

CUSTOMER MUTAL NON-DISCLOSURE AGREEMENT

BY AND BETWEEN

HOLMER Maschinenbau GmbH organized and existing under the laws of Germany, located at Regensburger Straße 20, 84069 Schierling/Eggmühl with VAT number DE 814 919 702 represented by Martin Führer, chief executive officer, duly authorized for the purposes of this Agreement,

Hereinafter referred to as “HOLMER”, or the “Customer” on the one hand;

AND

organized and existing under the laws of , located at ,
represented by , duly authorized for the purposes of this Agreement,

Hereinafter referred to as the “supplier”.

The Customer and the Supplier are hereinafter referred to individually as a “Party” or collectively as “the Parties”.

WHEREAS:

The Parties intend to establish contractual relations for the supply of all items, components and services offered by the Supplier (hereinafter the „Project“)

In this context, the Parties will be required to exchange and communicate documents and information of a technical, commercial or financial nature, of a confidential nature in connection with their products, services and/or technologies (hereinafter referred to as “Confidential Information” and more specifically defined in Article 1 “Definitions”) without any contractual commitment by either Party to carry out the Project.

This non-disclosure agreement (hereinafter the “Agreement”) shall govern and define the conditions that determine the exchange of information between the Parties arising from or in connection with (i) any request for quotation or technical information sent to the Supplier by the Customer, (ii) any auctions or orders placed by the Customer, and more generally (iii) any contractual relations between the Customer and the Supplier concerning the Project.

The Parties have therefore met to set the conditions for the transmission of this Confidential Information, as well as the rules relating to its use and protection.

NOW THEREFORE, IT HAS BEEN AGREED AS FOLLOWS

Article 1. DEFINITIONS

Whenever used in the context of this Agreement, the following words and terms, when used with initial capital letters, in the singular or in the plural, shall have the meaning defined below, unless otherwise specified or the context does not allow them to be given such meaning:

“Affiliate

Means any person, company or entity which, directly or indirectly, controls, is controlled by, or is under joint control with the relevant Party. A person, company or entity is deemed to control another person if he/she/it holds at least 50% of the capital and/or voting rights of that person, company or entity.

The concept of “control” is understood within the meaning of Article L. 233-3 of the French Commercial Code.

“Agreement”	Means this non-disclosure agreement and, where applicable, its amendments.
“Confidential Information”	Means (a) any information or data of any kind, including technical, scientific, economic, financial, commercial, accounting data, any plan, study, prototype, equipment, audit, experimental and test data, drawings, graphic representations, specifications, know-how, skills, software and programmes, regardless of the form, medium or means thereof, including, without limitation, oral, written or recorded communications on any medium whatsoever, which the Parties are required to communicate in the context of the Project, relating directly or indirectly to the Project; (b) any information that may be considered confidential by a “person skilled in the art” or in the practices of the sector of the Parties’ activity, in particular information concerning: (i) the Disclosing Party’s business, affairs, customers, suppliers, plans, intentions or market opportunities; or (ii) the Disclosing Party’s operations, processes, products, techniques and specifications, test procedures and results, inventions, know-how, trade secrets, designs or software; c) and generally, any information that is likely to be protected by trade secrets or which should reasonably be regarded as confidential by reason of its nature or the circumstances of its disclosure.
“Disclosing Party”	Means the Party that owns the Confidential Information that it transmits to another Party.
“Receiving Party”	Means the Party or Parties receiving the Disclosing Party’s Confidential Information.
“Representative”	Means, with respect to a Party or its Affiliates, its directors, officers, employees, agents and professional advisers such as its accountants, lawyers and financial advisers.

Article 2. PURPOSE

The purpose of this Agreement is to determine the conditions under which the Confidential Information that the Parties have received, will receive or of which they will have become aware in connection with this Agreement and its Project defined in the preamble will be protected.

Article 3. CONFIDENTIALITY UNDERTAKING

Each Party undertakes to consider and treat the Confidential Information received as strictly confidential and as the exclusive property of the Disclosing Party.

