with such a claim.
 - (ii) Agrees that it shall not oppose the granting of such relief on the basis that the Discloser has an adequate remedy at law.

- b) If either Party institutes any legal suit, action, or proceeding against the other Party arising out of or relating to this Agreement, the prevailing Party in the suit, action or proceeding shall be entitled to receive in addition to all other damages to which it may be entitled, the costs incurred by such Party in conducting the suit, action or proceeding, including reasonable attorneys' fees and expenses and court costs.
14. Governing Law, Jurisdiction, and Venue. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Virginia without giving effect to any choice or conflict of law provision or rule (whether of the State of Virginia or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Virginia.
15. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or email of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the Parties at the respective addresses set forth on the first page of this Agreement (or to such other addresses that may be designated by a Party from time to time in accordance with this Section)
16. Entire Agreement. This Agreement constitutes the sole and entire agreement between the Parties with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each Party hereto.
17. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
18. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.
19. Assignment. Neither Party may assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the other Party.

20. Waivers. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.

HEYCO-Werk USA

[RECIPIENT]

By _____

By _____

Name:

Name:

Title:

Title:

Version: July 2024