

# CONFIDENTIALITY AGREEMENT

between

– hereinafter referred to as "KREMER" –

KREMER GmbH

Kinzigstraße 9

63607 Wächtersbach

and

– hereinafter referred to as the "SUPPLIER" –

In view of the fact that the parties may be working together in the future in the field of/on the project

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it may be necessary, prior to concluding a contract, for them to exchange and/or disclose information, experience(s), documents, drawings, plans, parts and protected, privileged technical knowledge (know how) – hereinafter referred to as the “information” – and to conduct talks which involve the inclusion of knowledge and experience(s) which do not form part of best available technology. In view of the fact that such information needs to be treated confidentially, KREMER and the SUPPLIER have hereby concluded the following agreement:

In order to allow talks to be conducted with the requisite frankness and openness prior to a contract being concluded, the following has been agreed:

## 1. DUTY TO MAINTAIN CONFIDENTIALITY

The SUPPLIER undertakes to treat any disclosed information, documents and parts as strictly confidential within the meaning of trade and business secrets, not to disclose these, and to take all necessary steps to prevent them from being disclosed to third parties.

## 2. NON-EXPLOITATION

Notwithstanding any other provision to the contrary on the basis of a separate contract, the SUPPLIER undertakes not to exploit the disclosed information and documents himself or directly or indirectly through third parties without the express written consent of KREMER, and in particular not to utilise the information and know-how for his own or external commercial purposes or to register any intellectual property rights in respect of these.

No rights to the commercial use of the information, documents, the related know-how, or any intellectual property rights registered or granted on the same, if applicable, have been granted on the basis of this Agreement.

## 3. CONFIDENTIAL INFORMATION

3.1. The duty to maintain confidentiality within the meaning of this Agreement shall extend to all drawings, specifications, calculations as well as all

other information exchanged verbally or in writing, especially any documents, tests, test set-ups and plans conveyed by the other party. This Confidentiality Agreement not only covers all information, findings or materials expressly designated by KREMER as being confidential but also such information, findings or materials which become public – most notably through publication – and which are suited to having detrimental impact on KREMER and its competitive situation, as well as all personal data within the meaning of Germany's data protection laws (Bundesdatenschutzgesetz).

3.2. The duty to maintain confidentiality and to observe non-exploitation of the disclosed information and surrendered documents shall not apply to the extent that these

- a) were verifiably and legally available to the recipient contractual party prior to their being disclosed, or
- b) were in the public domain or generally available prior to being disclosed, or
- c) after their disclosure, became publicly known through no involvement or fault of the recipient contractual party, or were generally available, or

d) primarily correspond to information and documents which are disclosed or made available to the contractual party by legal means at any time by an authorised third party.

3.3. With respect to whether information subject to this Agreement becomes generally known through lawful access or whether a party has or has not acted negligently, the burden of proof shall rest with the contractual party utilising the information.

#### **4. VICARIOUS AND PERFORMING AGENTS**

4.1. The SUPPLIER shall bind his vicarious and performing agents or employees to maintain strict confidentiality and shall ensure by virtue of adequate written agreements that such agents and employees accept that the provisions of this Agreement are binding on them, or shall correspondingly bind them to confidentiality on the basis of their contract of service / employment contract.

4.2. To the extent that the SUPPLIER should legitimately engage sub-contractors to perform his contractual obligations, he shall also bind them in writing in accordance with this Agreement. KREMER is to be informed immediately in advance of any such sub-contracting.

4.3. In particular, the SUPPLIER shall ensure that:

- a) no information pertaining to the confidential information is disclosed to third parties;
- b) during the performance of any work subject to this Agreement, no unauthorised third parties can gain access to the nature and scope of the work;
- c) all occurrences relating to the work, most notably contact to journalists, photographers or other persons, are reported to KREMER (plant security, company security and/or the KREMER project manager) immediately.

#### **5. LIABILITY**

Neither party hereto shall assume any liability for the other party with respect to any information, documents, data, work outcomes, prototypes or semi-finished products made available within the scope of the Agreement having any general or contractually agreed properties or characteristics or meeting any qualifications, or being usable, complete, technically flawless or marketable, or for the use thereof not violating any third-party intellectual property rights.

Wächtersbach, \_\_\_\_\_

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KREMER GmbH

#### **6. LIABILITY FOR DAMAGES; CONTRACTUAL PENALTIES**

In the event that the SUPPLIER infringes the duties and obligations imposed in this Agreement, the SUPPLIER shall be obliged to pay a contractual penalty to be asserted at the given time, whereby the size, appropriateness and proportionality of such a penalty shall be reviewed by the court with jurisdiction over this Agreement and shall take into consideration the potential damage to and the value, scope and significance of the project. In this respect, § 343 of the German Civil Code (BGB) shall apply accordingly.

#### **7. NO LICENSING RIGHTS**

No licensing, construction, utilisation or other rights may be derived from this Agreement or from the technical information made known to the SUPPLIER, irrespective of whether intellectual property rights to the foregoing exist or not. KREMER hereby reserves all rights to its information, in particular in the event that patents are granted, utility models registered or trademarks protected.

#### **8. PARTIAL INVALIDITY**

In the event that a provision in this Agreement is or becomes invalid, the validity of the Agreement as a whole shall remain unaffected. The parties hereto shall be obliged to replace the invalid provision with a valid one which reflects the meaning and intent of the invalid provision. The same shall apply with respect to any omissions hereto.

#### **9. TERM OF AGREEMENT**

This Agreement shall come into force upon being signed. It shall run for an indefinite period and expire at the end of the fifth calendar year that follows the termination of the partnership. Upon termination of the partnership, all written documents and information are to be returned and any copies made thereof destroyed. This is to be confirmed in writing to the respective other party in the event that no further agreement has been concluded by such time between KREMER and the SUPPLIER.

#### **10. MISCELLANEOUS**

10.1. The laws of the Federal Republic of Germany shall apply to the exclusion of any conflict of laws.

10.2. Amendments and additions hereto shall only be valid if made in writing.

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\_\_\_\_\_  
SUPPLIER

**KREMER**