

# Non-Disclosure Agreement

(hereinafter referred to as "**Agreement**")

between

**[company]**, [address], [country]

- hereinafter referred to as "**Recipient**" -

and

**[Bauer Group company]**, [address], Germany

- hereinafter referred to as "**Principal**" -

The Recipient and the Principal hereinafter collectively referred to as "**Parties**", individually as "**Party**"

## Recitals:

The Parties have entered into the project relationship described below (hereinafter referred to as "**Project**") within the scope of which the Principal has disclosed or will disclose confidential information to the Recipient.

Project description:

[...]

## Agreement:

### 1. Definitions

- 1.1. "**Confidential Information**" means all financial, technical, commercial, economic, legal, and tax-related information as well as all information relating to the business activities, strategy, employees, management and other information (including data, drawings, descriptions and records regarding the design, development, manufacturing and integration of equipment and/or parts, as well as know-how in this context) of the Principal or its Affiliates and which is provided to the Recipient, its executive bodies, employees, consultants, or other third parties acting for the Recipient directly or indirectly, by the Principal or one of its Affiliates, or of which the Recipient obtains knowledge in any other manner, regardless of whether this happens in writing, in text form, verbally or in any other manner by allowing physical access or granting access authorization to information, no matter the data medium on which the information is embodied.

Confidential Information also includes the fact that Confidential Information has been disclosed, the existence and content of this Agreement, and all other information relating to the performance of the Project, including the fact that talks will be held on the Project between the Parties and the status of these talks.

Confidential Information does not include any information for which the Recipient can prove that

- the information was already in the public domain at the time of its disclosure to the Recipient, or later became part of the public domain without a breach of this Agreement,
- the Recipient already held such information prior to its disclosure by the Principal or one of its Affiliates, independently of the Project and without violating any non-disclosure agreements or obligations, or that it was developed by the Recipient independently of the Project, or
- the Recipient is required to disclose the information in order to comply with mandatory laws and regulations, court orders or instructions of a competent government authority or to defend or prosecute litigation, provided that the Recipient has given prior written notice of such disclosure to the Principal, to the extent this is permitted by applicable law. The Recipient shall take and implement any appropriate and legitimate actions and measures to prevent such disclosure and/or reduce its scope to a minimum.

- 1.2. "**Affiliates**" are affiliated companies pursuant to sections 15 et seq. of the German Stock Corporation Act [AktG - Aktiengesetz] at the date of this Agreement or companies that become affiliated in the future accordingly.

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- 1.3. **“Reverse Engineering”** means the acquisition of knowledge concerning the design, technical functionality and/or other characteristics of a product, software or any other item of the Principal which contains Confidential Information, through observation, examination, dismantling, testing, or by tracking the source code.
2. The Recipient shall treat the Confidential Information received within the scope of the Project as strictly confidential and shall refrain from any unauthorized use, replication, reproduction, disclosure, publication, or dissemination of the Confidential Information. The Recipient shall use this Confidential Information solely within the scope of the Project and shall refrain from using it in any other manner. The Recipient shall disclose this Confidential Information solely to such employees, vicarious agents, other natural persons or legal entities acting for the Recipient, if and insofar as disclosure is required within the scope of the Project, and these persons and entities have been obliged to maintain secrecy and use the Confidential Information in accordance with this Agreement, prior to disclosure of this Confidential Information to these persons and entities.
3. Any kind of Reverse Engineering by the Recipient shall be strictly prohibited.
4. The Principal and/or its Affiliates shall retain all rights in and to the Confidential Information. The Recipient shall not derive nor be granted any rights from the disclosure of Confidential Information. The Recipient shall not claim nor derive any rights based on prior use with regard to the Confidential Information, nor file objections to any property rights applications submitted by the Principal or its Affiliates; this shall particularly apply for the objection of obvious prior use. The Recipient shall refrain from applying for property rights the subject of which is entirely or partially based on, or derived from, the disclosure of Confidential Information.
5. The Recipient shall return any Confidential Information and any reproductions and copies made thereof – including any kind of material manufactured by the Recipient which contains or allows conclusions to be drawn about Confidential Information (regardless of the data medium on which it is embodied) – to the Principal or destroy and/or delete it at any time immediately at the request of the Principal, but no later than the expiry of this Agreement. Furthermore, the Recipient shall confirm in writing that such information, reproductions and copies have been completely returned or destroyed. The Principal's request to return, destroy or delete any Confidential Information and/or copies and/or reproductions thereof is not required to specifically designate the relevant information. Subject to Section 6, the right of retention for whatever reason shall be explicitly excluded.
6. The obligation to return, destroy and/or delete the Confidential Information under Section 5 above shall not apply if and to the extent that the Recipient is mandatorily obliged to retain it for compliance with the applicable law, regulations of a stock market, or compelling instruction of a competent government authority or court. Furthermore, the obligation under Section 6 shall not apply to automatically generated electronic backup copies within the scope of the existing backup system during a reasonable backup time. This Confidential Information shall then be treated as confidential for the entire retention period in accordance with this Agreement.
7. For each culpable breach of the obligations arising from Sections 2 and 3 of this Agreement by the Recipient, the Principal may request the Recipient to pay a reasonable amount of liquidated damages which the Principal may determine at its due discretion and which can be reviewed as to its adequacy by a competent court at the request of the Recipient in the event of a dispute. Any such liquidated damages to be paid shall be set off against any claims for damages, whereby the liquidated damages shall be the minimum amount to be paid. Payment of liquidated or actual damages shall not release the Recipient from its obligations according to this Agreement.
8. In case of any breach of this Agreement by the Recipient, its Affiliates and its/their vicarious agents, the Principal shall be entitled to take any kind of judicial remedies. In particular, the Principal shall be entitled to (i) obtain interim relief against an imminent violation of this Agreement or, respectively, against the continuation of a violation that has already occurred, whereby in either case the violation shall be committed by the Principal or be attributable to the Principal, without the Principal being obliged to prove that a damage has occurred or is imminent, and (ii) to claim from the Recipient indemnity or compensation of all damages and all detriments (including compensation or indemnity of legal costs) which incurred with the Principal owing to or in connection with a violation of the Recipient's obligations or the obligations of its Affiliates or its/their vicarious agents or which incurred due to the enforcement of such obligations or due to the unauthorized disclosure or use of Confidential Information.
9. This Agreement shall become effective upon signature and shall expire upon completion of the Project, but at

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- the earliest after a term of five years. This Agreement shall also include Confidential Information disclosed or made accessible within the scope of the Project prior to signature of the Agreement. The obligations arising out of this Agreement shall not be affected by the expiry of this Agreement, regardless of the legal reason, and shall continue to be valid and apply for a period of five years from the date of expiry of this Agreement.
- 10. This Agreement does not constitute an obligation to disclose information, in particular the disclosure of Confidential Information, or to conclude further contracts. Neither Party may claim from the other Party compensation for expenses incurred in connection with this Agreement and/or the Project, nor may either Party rely on the assumption that further contracts will be concluded with the other Party.
  - 11. This Agreement shall be deemed to be a contract for the benefit of a third party with regard to the Affiliates of the Principal.
  - 12. This Agreement is governed by the laws of the Federal Republic of Germany to the exclusion of the provisions of private international law and the UN Sales Convention.
  - 13. In case either of the Parties has its statutory seat, its headquarters or its main branch outside the European Union, all disputes arising from or in connection with this Agreement or its validity shall be finally settled by an arbitration tribunal in accordance with the Arbitration Rules of the German Arbitration Institute (DIS) without recourse to the ordinary courts of law. The place of arbitration shall be Ingolstadt, Germany. The language of arbitration shall be English.
  - 14. In case both Parties have their statutory seat, their headquarters or their main branch in a member state of the European Union, the exclusive place of jurisdiction shall be Ingolstadt, Germany for all disputes arising from or in connection with this Agreement or its validity.
  - 15. The invalidity or unenforceability of any provision of this Agreement, wholly or in part, and the existence of any loopholes therein, where relevant, shall not affect the validity and enforceability of the remaining provisions of this Agreement. Any invalid or unenforceable provision shall be replaced and any loophole shall be filled by a provision which comes as close as possible to the original economic intent behind the invalid or unenforceable provision, or which would have been agreed by the Parties in line with the spirit and purpose of this Agreement, if they had been aware of the invalidity, unenforceability or loophole.

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