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| **Non-Disclosure Agreement** |
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| This Non-Disclosure Agreement (the “Agreement”) is made between Hoerbiger \_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[please enter name and address of the respective Hoerbiger company and abbreviation thereof]* („**\_\_\_**”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[please enter name and address of the other Party]* (the „**Contractual Partner**”) and shall become effective on \_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[please indicate a specific date which might date prior to the actual signing if parties commenced exchanging of information already before the signing of this Agreement or replace by: “*the later date of signature of both Parties”*]* (the “**Effective Date**”). |
| WHEREAS both Parties, intend to disclose to each other non-public technical and/or commercial information in the technical field of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[please enter a description of the technical field of cooperation]* and for the purpose of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[please enter the purpose for the disclosure of the information; e.g.: “evaluating the feasibility of a possible business cooperation between the Parties regarding the development of…”]* (the “**Purpose of this Agreement**”). |
| For Purposes of this Agreement, “**Confidential Information**” means any data or information, no matter whether disclosed by the disclosing party (the “**Disclosing Party**”) itself or by any of its Affiliates pursuant to § 15 German Stock Corporation Act (the “**Affiliates**”), whether in tangible or intangible form, in whatever medium provided, whether unmodified or modified by the receiving Party (the “**Receiving Party**”) or its representatives, whenever and however disclosed, including, but not limited to: * (i) any marketing strategies, plans, financial information, or projections, operations, sales estimates, business plans and performance results relating to the past, present or future business activities of the Disclosing Party and its Affiliates;
* (ii) plans for products or services, and customer or supplier lists;
* (iii) any scientific or technical information, invention, design, process, procedure, formula, improvement, technology or method;
* (iv) any concepts, reports, data, know-how, works-in-progress, designs, development tools, specifications, computer software, source code, object code, flow charts, databases, inventions, information and trade secrets;
* (v) any other information that should reasonably be recognized as confidential information of the Disclosing Party; and
* (vi) any information generated by the Receiving Party or by its Representatives that contains, reflects, or is derived from any of the foregoing.
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| Confidential Information need not be novel, unique, patentable, copyrightable or constitute a trade secret within the meaning of Section 2 No. 1 of the German Trade Secrets Act (Geschäftsgeheimnisschutzgesetz - "**GeschGehG**") in order to be designated Confidential Information. The Receiving Party acknowledges that the Confidential Information is proprietary to the Disclosing Party, has been developed and obtained through great efforts by the Disclosing Party and that Disclosing Party regards all of its Confidential Information as trade secrets. |
| NOW, THEREFORE, in consideration of receipt of the Confidential Information for the Purpose of this Agreement as set forth above, THE PARTIES AGREE AS FOLLOWS: |
| 1. The Receiving Party shall hold such Confidential Information confidential, shall use such Confidential Information only for the Purpose of this Agreement, shall in any case abstain from commercializing the Confidential Information unless in accordance with the prior written consent of the Disclosing Party, shall reproduce such Confidential Information only to the extent necessary for the Purpose of this Agreement, shall restrict disclosure of such Confidential Information to those of its employees with a need-to-know, and shall not disclose such Confidential Information to any third party without prior written approval of the Disclosing Party. Affiliates of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[please enter abbreviation of Hoerbiger company]* shall not be deemed third parties for the purpose of this Section 1. |
| 2. These restrictions on the use or disclosure of Confidential Information shall not apply to any Information which the Receiving Party can reasonably demonstrate is: |
| a. known to the Receiving Party without breach of a confidentiality obligation owed to the Disclosing Party prior to the disclosure by the Disclosing Party or any of its Affiliates under this Agreement; or |
| b. subsequently becomes publicly available otherwise than through an act of the Receiving Party in breach of an obligation owed to the Disclosing Party; or |
| c. developed by the Receiving Party independently; or |
| d. lawfully received from a source other than the Disclosing Party or any of its Affiliates and other than by breach of a confidentiality obligation owed to the Disclosing Party; or |
| e. approved for release in writing by the Disclosing Party. |
