

Non-Disclosure Agreement

between

X-Company

[address, register]

(hereinafter referred to as “X”)

and

Y-Company

[address, register]

(hereinafter referred to as “Y”)

(X and Y hereinafter individually referred to as “Party” and collectively as “Parties”)

Preamble

[short description of business focus of X and Y]

The Parties intend to evaluate a potential business collaboration concerning [short description of collaboration, e.g. project name or products to be purchased] and possibly implement such collaboration (hereinafter referred to as the “Purpose”). With respect to such activities, it is anticipated that the Parties may disclose confidential information of any nature to each other. In order to eliminate the possibility of misuse of such confidential information, the Parties hereby agree and enter into this Non-Disclosure Agreement (hereinafter referred to as the “Agreement”):

1. Definitions

- 1.1. **“Confidential Information”** shall mean information of any nature (including but not limited to technical or commercial data, documentation or knowledge), and/or samples that the Parties or their Affiliated Companies disclose in connection with the aforementioned Purpose or which they become aware of in the context of the Purpose (e.g. at factory tours), irrespective if such information is the property of the Parties, of an Affiliated Company of a Party, or of third parties, and regardless of the type and form of the transfer or disclosure of information, including without limitation a direct disclosure of Confidential Information by an Affiliated Company to the Receiving Party.
Confidential Information also comprises all copies of said information, self-generated materials and data, as well as any extracts and summaries thereof.
- 1.2. **“Affiliated Companies”** are legal entities, which exercise direct or indirect control over a Party of this Agreement (**“Parent Companies”**), or which are controlled directly or indirectly by a Party or its Parent Company. For the purpose of this definition “Control” or “Controlling” shall mean to have, directly or indirectly, more than 50% of company shares or voting rights.
- 1.3. **Disclosing Party** is the Party who either by itself or by an Affiliated Company discloses or makes available Confidential Information to the respective other Party.

1.4. **Receiving Party** is the Party who receives or becomes aware of Confidential Information either from the Disclosing Party or from an Affiliated Company of the Disclosing Party.

2. **Duty of non-disclosure; limited use; no reverse engineering**

2.1. In respect of any Confidential Information of a Disclosing Party, the Receiving Party hereby undertakes

- a) to use such Confidential Information exclusively for the Purpose mentioned in the preamble;
- b) to maintain secrecy with respect to such Confidential Information and apply the same diligence as is used with respect to the Receiving Party's own information of similar importance, but at least with a reasonable degree of care [opt.: and in accordance with the measures set out in Annex X1] [opt.: and by forwarding Confidential Information only to those employees whose involvement is necessary for the Purpose (need-to-know principle)];
- c) to disclose such Confidential Information to Affiliated Companies only insofar as such disclosure is necessary in order to achieve the Purpose, provided such Affiliated Companies have been notified of the obligation of confidentiality under the terms of this Agreement, comply with the need-to-know principle mentioned under b) when passing on data internally and insofar as the Affiliated Company concerned is not a competitor to the Disclosing Party.
- d) not to disclose such Confidential Information in any way or form to any third party. However, Confidential Information may be disclosed to third parties insofar as such disclosure is necessary in order to achieve the Purpose and if
 - the respective third party is legally bound by standards of professional secrecy at least as stringent as this Agreement and insofar as the third party concerned is not a competitor to the Disclosing Party;
 - the respective third party has agreed to an agreement of confidentiality at least as stringent as this Agreement and insofar as this third party concerned is not a competitor to the Disclosing Party; or
 - the Disclosing Party agrees to such disclosure in writing.

2.2. Reverse engineering (§ 3 sec. 1 no. 2 German GeschGehG) is not allowed.

3. **Exceptions**

3.1. The obligations under Section 2 of this Agreement do not apply to Confidential Information of the Disclosing Party that:

- a) was in the Receiving Party's lawful possession without obligation of non-use or non-disclosure prior to receipt from the Disclosing Party;
- b) is at the time of disclosure already in the public domain or subsequently becomes available to the public through no breach of this Agreement by the Receiving Party;
- c) is lawfully obtained by the Receiving Party from a third party, unless the Receiving Party is aware or should have been aware that such third party is in breach of any obligations to the Disclosing Party relating to such information;
- d) has been developed by the Receiving Party independently of and without use of or reference to such Confidential Information; or

¹ Optional clause for business-specific standards, e.g. VDA/ISA catalogue

- e) has been approved for release in writing by the Disclosing Party for disclosure in a specific instance.
- 3.2. The Party seeking benefit of one or multiple of the aforementioned exceptions shall bear the burden of proof regarding the respective requirements thereof.
- 3.3. Each Party has the right to refuse acceptance of information prior to the disclosure thereof. Information which is transferred despite such a refusal is not covered by the confidentiality obligations of this Agreement.

4. Duty of disclosure

- 4.1. The Receiving Party may disclose the Confidential Information of the Disclosing Party if the Receiving Party is obligated to do so by any ruling of a governmental or regulatory authority or court order or by mandatory law. In such case, the Receiving Party notifies the Disclosing Party of such ruling and/or court order and/or law without undue delay and insofar as legally possible and supports the Disclosing Party in seeking assurance that its Confidential Information will be treated confidentially.
- 4.2. Confidential Information of the Disclosing Party that is disclosed in such way to a governmental or regulatory authority or court must be marked as "Confidential" insofar as reasonably possible.

5. No warranty

Each of the Parties agrees that any Confidential Information disclosed hereunder is made available "as is". It does not warrant that any of this information that it discloses is complete, accurate, actual, free from defects or third-party rights, or useful for the Purpose, or other purposes of the Receiving Party.

