

Non-Disclosure Agreement

between

GAUDLITZ PLASTIC TECHNOLOGIES GmbH & Co. KG

Callenberger Str. 42, D-96450 Coburg

-hereinafter referred to as **GAUDLITZ** –

and

Company: _____

Address: _____

-hereinafter referred to as the contractual partner-

-both hereinafter referred to as the contractual parties-

Sec. 1 Purpose of the Non-disclosure Agreement

- (1) The contractual partner and GAUDLITZ intend to enter into a business relationship with respect to

Project/Description:

or have already done so. In the course of this business relationship, the parties shall exchange information for the purpose of initiating and executing contracts.

- (2) Under this agreement, both GAUDLITZ and the contractual partner shall receive protection for the information previously disclosed and to be disclosed in the future within the framework of this collaboration.

Section 2 Confidential Information

- (1) Information in the sense of this agreement includes all information of a technical, scientific, financial or commercial type regarding knowledge, skills, experiences, development services, testing results, fabrication processes, designs/constructions, materials, analog or digital tools, company and business secrets and inventions or other intellectual property (regardless of whether this is protectable) of the parties which GAUDLITZ or a company affiliated with GAUDLITZ discloses to the contractual partner or which the contractual partner discloses to GAUDLITZ in conjunction with the purpose indicated in Sec. 1 of this agreement in either oral, written, visual or any other form, either directly or indirectly.

- (2) All information exchanged in conjunction with the purpose indicated in Sec. 1 of this agreement in any format, whether written, electronic, oral or in any other manner shall be treated as confidential insofar as the information is not expressly designated as non-confidential information. Insofar as the purpose of the business relationship relates to development services, this agreement also applies to all information related to the manufacturing of an object associated with these development services.
- (3) The fact that the parties to this agreement are conducting contractual negotiations with one another with said intent or that they are in a business relationship is also considered confidential information, as are the existence and content of this agreement itself.
- (4) Information is not considered confidential if the party against whom a breach of this non-disclosure agreement is asserted (hereinafter referred to as the *accused party*) can verify that
 - the information in question is generally available and accessible to third parties without this being the result of any violation of this agreement by the accused party, or
 - at the time the information in question was disclosed to the accused party by the accusing party that information was already available to the accused party as a result of its own development work or as the result of its own activities, or
 - the accused party was provided with the information in question in a legal manner independently of the business relationships indicated in Sec. 1 of this agreement, without a violation of the provisions of this agreement and/or without relevant restrictions of usage, whether by third parties or by the other party, or
 - the information on question is the state of the art or can be derived directly from the state of the art, or
 - the accusing party has agreed to the disclosure in writing.

Section 3 Protection of Information

- (1) If a party receives confidential information, this party hereby undertakes to treat the confidential information as confidential without limitation from the time of receipt, and
 - to only use it for the purpose intended in this agreement, unless the disclosing party expressly agrees to further use in advance and in writing, and
 - to only copy it or record it in written form insofar as this is necessary to fulfill the purpose of the contract.
- (2) The parties hereby undertake not to copy this confidential information themselves or through other persons (with the exception of backup copies for information in electronic form) or disseminate the information, nor disclose it to third parties in any manner or use it for other purposes, unless they obtain the written consent of the other party in advance.
- (3) The receiving contractual partner shall protect and secure the confidential information with the appropriate level of care, and at least the care with which it would protect its own comparable information. Information shall be stored and secured in such a manner as to exclude misuse and unauthorized access.
- (4) The receiving contractual partner shall inform the disclosing contractual partner promptly and in writing if it becomes aware or suspicious of any violation that has occurred or may occur of the disclosing contractual partner's interest in confidentiality. This here clause protects the confidentiality interests of the disclosing contractual partner against any other party.

- (5) The parties hereby undertake to only make the confidential information accessible to their own personnel if such personnel are involved with carrying out the purposes provided for in this agreement. Personnel must agree in writing to comply with the provisions of this agreement, including after the end of their employment relationship.
- (6) Confidential information may generally not be transmitted to third parties. "Third parties" in the sense of this agreement includes the affiliated companies of the contractual partner. "Third parties" in the sense of this agreement does not include affiliated companies of GAUDLITZ. A contractual party may only transmit confidential information if they are given prior written consent by the other contractual party, and only if the transmitting party is able to obligate the third party receiving the confidential information to uphold the stipulations of this agreement.
- (7) This does not include disclosure to third parties if one of the contractual parties is obligated to disclose such information under an order by court or by an administrative authority or under mandatory legislation. The contractual partner under such duty shall inform the contractual partner who has initially disclosed the information promptly and in advance of any such transmissions of information.
- (8) Confidential information may not be used by the contractual partner nor by any of the contractual partner's affiliated companies for business-related purposes that would be in competition with the activities of GAUDLITZ or one of GAUDLITZ's affiliated companies.

