



Fax

TO:	Customer Service Manager	FROM:	
FAX:	978-686-7729	PAGES:	6
PHONE:	978-683-9411	DATE:	
RE:	Key Polymer NDA	CC:	

Urgent For review Please comment Please reply Please recycle

Comments: Here is our signed Non-Disclosure Agreement. Please have a Key Polymer officer sign and return ASAP so we can continue our discussions.

Key Polymer
17 Shepard Street
Lawrence, MA 01843



MUTUAL NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is effective as of _____ by and between _____ and Key Polymer Holdings, LLC, together with its affiliates (collectively "**KPH**"), each referenced as a "**Party**," and, collectively, the "**Parties**."

Recitals

- A. The Parties are considering entering into a business arrangement and wish to protect their respective proprietary and confidential information disclosed in connection with their contemplated or actual business arrangement (the "**Dealings**").
- B. Each Party is a "**Discloser**" when disclosing or has disclosed Confidential Information (defined below) to the other Party.
- C. Each Party is a "**Recipient**" when receiving or has received Confidential Information from the other Party.
- D. The Parties agree that the Confidential Information must be protected against any unauthorized use and/or disclosure.

Agreement

NOW, THEREFORE, in consideration of the covenants set forth herein, the Parties, intending to be legally bound, agree as follows:

- 1. **Confidential Information.** The term "**Confidential Information**" shall include all information which is proprietary to the Discloser that is not known by, or generally available to the public at large, including without limitation: financial data, costs, compensation plans, employee information, pricing; pricing strategy, business and marketing plans, and/or other business strategies; customer lists and channel partner information; technical information, designs, specifications; existing systems and programs and those in development; research, information encompassed in test data, other data, reports, and recommendations; intellectual property including without limitation, object code, source code, trade mask works, trademark works, copyright works; and information regarding the Discloser’s business organization, subsidiaries and affiliates. All information of the Discloser that is disclosed to the Recipient or to which the Recipient obtains access, whether originated by the Recipient or by the Discloser or others, shall be presumed to be Confidential Information. Neither Party shall have any obligation to specifically identify any information as to which the protection of this Agreement extends by any notice or other action. The term Confidential Information includes information in electronic, oral and written form, or contained in any other type of storage medium.

2. **Non-use and Nondisclosure.** The Recipient will not, during the period of the relationship between the Parties or anytime thereafter, use or disclose any Confidential Information of the Discloser other than for purposes of evaluating the Dealings or as may be authorized in writing by the Discloser.
3. **Scope of Permitted Disclosure.** The Recipient agrees that any disclosure or dissemination of Confidential Information to the Recipient’s legal, accounting and financial advisors (if any), affiliates, and, in the case of KPH, its board of managers, employees, partners and financing sources (collectively “Representatives”), shall be only for the limited purpose of evaluating the Dealings. The Recipient further agrees that it will disclose Confidential Information of the Discloser only to such Representatives who have a need to know such Confidential Information in order to carry out the responsibilities of the Recipient or evaluate the Dealings, and only then after such persons has been advised of the confidential nature of such information and have agreed to the same obligations of confidentiality and non-use.
4. **Exclusions from Confidential Information.** The foregoing shall not prohibit or limit the Recipient’s use of information (including, but not limited to, ideas, concepts, know-how, techniques, and methodologies) which (a) is or becomes public domain information or material through no fault or breach on the part of the Party using such information; (b) as demonstrated by the written records of the Party using such information, was already lawfully known (without restriction on disclosure) to it prior to such information being disclosed to it by the other Party; (c) has been or is hereafter rightfully furnished to the Party using such information by a third person lawfully in possession thereof, without restriction on disclosure, and itself without restriction on disclosure; or (d) is disclosed by order of a court of competent jurisdiction. In the event that the Recipient, or anyone to whom the Recipient transmits the Confidential Information, becomes legally compelled to disclose the Confidential Information, the Recipient shall, to the extent permissible by law, provide the Discloser with prompt written notice so that the Discloser may seek a protective order or other appropriate remedy. The Recipient shall cooperate with the Discloser in its efforts to obtain such remedies, but the Recipient shall not be required to undertake litigation or legal proceedings in its name.
5. **Recipient Obligations—No Use, Indemnification for Use by Recipient’s Agents and Advisors.** None of the terms contained in this Agreement shall be understood or construed as granting to the Recipient any other right to use or exploit the Confidential Information of the Discloser. The Recipient shall not claim any proprietary right based upon the providing of Confidential Information and shall prohibit (and shall defend and indemnify the Discloser from) any such claims from the Recipient’s agents, advisors or others who may receive the Confidential Information from or through the Recipient. The Recipient agrees that it shall indemnify Discloser for any breach of this Agreement by Recipient’s agents, advisors or others who may receive the Confidential Information from or through the Recipient.
6. **Return or Destruction.** Each Party agrees that, upon termination of the Dealings, or at any time upon the written request of the other Party to this Agreement furnishing Confidential Information, it will promptly destroy all originals and copies of all documents and materials and any electronic data it has received from such other Party containing Confidential Information except for (i) electronic copies created pursuant to standard back- up or archived procedures, and (ii) one copy of such Confidential Information to the extent required by applicable law or regulation; *provided,*