The Receiving Party undertakes to:

- a) take all necessary measures to protect the confidentiality of the Confidential Information, and not to disclose or communicate the Confidential Information to any third party without the prior written consent of the Disclosing Party, including, but not limited to any third party who is acquiring the Receiving Party;
- b) maintain the Confidential Information and protect it with at least the same degree of care in protecting its own confidential information; or
- c) use the Confidential Information exclusively for the purposes of the Project and not to make any other use thereof;
- d) not to copy, reproduce, duplicate in whole or in part the Confidential Information in any form whatsoever, unless this is necessary to carry out the Project and such copies, reproductions or duplications have been authorised by the other Party;

- e) not to disassemble, dismantle, reverse engineer, decompile, inspect or otherwise test the Disclosing Party's Confidential Information without the express consent of the Disclosing Party;
- f) not to use the Confidential Information to manufacture, have manufactured or sell products or services that compete with the products or services of the Disclosing Party;
- g) only disclose Confidential Information to its employees, subcontractors and Representatives and/or those of its Affiliates who need to know the Confidential Information in order to carry out the Project and who are bound by written and binding non-disclosure obligations at least as restrictive as those herein; the Receiving Party shall remain liable for any unauthorised disclosure, misuse or breach of this Agreement by its subcontractors and Representatives and those of its Affiliates; and
- h) to inform the Disclosing Party of any actual or potential breach of any of the obligations under the Agreement.

The Project and the fact that discussions and negotiations concerning the Project take place or the status of such discussions and negotiations, as well as the existence, content and performance of the Agreement, shall be considered Confidential Information and shall be covered by the provisions of this article.

Article 4. LIMITS TO THE CONFIDENTIALITY UNDERTAKING

The obligations under the Agreement do not apply to Confidential Information for which each of the Parties provides written evidence that it:

- a) has entered the public domain prior to the date of its disclosure or communication or which will fall into the public domain after any communication or disclosure without the cause being attributable to the other Party; or
- b) has entered the public domain other than as a result of a breach of this Agreement;
- c) was already known by the Receiving Party prior to the effective date of the Agreement, subject to the Party invoking it to provide proof thereof; or
- d) was disclosed or used by the Receiving Party with the prior written consent of the Disclosing Party; or
- e) was lawfully obtained by the Receiving Party, from a third party, without breach or restriction of the Agreement; or
- f) has been developed independently of the other Party subject to the Party invoking it to provide proof thereof; or
- g) any law, applicable regulation, or court order requiring disclosure.

In the event that the Receiving Party is ordered by a governmental, judicial or administrative authority to disclose Confidential Information, the Receiving Party undertakes, to the extent permitted by law, to inform the Disclosing Party thereof by any appropriate means and as soon as possible, in order to enable it to request any appropriate protective measure.

Article 5. OWNERSHIP OF CONFIDENTIAL INFORMATION

All Confidential Information and its reproductions exchanged between the Parties are and shall remain the property of the Party that transmitted it.

The provisions of this Agreement shall not be construed as granting, at any time, to either Party, directly or implicitly, any right to the Confidential Information, including any intellectual property right, including, but not limited to, a licence or assignment of a patent, copyright, design and models, trade secrets, trademarks or know-how.

The disclosure of Confidential Information does not imply a waiver of the protection of such Confidential Information by the application for a patent or by any other intellectual property right by the Disclosing Party.

The Receiving Party undertakes, in particular, not to file an application for industrial property titles, in any country whatsoever, containing all or part of the Confidential Information it has received under this Agreement. Any application of improvement including Confidential Information must be the subject of prior negotiation between the Parties.

The Parties undertake to mention on any medium the information relating to the ownership and/or confidentiality of said Confidential Information, particularly at the time of its authorised reproduction.

Article 6. WARRANTY

Confidential Information is provided on an “as is” basis. The Disclosing Party makes no warranty, express, implied or otherwise, as to the accuracy, completeness or performance of the Confidential Information disclosed including warranties of title, non-infringement, merchantability or suitability for a particular purpose.

