

1 Glenn E. Turner III (CSB # 94497)  
 2 [gturner@gibbsgidden.com](mailto:gturner@gibbsgidden.com)  
 3 GIBBS GIDEN LOCHER TURNER  
 4 SENET & WITTBRODT LLLP  
 5 1880 Century Park East, 12<sup>th</sup> Floor  
 6 Los Angeles, California 90067  
 7 Tel: (310) 552-3400  
 8 Fax: (310) 552-0805

NOTE: CHANGES MADE BY THE COURT

9 Eric M. Trelz (pro hac vice)  
 10 Jeffrey L. Schultz (pro hac vice)  
 11 Lucas T Pendry (pro hac vice)  
 12 ARMSTRONG TEASDALE LLP  
 13 7700 Forsyth Blvd., Suite 1800  
 14 St. Louis, Missouri 63105  
 15 Telephone: (314) 621-5070  
 16 Facsimile: (314) 621-5065

17 *Attorneys for Defendant MiTek US, Inc.*

18 UNITED STATES DISTRICT COURT  
 19 CENTRAL DISTRICT OF CALIFORNIA

20 EARTHBOUND CORPORATION, a  
 21 Washington corporation; and INTACT  
 22 STRUCTURAL SUPPLY, LLC, a  
 23 Washington corporation,

24 Plaintiffs,

25 v.

26 MITEK USA, INC., a Missouri  
 27 corporation; KEN KEYSE, an  
 28 individual, and the MARITAL  
 COMMUNITY OF KEN AND  
 CINDY KEYSE, JAMES MILLER, an  
 individual, and the MARITAL  
 COMMUNITY OF JAMES MILLER  
 AND LINDA MILLER, and JASON  
 BIRDWELL, an individual, and the  
 MARITAL COMMUNITY OF  
 JASON BIRDWELL AND  
 LACHELLE BIRDWELL,

Defendants.

29 KEN KEYSE, an individual and  
 30 JAMES MILLER, an individual,

No. CV 16-7223-DMG (JPRx)

**EXHIBIT 1 - STIPULATED PROTECTIVE ORDER**

Action filed: August 2, 2016

Action transferred: September 26, 2016

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Counterclaimants,  
  
vs.  
  
EARTHBOUND CORPORATION  
and INTACT STRUCTURAL  
SUPPLY, LLC  
  
Counterclaim Defendants.

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. “CONFIDENTIAL” AND “ATTORNEYS’ EYES ONLY” MATERIAL

“Confidential” material shall include, without limitation, the following documents and tangible things produced or otherwise exchanged: customer contacts and information, payment and compensation structures, and confidential personal information. As a subset of “Confidential” material, “Confidential - Attorneys’ Eyes Only” shall be information that the producing party believes in good faith is extremely sensitive confidential information that if disclosed to another party or non-party would create a substantial adverse impact on the producing party’s business, financial condition, ability to compete, standing in the industry, or any other risk of injury that could not be avoided by less restrict means; such material shall include, without limitation, detailed pricing and margin information,

1 intellectual property, templates used to prepare quotes and job runs, and detailed  
2 job/project information. For the purposes of this paragraph, the phrase “Attorneys’  
3 Eyes Only”, includes Joe Carr, Esq., Sr. VP, Sec. and General Counsel of MiTek  
4 USA, Inc., and Wes Bates, Esq., corporate counsel for the plaintiffs, provided that  
5 they will not share any “Attorneys Eyes Only” information any third party.

### 6 3. SCOPE

7 The protections conferred by this agreement cover not only confidential  
8 material (as defined above), but also (1) any information copied or extracted from  
9 confidential material; (2) all copies, excerpts, summaries, or compilations of  
10 confidential material; and (3) any testimony, conversations, or presentations by  
11 parties or their counsel that might reveal confidential material. However, the  
12 protections conferred by this agreement do not cover information that is in the  
13 public domain or becomes part of the public domain through trial or otherwise.

### 14 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

15 4.1 Basic Principles. A receiving party may use confidential material that is  
16 disclosed or produced by another party or by a non-party in connection with this  
17 case only for prosecuting, defending, or attempting to settle this litigation.  
18 Confidential material may be disclosed only to the categories of persons and under  
19 the conditions described in this agreement. Confidential material must be stored and  
20 maintained by a receiving party at a location and in a secure manner that ensures  
21 that access is limited to the persons authorized under this agreement.