Section 4 Duration of the Non-disclosure Agreement

- (1) This non-disclosure agreement shall come into force upon signing by the contractual parties.
- (2) The confidentiality obligation under this agreement shall apply without limitation in time not only during the collaboration business relation in the sense of Sec. 1 of this agreement, but also after its termination, unless the information is obviously no longer subject to any interest in confidentiality for either of the contractual parties.
- (3) Regardless of Sec. 4 para. 2, the confidentiality obligation under this agreement shall end at the earliest 7 years after the end of collaboration between the contractual parties in accordance with Sec. 1.

Section 5 Return of Information

- (1) The parties are obligated to return all information received within ten days following a written request to do so by the other contractual party, and at the latest promptly after the end of the business relationship, without retaining any summaries, records, copies, photographs/recordings or similar; the contractual partner shall confirm within 14 days after the information is returned that all received information media have been returned, and that no summaries, records, copies, photographs/recordings or similar were retained. However, the services and results delivered by the contractual partner to GAUDLITZ shall remain the property of GAUDLITZ.
- (2) Information is only excluded from the deletion/removal obligation, although it is considered confidential information in the sense of Sec. 2 if such deletion/destruction is carried out on a regular, standardized manner for large quantities of data because the data is stored in an automated data backup system with regular backup copies. When establishing and operating such data backup systems the parties are obligated to protect information governed by this agreement against access by third parties using state of the art technology.

- (3) Furthermore, information and/or copies of information is excepted from the deletion/removal obligation if and insofar as the receiving party or a recipient authorized by this party must store the information under mandatory law.
- (4) If information relates to IT systems that only fulfill a defined task in a component, thereby creating an inseparable connection between software and hardware (embedded system), GAUDLITZ is not obligated to return this information.

Section 6 Contractual penalty

If one of the contractual partners violates the obligations of Sec. 3 of this agreement (debtor), they must pay a contractual penalty to the other contractual partner (creditor) for each violation, whereas the debtor hereby waives any objection based on the offence continuation context (in German: Verzicht auf die Einrede des Fortsetzungszusammenhangs). The contractual penalty shall be between EUR 5,000.00 and EUR 50,000.00. It will be levied according to just discretion. The importance of the violated obligation, the disadvantages suffered by the creditor (including intangible disadvantages) and the degree of the breach of duty and culpability of the debtor shall be used to determine the penalty. If the contractual partners do not agree on this point, a judge of the Higher Regional Court in Bamberg (in German: OLG Bamberg) appointed by the President of that very same Higher Regional Court shall, while acting as arbitration expert (in German: Schiedsgutachter), make a binding decision on the matter following a hearing (including only in written form) of the contractual partners.

Section 7 Place of jurisdiction and applicable law

- (1) The law of the Federal Republic of Germany applies exclusively to this agreement and its implementation, excluding both the referencing norms of the German international private law and UN CISG.
- (2) The contractual parties hereby agree to Coburg as the sole place of jurisdiction for disputes arising from this agreement.

§ 8 Final provisions

- (1) There are no ancillary agreements to this non-disclosure agreement. Amendments and supplements to this agreement shall require the written form, and are only valid after a legally binding signature by both parties. This written form requirement may only be waived through a written agreement.
- (2) If individual paragraphs or parts of paragraphs above are null and void, the remainder of the agreement shall remain valid, and the invalid regulation shall be replaced either by the statutory regulation or (if no such regulation exists), a regulation the parties would have agreed to in good faith that is permitted by law, if they had been aware that the paragraph they did agree on was null and void.

Coburg, dated _____

Place, date _____

GAUDLITZ PLASTIC TECHNOLOGIES

GmbH & Co. KG

sign / company stamp

Company:

sign / company stamp

name in block letters

name in block letters