

## Nondisclosure Agreement

between

**KOCH Pac-Systeme GmbH**, Dieselstrasse 13, D-72285 Pfalzgrafenweiler ["KOCH"]

and

**Company name**, road, place ["the contractor"]

- in the following also referred to individually or jointly "**the party/parties**".

### **PREAMBLE**

The parties intend to engage in discussions relating to a potential cooperation agreement, or collaboration on projects.

The parties therefore agree the following:

### **1. DISCLOSURE OF INFORMATION**

During the period covered by this agreement, the parties will disclose to each other business-related, technical and commercial information (data, drawings, measurement results, experience reports, samples, costings, etc.) and will gain knowledge of other business and operational secrets of the respective other party and its customers (generally referred to as "information").

### **2. CONFIDENTIALITY**

2.1 Both parties undertake to use all information concerning the respective other party and its customers to which they gain access only for the purposes of the intended cooperation, and to maintain confidentiality in respect of it. This means not disclosing information to third parties, either directly or indirectly, verbally or in writing, or in any other way; not disassembling, decompiling or otherwise translating the code of received software; and not opening or dismantling received samples, unless with the explicit written consent of the originating party.

Such disclosure shall be permitted where, and to the extent that, either party is obligated to disclose information originating from the other partner in whole or in part by law, by a court judgement, or on the basis of a binding decision or stipulation by a government agency. The originating party undertakes to notify the respective other party of this in writing in good time and without undue delay, and to provide comprehensive assistance so that the other party can take appropriate measures to protect the information.

2.2 The obligation of confidentiality and non-use shall not - or no longer - extend to information which:

- was provably in the public domain at time of disclosure, or subsequently entered the public domain by no fault of the receiving party; or
- was provably known to the receiving party prior to being disclosed, or was disclosed to it subsequently by a third party without it being obligated by the said third party to maintain confidentiality in respect of the information; or
- provably has been, or is being, developed by the receiving party independently, without using the information from the other party.

The burden of proof shall be incumbent upon the party which asserts the claim.

2.3 Both parties shall be obligated to return, delete or destroy all written or otherwise recorded information (including any copies made) as well as samples without delay on request by the respective other originating party, unless the receiving party is obligated to retain the information by law or by order of a competent court or government agency. Information held in routinely electronically backed-up files does not have to be deleted if deleting it would involve disproportionate effort and expense. The parties undertake not to restore information from backup copies, and to overwrite or destroy the backup media in question after an appropriate period of time. The obligation to return does not extend to copies of information received which the receiving party keeps as evidence of the content and conduct of discussions. The receiving party shall still be bound by its obligation of confidentiality and non-use despite having returned the information items in question.

2.4 KOCH may disclose information received from the contractor to customers and potential customers of KOCH for sales purposes, provided KOCH subjects the said customers to the same duties of confidentiality with regard to the disclosed information. In justified cases, the parties may conclude agreements at variance with the above provision as per Section 5.

### **3. NO ACQUISITION OF TITLE; LIABILITY**

This agreement and the mutual disclosure of information - regardless of whether subject to intellectual property rights or not - shall not entail the acquisition of any rights of title, license rights, rights of replication or use, or any other rights.

The disclosing party shall accept no liability for the completeness, accuracy or usability of the information disclosed under this agreement, or with regard to its freedom from encumbrance by the rights of third parties. Nor shall the disclosing party accept liability for any loss suffered by the receiving party or by third parties as a result of the information it discloses, unless liable by law.

**4. TERM OF THE AGREEMENT**

This agreement shall come into force on signing by both parties and shall have a fixed term of 5 (five) years. It shall subsequently be automatically extended every 12 (twelve) months, unless terminated observing a period of notice of 6 (six) months.

The obligation of confidentiality and non-use shall end 5 (five) years after termination of this agreement.

**5. AMENDMENTS OR ADDITIONS**

Amendments or additions to this agreement - including to this Section 5 - must be made in writing and signed by both parties in order to be legally effective.

**6. CHOICE OF LAW AND JURISDICTION**

This agreement shall be subject to German law, excluding conflict of laws. Jurisdiction in respect of all disputes arising from or in connection with this agreement, or in respect of its validity, shall lie with the courts of the town of Pfalzgrafenweiler, unless the law stipulates another place of jurisdiction.

**7. AFFILIATES**

Affiliate companies in which one party directly or indirectly holds more than 50% of the shares or voting rights, and which are not competitors of the respective other party, as well as Uhlmann Pac-Systeme GmbH & Co. KG, Uhlmannstr. 14-18, D-88471 Laupheim ("Uhlmann") and affiliates of Uhlmann under the terms of sections 15 ff. of the German Stock Corporation Act (AktG), shall not be classed as third parties, provided they are subjected to the same duties of confidentiality with regard to the disclosed information.

**8. SEVERABILITY CLAUSE**

If any single provisions of this agreement should prove legally ineffective, the effectiveness of the remaining provisions of the agreement shall remain unaffected. The parties undertake to amend the ineffective provisions in such a way that they are legally admissible, and come as close as possible to the originally intended commercial purpose. This shall also apply if single provisions contradict the regulations of the EEC/EU and/or the laws of the country concerned.

Pfalzgrafenweiler, dated \_\_\_\_\_, dated \_\_\_\_\_

KOCH Pac-Systeme GmbH \_\_\_\_\_

\_\_\_\_\_  
i.V. Hartmut Kalmbach  
Department Manager Procurement

\_\_\_\_\_  
Name, please complete using block capitals

\_\_\_\_\_  
i.A. Purchaser (please complete)  
Purchasing

\_\_\_\_\_  
Name, please complete using block capitals