

Confidentiality and Use Restriction Agreement

ID number: A-EK-WER-031



CONFIDENTIALITY AND USE RESTRICTION AGREEMENT

BETWEEN



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and

- hereinafter individually or mutually referred to as "Contract Partner" -

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PREAMBLE

The Contract Partners intend to cooperate with regard to bidding procedure, platform related subjects and projects, whereas the cooperation can relate to both development performances and purchasing-related subjects (purpose). For that purpose, the Contract Partners will provide each other with information.

For this reason, the Contract Partners agree upon the following:

1. Definitions

Confidential information shall include all embodied or verbal information and data, as for example technical or business data, documents or know-how and possibly samples, that the Contract Partners exchange in connection with the purpose mentioned in the Preamble.

In case that any confidential information shall be disclosed by the Contract Partners in tangible form, it ought to be described and labeled by the disclosing Contract Partner as "confidential" or labeled with a similar note.

When confidential information is disclosed verbally or visually it should be labeled accordingly or with a similar note prior to the disclosure and its content should be summarized in writing.

Confidential information also involves copies. Any devices, modules, samples, prototypes or parts of it which are given with regard to the cooperation are also regarded as confidential information in terms of this agreement. Confidential information also includes information and data without a confidential note when they are usually being treated as confidential. In case of doubt, any exchanged information and data is to be classified as confidential information.

Affiliated companies are companies where one Contract Partner directly or indirectly

- 1.1. possesses more than half of the voting rights or
- 1.2. can appoint more than half of the members of the management or administration body or the bodies appointed for legal representation or
- 1.3. has the right to conduct the business affairs,

- hereinafter referred to as subsidiaries -

and such companies, which directly or indirectly have the above mentioned influence on one Contract Partner (parent company), as well as its subsidiaries, however, only as long as the previously mentioned preconditions are fulfilled.

2. Confidentiality; restricted use

With regard to every received confidential information, each Contract Partner undertakes to

- 2.1. solely use it for the purpose mentioned in the Preamble;
- 2.2. not make it accessible to third parties resp. to only make it accessible to those employees of its affiliates or to the Contract Partners and/or the consultants or presuppliers of its affiliated companies, who need it for the intended purpose or pre-performances and which are subject to a confidentiality which is at least equal to this agreement, based on its employment contract or other written agreements.

Before one of the Contract Partners provides either an affiliated company or a consultant or a presupplier with confidential information, he has to make sure that a written agreement with the affiliated company or the consultant exists, containing their obligation to treat confidential information in a way which is equal to the contents of this agreement, and

- 2.3. to treat it as confidential and with the same standard of care as its own confidential information of the same importance, but at least with an adequate diligence.

The Contract Partners agree that the confidential information shall remain the property of the one who disclosed the information.

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3. Exceptions

The commitments stated in clause 2 of this agreement shall not apply to confidential information

- 3.1. already known rightfully before being disclosed, and without obligation to confidentiality, to the receiving Contract Partner;
- 3.2. being or going to be publically accessible, without the responsibility of the receiving Contract Partner, its affiliated companies and/or its consultants, provided that confidential information is not already considered as publically accessible for the fact that merely parts of it are or are going to be publically accessible;
- 3.3. being passed on to the receiving Contract Partner by a third party rightfully and without obligation to confidentiality, provided the third party does not violate – to the knowledge of the receiving Contract Partner - an own obligation for confidentiality when being provided with any information;
- 3.4. developed by the receiving Contract Partner, independent of and without recourse to confidential information or according to the exceptions mentioned in clause 3.1, 3.3 or 3.5; or
- 3.5. having been released in writing by the disclosing Contract Partner

The Contract Partner who claims an exception has to prove the existence of its preconditions.

The receiving Contract Partner may disclose confidential information passed on by the disclosing Contract Partner, as far as the receiving Contract Partner is obliged to it due to an official or judicial decision or mandatory legal regulations, provided that the receiving Contract Partner informs the disclosing Contract Partner of it without delay and in writing, for the purpose of exercising its rights, as far as it is not prohibited by legal regulations and that the receiving Contract Partner undertakes what is deemed acceptable to him in order to make sure that the confidential information will be treated as confidential. Such revealed confidential information has to be labeled as „confidential“.

4. Rejection

No Contract Partner is obliged to disclose certain information. Each Contract Partner has the right to deny any information. Any given information that had been denied in the first place and nevertheless was passed on, is not subject to a confidentiality obligation according to this agreement. However, any information that was denied after having been disclosed, is subject to confidentiality according to this agreement.

5. No granting of rights

Neither licenses or other rights, whatsoever, especially rights to a name, as well as rights to patents, utility models and/or trade marks as well as any other industrial property rights are being granted by this agreement, nor does it result in a corresponding obligation to grant such rights. The receiving Contract Partner has not the right to apply for a patent or other industrial property rights with the confidential information. Any given patents or other industrial property rights have to be transferred to the disclosing Contract Partner on appropriate request and free of charge. The disclosure of confidential information does not constitute any rights of prior use for the receiving Contract Partner.

6. Non-remuneration; caveat emptor and disclaimer of liability

The transfer of confidential information is done free of charge. Any warranty or liability in view of accuracy, correctness, freedom of property rights of third parties, completeness and/or usability of the confidential information is – to the extent permitted by law - excluded.

7. Term; further contracts

This Confidentiality Agreement is effective upon the signing of both Contract Partners. Each Contract Partner is entitled to cancel this agreement by a written note directed to the other Contract Partner within a period of thirty (30) days.