| 3. In the event the Receiving Party is legally required to disclose any Confidential Information received pursuant to this Agreement, it will immediately notify the disclosing party. Furthermore, the Receiving Party shall only disclose such part of the Confidential Information which it is legally obliged to disclose, and shall take all reasonable steps to obtain reliable assurance that the disclosed information shall be treated as confidential. Insofar as the Confidential Information to be disclosed involve know-how, the Disclosing Party shall work towards ensuring that the provisions of Sections 16 et seq. GeschGehG are invoked. |
| 4. No license under any intellectual property right or know-how shall be granted or implied by the conveying of Confidential Information to the Receiving Party. None of the Confidential Information which may be disclosed shall constitute any representation, warranty, assurance, guarantee or inducement, in particular not with respect to the infringement of any intellectual property rights or other rights of third parties, by either Party to the other of any kind. The Disclosing Party gives no warranty, express or implied, as to the accuracy, reliability, novelty, completeness or fitness for any particular purpose of any information disclosed pursuant to this Agreement. |
| 5. Neither this Agreement nor the disclosure or receipt of Confidential Information shall constitute or imply any promise or intention to make any purchase of products or services by either Party or any commitment by either Party to enter into any other business arrangement with each other. |
| 6. The Disclosing Party shall remain the owner of all Confidential Information and all embodiments of Confidential Information shall remain the property of the Disclosing Party. All Confidential Information, all embodiments thereof shall be returned and any copies or reproductions of any Confidential Information shall be destroyed by the Receiving Party upon expiration or termination of this Agreement or at any time upon written request of the Disclosing Party. |
| 7. Without prejudice to the confidentiality and provisions restricting the use of Confidential Information contained herein, nothing in this Agreement shall be construed as restricting or prohibiting either Party from performing any of its usual business. |
| 8. This Agreement constitutes the entire understanding between the Parties hereto as to Confidential Information related to the Purpose of this Agreement and replaces all prior agreements between them relating thereto. |
| 9. Neither this Agreement nor any rights or obligations hereunder may be assigned by either Party to any third party, without the prior written consent of the other Party. In the event a Party consents in writing to an assignment of rights or obligations under this Agreement, the assigning Party and the assignee shall be jointly and severally liable for compliance with all confidentiality and restricted use obligations related to the interests assigned. Affiliates of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[please enter abbreviation of Hoerbiger company]* shall not be deemed third parties for the purpose of this Section 9. |
| 10. No amendment or modification of this Agreement shall be valid or binding on the Parties unless made in writing and signed on behalf of each of the Parties by their respective duly authorized officers or representatives. |
| 11. Should any of the provisions of this Agreement become or prove to be null and void, this will be without effect on the validity of this Agreement as a whole. The Parties will, however, endeavour to replace the void provision by a valid one which in its economic effect complies most with the void provision. The same shall apply accordingly in the event that this Agreement contains any gaps. |
| 12. This Confidentiality Agreement shall expire five (5) years after its Effective Date, notwithstanding the right to terminate for good cause. The obligations of confidentiality and restricted use under this Agreement shall survive the expiration or termination of this Agreement or any extension, renewal or follow-up agreement thereof for a period of five (5) years, unless the Parties agree otherwise in such later agreement. |
| 13. The present Agreement is construed and interpreted in accordance with the laws of Germany, without giving effect to its conflict of laws rules. The 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply. |
| 14. Place of jurisdiction for any disputes between the Parties in connection with this Agreement shall be Munich, Germany. |
| 15. In the event of a substantial breach of this Agreement by any Party, the recovery of monetary damages may be an insufficient and inadequate remedy and the other Party may, without waiving any other rights or remedies, apply to any court of competent jurisdiction for an injunction to protect its Confidential Information, and to prevent or restrain the breach of this Agreement. |
| IN WITNESS THEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT. |
| For the Contractual Partner:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name in Print\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date |
| For \_\_\_\_\_\_\_\_\_\_\_\_\_\_ [bitte Abkürzung für relevante Hoerbiger Gesellschaft ergänzen]:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name in Print\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date |