22 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
23 ordered by the Court or permitted in writing by the designating party, a receiving  
24 party may disclose any “CONFIDENTIAL” material only to:

25 (a) the receiving party’s counsel of record in this action, as well as employees of  
26 counsel to whom it is reasonably necessary to disclose the information for this  
27 litigation;

1 (b) the officers, directors, and employees (including in house counsel) of the  
2 receiving party to whom disclosure is reasonably necessary for this litigation;

3 (c) experts and consultants to whom disclosure is reasonably necessary for this  
4 litigation and who have signed the “Acknowledgment and Agreement to Be  
5 Bound” (Exhibit A);

6 (d) the court, court personnel, and court reporters and their staff;

7 (e) copy or imaging services retained by counsel to assist in the duplication of  
8 confidential material, provided that counsel for the party retaining the copy or  
9 imaging service instructs the service not to disclose any confidential material to  
10 third parties and to immediately return all originals and copies of any confidential  
11 material;

12 (f) during their depositions, witnesses in the action to whom disclosure is  
13 reasonably necessary and who have signed the “Acknowledgment and Agreement  
14 to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or  
15 ordered by the Court. Pages of transcribed deposition testimony or exhibits to  
16 depositions that reveal confidential material must be separately bound by the court  
17 reporter and may not be disclosed to anyone except as permitted under this  
18 agreement;

19 (g) the author or recipient of a document containing the information or a custodian  
20 or other person who otherwise possessed or knew the information.

21 4.3 Disclosure of “CONFIDENTIAL - ATTORNEYS’ EYES ONLY” Information

22 or Items. Unless otherwise ordered by the Court or permitted in writing by the  
23 designating party, a receiving party may disclose any “ATTORNEYS’ EYES  
24 ONLY” material to: (a) the receiving party’s counsel of record in this action, as  
25 well as employees of counsel to whom it is reasonably necessary to disclose the  
26 information for this litigation; (b) in house or corporate counsel for a party, as  
27 identified in paragraph 2 above, provided in house or corporate counsel do not  
28

1 share the information designated “CONFIDENTIAL – ATTORNEYS’ EYES  
2 ONLY” with any other employee of the receiving party. Additionally, in house and  
3 corporate counsel and must sign the “Acknowledgement and Agreement to Be  
4 Bound” (Exhibit A) prior to receiving any “CONFIDENTIAL - ATTORNEYS’  
5 EYES ONLY” material; (c) experts and consultants to whom disclosure is  
6 reasonably necessary for this litigation and who have signed the “Acknowledgment  
7 and Agreement to Be Bound” (Exhibit A); (d) the Court, court personnel, and court  
8 reporters and their staff; (e) copy or imaging services retained by counsel to assist  
9 in the duplication of confidential material, provided that counsel for the party  
10 retaining the copy or imaging service instructs the service not to disclose any  
11 confidential material to third parties and to immediately return all originals and  
12 copies of any confidential material; (f) the author(s) and all recipients of the  
13 document or the original source of the information; and (g) any other person only  
14 upon order of the Court or upon written consent of the producing party.

15 4.4 Filing Confidential Material. Before filing confidential material or discussing or  
16 referencing such material in court filings, the filing party shall confer with the  
17 designating party to determine whether the designating party will remove the  
18 confidential designation, whether the document can be redacted, or whether a  
19 motion to seal or stipulation and proposed order is warranted. Local Civil Rule 79-5  
20 sets forth the procedures that must be followed and the standards that will be  
21 applied when a party seeks permission from the Court to file material under seal.

## 22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
24 party or non-party that designates information or items for protection under this  
25 agreement must take care to limit any such designation to specific material that  
26 qualifies under the appropriate standards. The designating party must designate for  
27 protection only those parts of material, documents, items, or oral or written  
28

1 communications that qualify, so that other portions of the material, documents,  
2 items, or communications for which protection is not warranted are not swept  
3 unjustifiably within the ambit of this agreement.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations  
5 that are shown to be clearly unjustified or that have been made for an improper  
6 purpose (*e.g.*, to unnecessarily encumber or delay the case development process or  
7 to impose unnecessary expenses and burdens on other parties) expose the  
8 designating party to sanctions. If it comes to a designating party's attention that  
9 information or items that it designated for protection do not qualify for protection,  
10 the designating party must promptly notify all other parties that it is withdrawing  
11 the mistaken designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
13 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise  
14 stipulated or ordered, disclosure or discovery material that qualifies for protection  
15 under this agreement must be clearly so designated before or when the material is  
16 disclosed or produced.

17 (a) Information in documentary form: (*e.g.*, paper or electronic documents and  
18 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial  
19 proceedings), the designating party must affix the word "CONFIDENTIAL" or  
20 "CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each page that contains  
21 confidential material. If only a portion or portions of the material on a page  
22 qualifies for protection, the producing party also must clearly identify the protected  
23 portion(s) (*e.g.*, by making appropriate markings in the margins).

24 (b) Testimony given in deposition or in other discovery-related proceedings: the  
25 parties must identify on the record, during the deposition, hearing, or other  
26 proceeding, all protected testimony, without prejudice to their right to so designate  
27 other testimony after reviewing the transcript. Any party or non-party may, within  
28

1 fifteen days after receiving a deposition transcript, designate portions of the  
2 transcript, or exhibits thereto, as confidential.

3 (c) Other tangible items: the producing party must affix in a prominent place on the  
4 exterior of the container or containers in which the information or item is stored the  
5 word "CONFIDENTIAL." If only a portion or portions of the information or item  
6 warrant protection, the producing party, to the extent practicable, shall identify the  
7 protected portion(s).