The obligations resulting from this agreement with regard to the confidential information being received till the end of the contract term, stay, however, in effect for each Contract Partner, even after the end of the contract, for a period of five (5) years.

The Contract Partners are not obliged to conclude further contracts with regard to the purpose mentioned in the Preamble.

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8. Return

Within ninety (90) days after the end of the contract the disclosing Contract Partner can demand in writing that any confidential information in embodied and/or in any electronic form of device as well as any copies thereof in his possession are to be returned or destroyed, as chosen by the receiving Contract Partner. Within fourteen (14) days after receipt of such a request, the receiving Contract Partner shall either return the confidential information and any copies thereof or confirm in writing to the disclosing party that all of it was destroyed.

Clause 8 paragraph 1 is not applicable for routinely made backup copies of the electronic data traffic and if confidential information and/or copies thereof has to be preserved, according to mandatory law, by the receiving Contract Partner, its affiliated companies or its consultants, provided, however, that this confidential information and/or its copies are subject to an unlimited confidential obligation in correspondence with the regulations in this agreement, as far as they are not being returned or destroyed.

9. Liability for affiliated companies and consultants

In the case that a Contract Partner has disclosed or disclosed confidential information to his affiliated companies, employees, consultants or successors in the business or acquirer of the business pursuant to Section 13, this Contract Partner shall be liable to the other Contract partner for acts or omissions

- his affiliated companies, their employees - even if the affiliated company loses the status of a related company or
- his consultants or
- other third parties,

who have lawfully received the confidential information referred to point 13, should such acts or omissions lead to the unauthorized disclosure or disclosure of such confidential information as if it were a matter of his own acts or omissions of the Contract partner.

10. Contractual penalty

For each violation of the previously mentioned obligations for Confidentiality and Use Restriction, the offending Contract Partner shall have to pay a contractual penalty of 100.000 €, depending on the proof of a real damage and the fact that it does not obstruct the enforcement of a further damage or other claims.

The principles of a connecting link are excluded. Any further claims for damages shall remain unaffected. However, the contractual penalty shall be added to such claims.

11. Settlement of disputes

In case there should arise disputes in connection with this agreement, the Contract Partners will try to settle their disputes amicably by agreement. On demand of a Contract Partner a member of the senior management of both parties shall participate in the negotiations. The Contract Partners are allowed to terminate these negotiations at any time by a written declaration to the other Contract Partner.

Within 14 calendar days after the receipt of the declaration of termination according to paragraph 1, the Contract Partners will try to agree to an alternative dispute resolution (ADR) and the regulations necessary for its realization (including maximum duration of the proceedings). Should such a consent not be accomplished within this period of time, a conflict management procedure according to the conflict management regulation of the "Deutschen Institution für Schiedsgerichtsbarkeit e. V. (DIS)" will be carried out aiming at accomplishing a ADR procedure.

All disputes resulting in connection with this agreement and which have not been able to be settled by negotiations according to paragraph 1 or a ADR procedure, including those referring to its termination or subsequent contractual amendments, are ultimately ruled according to the "Schiedsgerichtsordnung der Deutschen Institution für Schiedsgerichtsbarkeit e.V. (DIS)".

For disputes with a total amount involved of less than 1 million €, the supplementary rules for an accelerated procedure of the DIS are additionally applicable. In case the Contract Partners do not strike an agreement whether the amount involved remains under 1 million €, the "Streitwertfestsetzung" (assessment of the amount involved) of the DIS is applicable.

The seat, or legal place, of the arbitration shall be Munich. The language to be used in the arbitration proceedings shall be German.

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The directive to present a document is only permitted if one of the Contract Partners refers explicitly to such a document in its legal papers. The unsuccessful Contract Partner bears all the costs of the proceeding. In view of the decision referring to the expenses, the arbitration, however, can take into account to which quick and cost-effective extent each of the parties has conducted the proceeding.

12. Applicable law

This agreement is subject to German material right excluding the standards that refer to other legal systems.

13. Transferability

None of the Contract Partners can transfer this agreement or single rights or obligations out of this agreement to third parties without written consent of the other Contract Partner. With the continuing validity of this agreement between the Contract Partners, however, each Contract Partner can transfer, without consent of the other Contract Partner, confidential information, which he has received according to the rules of this agreement and which concerns the acquired business or the essential part of the acquired business, to a successor of the business or a purchaser whether it is by share acquisition, by acquisition of single assets or by other means, provided the successor or purchaser is obligated by an earlier concluded written agreement, to treat confidential information in a way which is at least equal to the contents of this agreement.

14. Written form

All amendments and supplements to this agreement need to be done in writing in order to be effective in law.

Only a written disclaimer can discharge from this necessity.

15. Export control

The Contract Partners have, upon disclosure of all confidential information, to fulfil the respective applicable requirements of the national and international export, customs and foreign trade regulations (Foreign Trade Regulations) and the disclosing party has to provide the necessary export licenses.

Each disclosing Contract Partner has to inform the receiving Contract Partner, in writing, of all the information and data that the receiving Contract Partner needs in order to comply with the applicable foreign trade regulations (e. g. the export list number or the Export Control Classification Number according to the U. S. Commerce Control List (ECCN)) as soon as possible, during disclosure of the confidential information latest.

16. Severability clause

Should any terms of this contract be or become void or not feasible, either in whole or in part, the validity of the remaining terms shall not be affected by it. The void and not feasible term shall be replaced by a regulation that, as far as is legally possible, is closest to what the Contract Partners intend.

Flachglas Group

Supplier

place, date

place, date

name (printed characters)

name (printed characters)

signature

signature