6. Exclusion of license rights

- 6.1. Any Confidential Information which has been disclosed to the Receiving Party remains the property of the Disclosing Party or its Affiliated Company or a third party.
- 6.2. No Licenses and/or any other rights such as, but not limited to, rights of use are either expressly or implicitly granted by this Agreement nor does it constitute any obligation of a Party to grant or convey such rights. In particular, the Receiving Party shall not be entitled to file for patents or other statutory protection in any country based on or using any Confidential Information of the Disclosing Party received hereunder, and – subject to the provisions in clause 6.3.2- any such patent or statutory protection must be transferred to the Disclosing Party upon its reasonable request and without any charge. If the transfer of a statutory protection is legally impossible, the Disclosing Party is entitled to an exclusive worldwide license. In addition, the disclosure of such Confidential Information does not constitute any rights of prior use for the Receiving Party.
- 6.3. Insofar as the Parties undertake negotiations for the initiation of business relations in the form of small groups of representatives from both sides engaging in discursive, open communication ("Workshop"), the following provisions apply in addition to sec. 6.1 and 6.2:
 - 6.3.1 Neither of the Parties is entitled to apply or utilize the contributions of the other Party in whatever form, either by themselves or via third parties, or to put such contributions to any other form of commercial or scientific use (including but

not limited to by registering a patent or a utility model or any other form of industrial property right) or by stipulating a license, or to have it used by others for such a purpose.

- 6.3.2 Any inventions, patents, utility models, designs, copyrights (including without limitation software rights), topography rights and other intellectual property rights or know-how, in particular unpatented technical information, developed or arising from and/or in connection with the workshop if created by the Parties or their employees jointly shall be subject to terms of a separate contract which the Parties shall negotiate in good faith.

7. Liability for Affiliated Companies and consultants/contractors

The Receiving Party warrants that its Affiliated Companies (even if an Affiliated Company ceases to be an Affiliated Company), their agents and their consultants, contractors, employees and other third parties, to whom Confidential Information of the Disclosing Party was disclosed, will adhere to the provisions of this Agreement.

8. Term

- 8.1. This Agreement is effective as of the date of last signature hereunder and shall remain valid for a period of [____] years.

- 8.2. However, the obligations arising from this Agreement with respect to the Confidential Information received hereunder during the term of this Agreement shall survive termination for a period of [____] years. To the extent statutory property rights provisions apply for Confidential Information (e.g. for trade and business secrets), the post-contractual obligation of confidentiality shall extend in accordance with such statutory provisions.

9. Return of Confidential Information

- 9.1. Upon request of the Disclosing Party Confidential Information in tangible and/or electronic form disclosed to the Receiving Party hereunder, as well as any copies thereof, must be returned or destroyed at the discretion of the Disclosing Party. Within fourteen (14) days of its receipt of such request, the Receiving Party shall either
- (i) return such Confidential Information, or
 - (ii) confirm the destruction thereof in writing.
- 9.2. The obligations of return and/or destruction do not apply to
- (i) copies of a Disclosing Party's Confidential Information electronically stored as a matter of routine information technology backup routines of the Receiving Party, but only to the extent that such copies are not otherwise accessible and are not used for any purpose other than backup and/or archiving of data, and to
 - (ii) copies of such Confidential Information which are stored only for purposes of evidence or for the fulfilment of statutory archiving and record-keeping duties and to
 - (iii) Confidential Information the return or destruction of which would be economically or technically impossible to be proven by the Receiving Party; provided however, in each case, that such Confidential Information and/or any copies thereof retained in accordance with (i) and (ii) above in this paragraph shall be subject to an indefinite confidentiality obligation in accordance with the terms and conditions set forth in this Agreement.

10. Applicable law

This Agreement, including the following dispute resolution clause, is subject to the laws of the Federal Republic of Germany excluding its conflict of law provisions. The UNCITRAL Convention on the International Sale of Goods (CISG) will not apply.

11. Dispute resolution / legal venue

11.1. All disputes arising out of or in connection with this contract or its validity shall be finally settled in accordance with the Arbitration Rules of (see possible proposals: <https://www.dihk.de/de/themen-und-positionen/recht-in-der-wirtschaft/aussergerichtliche-streitbeilegung/schiedsgerichtsbarkeit-2114>) without recourse to the ordinary courts of law.

- (1) The arbitral tribunal shall be comprised of [please enter “a sole arbitrator” or “three members”].
- (2) The seat of the arbitration is [please enter city, Germany].
- (3) The language of the arbitration shall be German [opt.: English].
- (4) The rules of law applicable to the merits shall be German law.

12. Transferability

Neither Party shall be entitled without the prior written consent of the other, to transfer or assign any rights and obligations arising hereunder to third parties.

13. Miscellaneous provisions

13.1. This Agreement does not constitute any obligation for the Parties to enter into a collaboration and/or other business relationship, or to disclose any particular information.

13.2. There exist no other written or verbal agreements with regard to this Agreement’s subject matter. This Agreement may not be modified or amended except by written amendments duly executed by each of the Parties. This requirement of written form can only be waived by written agreement between the Parties.

13.3. The export of Confidential Information disclosed under this Agreement may be prohibited by law or require governmental approval. Each Party shall observe the respective national and international laws, and other legal regulations which are applicable for the use and disclosure of Confidential Information exchanged pursuant to this Agreement, in particular the applicable export control regulations and sanction schemes.

13.4. If any provisions of this Agreement should be or become void, invalid, or for legal reasons not enforceable as intended, the validity of the remaining provisions shall not be affected thereby. The Parties shall replace the void, invalid or unenforceable provision with a legally valid provision which corresponds to the economic purpose of the void, invalid, or unenforceable provision to the furthest possible extent.

_____, _____
(place, date)

[signatures]