

focus on LAW

Non-Disclosure Agreement (model)

1st edition 2018

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Non-Disclosure Agreement (“NDA”) (model)

by and between

- Company A, represented by [NAME of authorised representative]
- and
- Company B, represented by [NAME of authorised representative]
- each hereinafter individually referred to as “Party” or jointly as “Parties”.

Introduction:

The Parties have conducted talks with respect to their future and/or already existing project (“Project”) [precise description of the Project]. In this context, they may have to disclose and/or make accessible technical, commercial or other company-related Information that are classified. The Parties are aware of the fact that treating such Information in absolute confidentiality is a key prerequisite for their future and/or continued cooperation.

§ 1 Secrecy obligation

With respect to any Information specified in § 2 below received directly or indirectly in the framework of the Project, the Parties undertake

- to use these exclusively for the purpose ensuing from and intended for the Project;
- to not make them accessible to a third party, or, respectively, make them accessible only to those requiring such Information in fulfilment of the duties underlying the Project pursuant to § 4 and make express reference to the present Agreement; and
- to treat them confidentially and in this respect apply the same level of care as with their own information, but at least due care, and take the necessary and appropriate protection measures.

§ 2 Scope of secrecy obligation

Secrecy within the meaning of the present Agreement applies with respect to any physical or oral information and data obtained directly or indirectly (“Information”), including without limitation:

- any Information expressly designated as secret or that are obviously trade or business secrets;
- any technical Information, including without limitation product or development descriptions, sketches, models, graphics and drawings and other technical documents, and manuals, technical processes and other know-how, including without limitation technical knowledge;
- any Information about existing or future legal interests, including without limitation rights of use and licensing, license fees, patents and patentable inventions, utility models, design models, trademarks and any other rights;

- any Information about company strategies, timelines, goals and ideas, envisaged projects, distribution channels, and commercial documents, including without limitation turnover and margins.

The present NDA does not trigger any obligation to provide or rights to receive information. Information are provided free of charge, no liability is assumed for their correctness, completeness or their being free from third-party industrial property rights ("IPR").

§ 3 Protection of IPR

A Party shall remain the owner of its Information and/or holder of the pertaining rights and IPR. Subject to any specific provisions that may have been agreed, the Parties shall neither exploit Information without prior, express and written consent nor file an IPR application based on Information. The NDA does not trigger grant any license or other rights of use.

§ 4 Categories of persons bound to secrecy

The obligation extends to any staff and agents, representatives or consultants, and subcontractors coming into contact with Information, irrespective of the type and legal concept underlying the business relationship. To the extent that this has not been done yet, the Parties undertake to oblige these categories of persons to adhere to secrecy obligations of at least the level provided for hereunder. As far as legally possible, these agreements have to be drafted in a way that the secrecy obligation will survive the termination of the respective contractual relationship.

Affiliates (*verbundene Unternehmen* within the meaning of Sec. 15 German Stock Corporation Act, *AktG*) are no third party, as long as that they have been made subject to secrecy obligations of at least the level provided for hereunder.

Persons may only be released from their secrecy obligations after having obtained the express, written and prior consent of the Parties.

§ 5 Term. Exemptions from the secrecy obligation

The present NDA enters into force upon signature by the Parties for a period of [xx] years. The obligation to maintain secrecy with respect to Information obtained shall survive the end of the term of the present NDA for an additional period of [x] years.

The obligations ensuing from the present NDA shall not apply, or no longer apply, with respect to Information that

- are or have become common knowledge or generally known;
- have existed previously or have been created independently; or

- have been obtained from a third party without infringement of a secrecy obligation;
- must be disclosed because of a statutory provision or a court/administrative order, whereas, prior to disclosure, the other Party must be given the opportunity to blacken or otherwise protect Information not caught by such provision or order.

Proof that the secrecy obligation has become inapplicable shall be incumbent on the Party claiming inapplicability.

§ 6 Obligation to return and delete Information

After the end of the business relationship or in the event that the present Agreement should be ineffective, the Parties undertake to return upon request each and any Information without undue delay. Electronic data carriers with secret Information must be deleted or destroyed. Information contained in non-operative backups that are stored electronically in regular intervals, are exempt from this obligation if doing so would be disproportionately burdensome. This also applies to Information that have to be stored because of statutory rules and/or documentation purposes. For these pieces of Information, the secrecy obligation shall survive the term stipulated in § 5 above.

No right of retention can be asserted. The Parties are under the obligation to confirm in writing upon request that everything has been returned or destroyed or deleted or, respectively, detail what Information have not been returned or deleted for the above-mentioned reasons.

§ 7 Final Provisions

No oral agreements exist amending this Agreement. Amendments and modifications shall be made in writing to be valid. Should a provision of the Agreement be or become ineffective, or should there be a gap, this does not affect the effectiveness of the remaining provisions. The ineffective provision / gap shall be replaced by an effective provision that is nearest to the economic purpose pursued by the Parties. This Agreement shall be governed by the law of the Federal Republic of Germany.

§ 8 Settlement of disputes. Arbitration clause

All disputes arising in connection with the present Agreement or its validity shall be finally settled in accordance with the Arbitration Rules of the German Institution of Arbitration e.V. (DIS) without recourse to the ordinary courts of law.

place, date signature Company A

place, date signature Company B