Article 7. RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION

At the end of this Agreement or at the written request of one of the Parties, each Party shall (i) return to the other Party, without delay, all Confidential Information in its possession or destroy it at its express request (including any copy and reproduction of the Confidential Information); (ii) cease all use of said Confidential Information, including any copies, extracts, summaries or other reproductions of part or all of the Confidential Information; (iii) erase the Confidential Information from any data processing or retention system.

However, each Party shall be authorised to retain all documents which contain, refer to or simply result, in whole or in part, from Confidential Information for internal use, automatic electronic backup or in the context of compliance with legal obligations.

Article 8. ENTRY INTO FORCE

The Agreement shall enter into force from the date of its signature (“Effective Date”) until end of business collaboration. Each Party may terminate the Agreement at any time and without cause, subject to notifying the other Party by registered letter with acknowledgement of receipt, giving thirty (30) days’ notice.

In any event, the confidentiality obligations shall remain in force for a period of five (5) years after the expiry or termination of the Agreement.

Article 9. GOVERNING LAW AND DISPUTE RESOLUTION - LANGUAGE

The Agreement is subject to German law. All disputes to which this Agreement may give rise, concerning its validity, interpretation, performance, termination, their consequences and subsequent related issues which cannot be resolved amicably within one (1) month from the occurrence of the dispute, shall fall within the exclusive jurisdiction of the courts of Regensburg.

The Agreement is initially drafted in English. In the event that it is translated into one or more languages, only the English text shall prevail in the event of a dispute.

Article 10. COMPLIANCE WITH LAWS

Any export, transfer or use of Confidential Information shall comply with applicable export and import control regulations, it being understood that it is the Disclosing Party’s duty to inform the Receiving Party if such regulations apply to the Confidential Information it has disclosed.

Article 11. RELATIONSHIP BETWEEN THE PARTIES

Nothing in this Agreement shall be construed as obliging either Party to transmit Confidential Information to the other Party or to enter into a contractual relationship with the other Party in the future.

The Parties agree that this Agreement shall not be construed as the creation of a joint entity, nor as an association or partnership of any kind.

Without prejudice to any other agreement between the Parties, each Party shall have the right, at its sole and absolute discretion, to terminate at any time the discussions and negotiations relating to the Project.

Article 12. ASSIGNMENT

The Agreement is concluded on an “*intuitu personae*” basis. Consequently, neither Party may assign or transfer the rights and/or obligations arising from the Agreement, in any form whatsoever, to any third party whatsoever, without the express prior written consent of the other Party. Affiliates are not considered third parties within the meaning of this Agreement.

Article 13. MISCELLANEOUS PROVISIONS

13.1. The Parties undertake not to make use of the name, logo or trademark of the other Party, whether for advertising, marketing or communications/publication purposes, without its prior written authorisation.

13.2. This Agreement may only be amended by a written amendment signed by the duly authorised representatives of the Parties.

13.3. All of the provisions of these clauses constitute the entire Agreement between the Parties with respect to its subject matter, and supersede and cancel any prior representations, negotiations, undertakings, oral or written communications, acceptances, understandings, prior agreements and confidentiality agreements between the Parties relating to the Project. Nevertheless, it is understood that all rights and obligations which by their nature should survive their expiry or termination shall remain in force.

13.4. If one of the clauses of the Agreement is declared null or inapplicable, the other clauses shall continue to have full effect, provided that the general structure of the Agreement can be safeguarded. The Parties shall then agree on a mutually satisfactory clause, valid and compliant with their original intention, in replacement of the clause declared null and void or not applicable.

13.5. This Agreement may be executed in any number of copies, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement. Each of the Parties agrees that this Agreement and any other document to be provided in connection with it may be signed electronically, that all digital or electronic signatures (including pdf, facsimile or electronically imitated signatures provided by DocuSign or any other digital signature provider) appearing on this Agreement are the same as the handwritten signatures for validity, enforceability and admissibility purposes, and that delivery of such electronic signature or signed copy of this Agreement and such other documents may be made by electronic mail or other electronic transmission.

Signed in Eggmühl on

Holmer Maschinenbau GmbH
Regensburger Str. 20
84069 Schierling/Eggmühl
GERMANY

Supplier - company stamp

Full name:

Full name:

Full name:

Signature:

Signature:

Signature:
