

Non-Disclosure Agreement

between

LESER GmbH & Co. KG, Wendenstr. 133 – 135, D - 20537 Hamburg  
- in the following referred to as “LESER” -

and

- in the following referred to as the “Supplier” –

Whereas

The parties intend to start negotiations on a cooperation. For the purpose of such negotiations and a future cooperation that may result, confidential information is to be exchanged. This Agreement is to regulate the secrecy of the exchanged information in the negotiation phase in the case of a later cooperation between the parties and after the termination of such negotiations and cooperation. On this basis, the parties to this Agreement agree on the following:

1 Confidentiality and secrecy

- 1. Each party shall treat all and any type of information provided by the other contract party verbally, in writing, electronically and/or in any other way, including data, documents, sketches, drafts, drawing, factory standards, operating secrets, findings, experience, minutes of meeting, etc. (in the following jointly referred to as “Information”) as strictly confidential and keep unrestricted secrecy about such Information and shall not disclose such Information to any third parties. This obligation shall be irrevocable and unlimited in time.
- 2. The confidentiality and secrecy obligation shall not apply to information which a party receives from the other party and
  - a) which is generally in the public domain at the time it is received or became generally known later, or
  - b) which one party had rightfully obtained from third parties before it was received, or rightfully obtains from third parties later, provided that the third party itself was not involved in an infringement of this Agreement upon acquisition of the Information or infringed any other contractual or statutory provision.

The burden of evidence for the existence of the exceptions provided for in a) and b) shall be on the party claiming the existence of such exceptions.

- 3. A party may only disclose, during and after termination of this Agreement, the Information received from the other party to third parties to the extent that:

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- a) such disclosure cannot be avoided in order to fulfil the purpose provided for in the “Whereas Clause” and the third party undertakes in writing to keep confidentiality and secrecy as per this Agreement; such written undertaking shall be submitted to the other party upon request,
- b) disclosure is required due to a decision of a court or government authority; the other party shall be informed of such disclosure immediately, or
- c) the other party approved of such disclosure expressly in advance in writing.

The burden of evidence for the existence of the cases provided for in a) through c) shall be on the party claiming the existence of such cases. In the case provided for in a), the party disclosing the Information shall be responsible to the other party for any infringement of the confidentiality and secrecy obligation by the third party in the same way it would be held responsible for disclosing such Information itself.

- 4. Each party shall ensure compliance with the obligation to keep confidentiality and secrecy by taking appropriate measures, in particular by ensuring that the information provided by the other party is not accessible to unauthorised persons, or cannot be viewed, copied or forwarded by such persons. Upon request, each party shall verify to the other party fulfilment of the aforementioned obligation by submitting appropriate documentation.
- 5. The confidentiality and secrecy obligation as per paragraphs 1 through 4 above shall also apply to this Agreement itself as well as to any cooperation between the parties. In particular, a party shall only be entitled to use the business relationship with the other party for purposes of publicity after obtaining the other party's prior express approval.

## **2 Rights relating to the Information, return**

- 1. The party receiving Information from the other party shall not acquire any rights relating to it (e.g. property rights, intellectual property rights, right of exploitation, etc.) and shall only be entitled to use the Information received for the purposes provided for in the “Whereas Clause”.
- 2. All physical or electronically saved Information a party receives from the other party, including all copies and duplications, shall be returned to the other party and/or deleted if such Information is not, or no longer, used for the purpose provided for in the “Whereas Clause” or when this Agreement is terminated. Retaining such Information shall not be permissible.

## **3 Violations**

In the case of a culpable violation of any obligation accepted in this Agreement, the violating party shall compensate the other party for any losses incurred by this party.

## **4 Validity and term**

- 1. This Agreement shall be unlimited in time. It can normally not be terminated. In particular, the confidentiality and secrecy obligation according to § 1 shall be unlimited in time, regardless of whether a cooperation between the parties was realised or the negotiations on the cooperation are cancelled.

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2. The rights and obligations of the parties according to §§ 1 through 3 shall continue to be valid even in the case of a termination of this Agreement for cause.

5 Other provisions

- 1. The rights from this agreement cannot be transferred by a party to third parties, neither in part nor in full, without the prior written approval by the other party.
- 2. Provided that a provision of this Agreement is or becomes ineffective and / or non-enforceable, this does not affect the validity of the other provisions of this Agreement.
- 3. Any disputes between the contracting parties resulting from or in connection with this Agreement shall be based on the laws of the Federal Republic of Germany, except for its international private law provisions. LESER’s place of jurisdiction shall be the exclusive place of jurisdiction for all and any disputes arising from this Agreement or its coming into being. However, LESER, shall also be entitled to initiate legal proceedings at any other place of jurisdiction.

Hamburg, \_\_\_\_\_ , \_\_\_\_\_

LESER \_\_\_\_\_ Supplier \_\_\_\_\_

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