

# MUTUAL NON-DISCLOSURE AGREEMENT

between

**mibostahl tools, trading and service GmbH**

Hochofenstrasse 6

58135 Hagen

(hereinafter referred to as “**mibostahl**”)

and

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(hereinafter referred to as “**Party**”)

(collectively referred to as “**The parties**”)

## PREAMBLE

The contracting parties intend \_\_\_\_\_

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That in the context of negotiations, it may be necessary for one of the parties to disclose to the other party business and trade secrets and/or other information regarding which at least one of the parties is interested in maintaining confidentiality. The parties to this agreement understand and acknowledge that each party has developed the information protected under this agreement with a considerable expenditure of time and money, and that each party therefore has an interest in ensuring that the information it discloses under this agreement will only be used according to the stipulations of this agreement.

## SECTION 1 PROTECTED INFORMATION

(1) This agreement encompasses all confidential information of both parties, regardless of the method of transmission, that does not fall under the exceptions according to Section 2 of this agreement. Confidential information includes, **regardless of its nature, particularly**

- Customer and business data,
- Formulas and algorithms,
- Computer programs,
- Visual languages such as HTML, XHTML etc.
- Constructions, sketches, plans and drawings, incl. functional diagrams, photographs etc.

- Specifications, samples, test reports, lab notes, prototypes
- Names and addresses of customers, distributors, sellers and suppliers,
- Information about price determination and pricing structures, market definitions, business plans and financial plans, inventions and ideas,
- The existence and protection of intellectual property such as patents, utility models and design patents as well as expertise,

(2) Confidential information also includes, regardless of the form of transmission, those data and facts which, evidently or according to the general understanding of the other party (**hereinafter referred to as: “the receiving party”**) or according to the general understanding within the industry, the party whose information is concerned (**hereinafter referred to as: “the disclosing party”**) would only disclose to third parties under the protection of this agreement.

(3) The designation of written information as “confidential”, “secret” or a comparable distinction is not required unless the information is expressly labelled as such by the disclosing party.

## SECTION 2 EXCEPTIONS

(1) Such information is not subject to the confidentiality obligation pursuant to Section 1 of this agreement if it is demonstrable that

- a) it was public knowledge at the time of transmission or later became public knowledge without any violation of this agreement or statutory regulations,
- b) the receiving party already had lawful knowledge of the information before concluding this agreement,
- c) a third party who was not obliged to maintain confidentiality lawfully provided this information to the receiving party without this third party violating statutory provisions or this contractual agreement,
- d) the information was obtained independently by the receiving party itself without the use of confidential information,
- e) it was released for publication with the explicit prior written approval of the disclosing party,

(2) The burden of proof for the requirements in the exceptions described under Paragraph 1 Letters a) to e) lies with the party invoking such an exception.

(3) In case the receiving party is under an obligation to disclose information due to an official or court order, the receiving party will

- a) immediately inform the disclosing party of this obligation in writing and support the disclosing party if requested to protect the information as far as possible or seek legal protection for the information, and
- b) as long as no other protective measures have been taken, only disclose information which must be disclosed due to a legal obligation and use its best efforts to ensure that the disclosed information is treated in accordance with this agreement.

## SECTION 3 HANDLING CONFIDENTIAL INFORMATION

(1) The receiving party must treat all confidential information of the disclosing party as strictly confidential and ensure that no third parties obtain such information.

(2) The receiving party has the right to disclose confidential information to affiliated companies pursuant to Sections 15 et seq. of the German Stock Corporation Act (AktG) if and to the extent that this is essential for the purposes of the negotiations mentioned in the preamble. The receiving party is obligated to subject these affiliated companies to the same confidentiality obligations which the receiving party itself commits to in this agreement.

(3) The disclosure of information to third parties that are not employees or affiliated companies is only permitted with the prior written approval of the disclosing party. The parties commit to imposing the obligations resulting from this non-disclosure agreement onto such employees or third parties even after the end of the employment relationship who could obtain exploitable knowledge of the confidential information based on their work activities.

(4) The parties acknowledge that a violation of the confidentiality agreement could lead to significant damages and cannot be adequately replaced by monetary compensation. For this reason, the parties agree that it may be demanded to cease and desist the disclosure, in addition to damages.

## SECTION 4 LIABILITY FOR INFORMATION

The disclosing party accepts no liability whatsoever that the confidential information it discloses is up to date, accurate and complete. This exclusion from liability also applies with respect to the suitability of the confidential information for a particular purpose intended by the receiving party.

## SECTION 5 PROHIBITION OF ANALYSIS

Without the disclosing party's written consent, the receiving party may not analyse or otherwise utilise the samples and end products provided by the disclosing party in order to identify their composition or manufacturing methods.

## SECTION 6 OBLIGATION TO RETURN INFORMATION, DESTRUCTION OF ELECTRONIC DATA

(1) At the written request of the disclosing party, a receiving party must return to the disclosing party all confidential information made available by the disclosing party along with all copies of such information.

(2) The disclosing party can give its written consent that the receiving party will destroy the confidential information securely as well as providing appropriate proof.

## SECTION 7 NO LICENSING

No provision of this agreement or business transactions between the parties will be considered as granting an explicit or implied licence for the receiving party relating to a patent, patent application, trademark, copyright, business secret or trade secret or other intellectual property of the disclosing party.

## SECTION 8 PERIOD OF CONFIDENTIALITY

The obligation to maintain confidentiality regarding confidential information begins upon disclosure of the confidential information and ends ten (10) years later with respect to this confidential information. If the precise calendar date on which this information was provided to the receiving party can no longer be determined, the applicable date will be the first calendar date of the month in which it was made available.

## SECTION 9 EFFECTIVE TERM OF THE AGREEMENT

- (1) This agreement enters into force on the day it is signed by both parties.
- (2) This agreement ends, if not terminated earlier according to Paragraph 3 of this Section 9, five (5) years after entering into force.
- (3) This agreement may be terminated by either party within a period of thirty (30) days from the first of a given month. Termination must be made in writing.
- (4) The regulations of Section 4, Section 7 and Section 8 remain effective even after termination.

## SECTION 10 APPLICABLE LAW, PLACE OF JURISDICTION

The present agreement is subject to the laws of the Federal Republic of Germany. For all legal disputes arising from or in connection with this agreement, the courts of competent jurisdiction for the party who initiated the dispute will have exclusive jurisdiction.

## SECTION 11 OTHER REGULATIONS

- (1) No collateral agreements have been made to this agreement. Modifications and amendments to this agreement must be made in writing to be effective. This also applies for changes to the written form requirement.
- (2) If one of the regulations in this agreement proves to be invalid, this will have no influence on the validity of the remaining provisions. In this case, the invalid provision will be replaced by a regulation that comes as close as possible to the commercial purpose of the invalid provision, under consideration of both parties' interests in confidentiality.

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Place, Date

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Place, Date

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mibostahl tools, trading and service GmbH  
Stamp/Signature

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Contracting party  
Stamp/Signature