Non-Disclosure Agreement

THIS NON-DISCLOSURE AGREEMENT [this “Agreement”]
is made and entered into as of

_____ [Date]

between

Hielscher USA, Inc. having its place of business at 2024 Macopin Road, Lembo Bldg., West Milford, NJ 07480, USA and

_____

[Company Name],
having its place of business at

_____

[Address]

All companies listed above are each herein called a [“Party”] and are collectively called the [“Parties”].

1. Purpose

Both Parties wish to explore a business opportunity of mutual interest and in connection with this opportunity wish to execute this Non Disclosure Agreement [“Agreement”].

Therefore, both Parties plan to enter into certain technical and business discussions relating to ultrasonic processing and its scale up. In the course of such discussions, each Party may acquire or be exposed to proprietary or confidential information of the other Party. The Parties have entered into this Agreement in order to protect their rights with respect to any such information in accordance with the terms of this Agreement.

2. Confidential Information

The term [“Confidential information”] means all technical and commercial information of a proprietary or confidential nature which is disclosed by a Party, or otherwise acquired by the receiving Party, in the course of the Parties' discussions and which is marked "Confidential" by the disclosing Party or identified as confidential by the disclosing Party by written notice to the receiving Party within ten (10) days of disclosure thereof. By way of illustration, but not limitation, Confidential Information includes trade secrets, processes, formulae, data, know-how, products, designs, drawings, computer aided design files and other computer files, computer software, bills of materials, ideas, improvements, inventions, training methods and materials, manufacturing processes, sales information, marketing techniques, plans, strategies, budgets, financial information, forecasts, marketing plans, customer names, customer data, customer lists and pricing policies. Confidential Information may also include information disclosed to a Party by third Parties at the direction of a disclosing Party.

Confidential Information shall not, however, include any information which the receiving Party can establish

1. is or hereafter becomes known and available to the general public through no act or omission of the receiving Party which is, directly or indirectly, in violation of the receiving Party's obligations under this Agreement;

2. is subsequently disclosed without restriction to the receiving Party by a third party who had the right to make such disclosure and who did not, directly or indirectly, receive such information through a party who was obligated not to disclose the same;

3. is required to be disclosed by any applicable judgment, order or decree of any court, governmental body or agency having jurisdiction or by any applicable law, rule or regulation; provided that in connection with any such disclosure, the receiving Party shall use its best efforts to give to the disclosing Party reasonable prior notice of the disclosure of any information;

4. is disclosed to a third party on a non-confidential basis by the Party who owns such information; or

5. was known by the receiving Party prior to disclosure or independently developed by the receiving Party without knowledge of, reliance upon, or use of the disclosing Party’s Confidential Information.

3. Non-use and Non-disclosure

Confidential Information will remain the property of the disclosing Party notwithstanding disclosure hereunder. The receiving Party agrees not to use any Confidential Information for any purpose except to evaluate and engage in discussions concerning a potential business relationship between the Parties hereto. Receiving Party agrees not to disclose any Confidential Information to third parties or to its employees, except to those employees who are required to have the information in order to evaluate or engage in discussions concerning the contemplated business relationship. The receiving Party shall not reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the disclosing Party's Confidential Information and which are provided to the receiving Party hereunder.

4. Maintenance of Confidentiality Information

The receiving Party agrees that it shall take all reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information. Without limiting the foregoing, receiving Party shall take at least those measures that receiving Party takes to protect its own most highly confidential information and shall have its employees, if any, who have access to Confidential Information sign a non-use and non-disclosure agreement in content substantially similar to the provisions hereof, prior to any disclosure of Confidential Information to such employees. The receiving Party shall reproduce the disclosing party’s proprietary rights notices on any copies of Confidential Information in the same manner in which such notices were set forth in or on the originals. The receiving Party shall immediately notify the disclosing Party in the event of any unauthorized use or disclosure of the Confidential Information.

5. No Obligation

Nothing herein shall obligate either Party to proceed with any transaction between them, and each Party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement concerning the business opportunity.

6. No Warranty

ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS". NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING ITS ACCURACY, COMPLETENESS OR PERFORMANCE.

7. Return of Materials

All documents and other tangible objects containing or representing Confidential Information and all copies thereof which are in the possession of receiving Party shall be and remain the property of the disclosing Party and shall be promptly returned to the disclosing Party upon the disclosing Party's request.

8. No License

Nothing in this Agreement is intended to grant any rights to either Party under any patent, mask work right or copyright of Company, nor shall this Agreement grant receiving Party any rights in or to Confidential Information except as expressly set forth herein.

9. Term

This Agreement shall terminate and be of no further force or effect thirty-six (36) months from the date hereof; provided, however, that Recipient's obligations set forth herein shall continue with respect to that portion of the Confidential Information that constitutes a trade secret pursuant to applicable law. Recipient's obligations with respect to such information shall continue until the earlier of (a) the date on which such information ceases to constitute Confidential Information pursuant to paragraph two of this Agreement or (b) the date on which such information ceases to constitute a trade secret pursuant to applicable law.

10. Remedies

The receiving Party agrees that any violation or threatened violation of this Agreement will cause irreparable injury to the disclosing Party, entitling the disclosing Party to seek injunctive relief in addition to all legal remedies.

11. Miscellaneous

Each Party represents and warrants that, unless it is an individual, Party is duly organized, validly existing and in good standing, and that Party has the power and authority to enter into this Agreement. Neither Party may assign this Agreement without the prior written consent of the other Party; provided, however, that either Party may assign this Agreement in connection with the sale of all or substantially all of its business (whether by asset sale, stock sale, merger or otherwise).

This Agreement shall bind and inure to the benefit of the Parties hereto and their successors and assigns. This Agreement shall be governed, construed and interpreted in all respects in accordance with the laws of the State of the defendant without giving effect to any conflict of law rules. Both Parties waive their right to a jury trial, and expressly consent, unconditionally and irrevocably, to the exclusive jurisdiction of such courts at the defendants state and to service of process by certified mail, return receipt requested, or by any manner authorized by the defendant's state rules of court.

This document contains the entire agreement between the Parties with respect to the subject matter hereof. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision hereof. This Agreement may not be amended, nor any obligation waived, except by a writing signed by both Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have executed this Nondisclosure Agreement as of the date first above written.

By: _____

Hielscher USA, Inc., Tom Hielscher (President)

By: _____

_____

Company Name, Name (Title)