however, that such copies of Confidential Information retained under Section 1(i) and (ii) above will remain subject to the terms of this Agreement. Each Party agrees that upon the written request of the other Party, it will provide a written statement to the other Party certifying compliance with this provision.

7. **Disclosures regarding Relationship.** The Parties agree not to disclose to any third party the object and scope of the relationship between the Parties, except as required by law or as may be necessary to enforce the terms of this Agreement.
8. **Legal Remedies and Attorneys' Fees.** Each Party agrees and acknowledges that any breach of this Agreement may cause the other Party irreparable harm for which monetary damages may be inadequate. Accordingly, either Party will be entitled to seek injunctive or other equitable relief, in addition to all other remedies available at law and in equity, to remedy any threatened or actual breach of this Agreement by the other Party. In the event a Party enforces this Agreement due to a breach by the other Party, the breaching Party shall reimburse the non-breaching Party for costs and expenses, including without limitation attorneys' fees, reasonably incurred in such enforcement.
9. **Obligations Survive Termination.** The termination of the intended relationship between the Parties with respect to the Dealings shall not relieve the Parties or their agents and advisors of the obligations of non-use and nondisclosure or obligation to return the Confidential Information.
10. **Non-Solicitation.** Neither Party shall solicit, hire, engage, or otherwise employ or compensate, directly or indirectly, an employee of the other Party for a period of two (2) years from the effective date hereof. Nothing herein, however, shall preclude either party from hiring any individual who (i) responds to a general employment solicitation, (ii) initiates discussions regarding such employment without any direct solicitation to such individual, or (iii) has been terminated by either party prior to commencement of employment discussions between such potential employer and such individual.
11. **Entire Agreement.** This Agreement sets forth the entire understanding of the Parties with respect to the matters set forth in this Agreement, and supersedes all prior agreements, arrangements and understandings of the Parties, whether written or oral, with respect to the subject matter of this Agreement. The Parties may amend, modify or supplement this Agreement in such manner as they may agree upon in writing.

- 12. Miscellaneous.** This Agreement shall be binding upon, and shall inure to the benefit of the Parties and their respective successors and assigns. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware. The Delaware courts shall have jurisdiction over all matters relating to this Agreement. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms and provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated. The Parties understand and agree that no failure or delay by the other Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof. Each of the Parties represents and warrants that it has the authority to enter into this Agreement. For purposes of this Agreement, "affiliate" of a person means any entity or individual controlled by or under common control with such person and, in the case of KPH, includes, but is not limited to, Key Polymer Real Estate LLC.

IN WITNESS WHEREOF, each of the Parties has read, understood and executed this Agreement as of the date first set forth above.

COMPANY _____

KEY POLYMER HOLDINGS, LLC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____