8 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
9 designate qualified information or items does not, standing alone, waive the  
10 designating party's right to secure protection under this agreement for such  
11 material. Upon timely correction of a designation, the receiving party must make  
12 reasonable efforts to ensure that the material is treated in accordance with the  
13 provisions of this agreement.

## 14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
16 confidentiality at any time. Unless a prompt challenge to a designating party's  
17 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,  
18 unnecessary economic burdens, or a significant disruption or delay of the litigation,  
19 a party does not waive its right to challenge a confidentiality designation by  
20 electing not to mount a challenge promptly after the original designation is  
21 disclosed.

22 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
23 regarding confidential designations without court involvement. Any motion  
24 regarding confidential designations or for a protective order must include a  
25 certification, in the motion or in a declaration or affidavit, that the movant has  
26 engaged in a good faith meet and confer conference with other affected parties in an  
27 effort to resolve the dispute without court action. The certification must list the  
28

1 date, manner, and participants to the conference. A good faith effort to confer  
2 requires a face-to-face meeting or a telephone conference in compliance with Local  
3 Rule 37.

4 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court  
5 intervention, the designating party may file and serve a motion to retain  
6 confidentiality under Local Civil Rule 37. The burden of persuasion in any such  
7 motion shall be on the designating party. Frivolous challenges, and those made for  
8 an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens  
9 on other parties) may expose the challenging party to sanctions. All parties shall  
10 continue to maintain the material in question as confidential until the court rules on  
11 the challenge.

12 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
13 OTHER LITIGATION

14 If a party is served with a subpoena or a court order issued in other litigation  
15 that compels disclosure of any information or items designated in this action as  
16 “CONFIDENTIAL,” that party must:

- 17 (a) promptly notify the designating party in writing and include a copy of the  
18 subpoena or court order;  
19 (b) promptly notify in writing the party who caused the subpoena or order to issue  
20 in the other litigation that some or all of the material covered by the subpoena or  
21 order is subject to this agreement. Such notification shall include a copy of this  
22 agreement; and (c) cooperate with respect to all reasonable procedures sought to be  
23 pursued by the designating party whose confidential material may be affected.

24 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25 If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
26 confidential material to any person or in any circumstance not authorized under this  
27 agreement, the receiving party must immediately (a) notify in writing the  
28



1 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve  
2 all unauthorized copies of the protected material, (c) inform the person or persons  
3 to whom unauthorized disclosures were made of all the terms of this agreement,  
4 and (d) request that such person or persons execute the “Acknowledgment and  
5 Agreement to Be Bound” that is attached hereto as Exhibit A.

6 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
7 PROTECTED MATERIAL

8 When a producing party gives notice to receiving parties that certain  
9 inadvertently produced material is subject to a claim of privilege or other  
10 protection, the obligations of the receiving parties are those set forth in Federal  
11 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
12 whatever procedure may be established in an e-discovery order or agreement that  
13 provides for production without prior privilege review. Parties shall confer on an  
14 appropriate non-waiver order under Fed. R. Evid. 502.

15 10. NON TERMINATION AND RETURN OF DOCUMENTS

16 Within 60 days after the termination of this action, including all appeals, each  
17 receiving party must return all confidential material to the producing party,  
18 including all copies, extracts and summaries thereof. Alternatively, the parties may  
19 agree upon appropriate methods of destruction.

20 Notwithstanding this provision, counsel are entitled to retain one archival  
21 copy of all documents filed with the court, trial, deposition, and hearing transcripts,  
22 correspondence, deposition and trial exhibits, expert reports, attorney work product,  
23 and consultant and expert work product, even if such materials contain confidential  
24 material.

25 The confidentiality obligations imposed by this agreement shall remain in effect  
26 until a designating party agrees otherwise in writing or a court orders otherwise.  
27  
28


1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 By: /s/ Glenn E. Turner III  
3 /s/ Eric Trelz (pro hac vice)  
4 /s/ Jeffrey L. Schultz (pro hac vice)  
5 /s/ Lucas T Pendry (pro hac vice)  
6 *On behalf of MiTek USA, Inc.*

7 By: /s/ Laura K. Christa (w/ consent)  
8 /s/ James Nelson (pro hac vice) (w/ consent)  
9 *On behalf of Keyse, Miller, & Birdwell*

10  
11 By: /s/ Jeffrey R. Witham (w/ consent)  
12 /s/ Darren A. Feider (pro hac vice) (w/ consent)  
13 /s/ Jillian Barron (pro hac vice) (w/ consent)  
14 /s/ Jeffrey A. James (pro hac vice) (w/ consent)  
15 *On behalf of Earthbound & Intact Structural Supply*

16  
17  
18 DATED: December 5, 2016

19 By:   
20 The Honorable Jean P. Rosenbluth  
21 United States Magistrate Judge  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on \_\_\_\_\_, 2016 in the case of *Earthbound Corp. & Intact Structural Supply, LLC v. MiTek USA, Inc., et al.* Case No. CV 16-07223-DMG (JPRx). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_