

CONFIDENTIALITY AGREEMENT

between

OTTO FUCHS Surface Technology GmbH & Co. KG
Gewerbegebiet Grünewald 10
58540 Meinerzhagen

and

company

street address

postal code and city

country

individually, a “Party” and together, the “Parties”.

THE PARTIES AGREE as follows:

1. DEFINITIONS:

“**Information**” means any commercial, financial, technical or operational information, know-how, trade secrets, existence or contents of this Agreement or other information of or in the possession of the Disclosing Party in any form or medium (including, but not limited to, all data, know-how, calculations, designs, drawings, methods, processes, systems, explanations and demonstrations) as has been or may be disclosed or otherwise made available to the Receiving Party or any Representative, whether orally or in written, electronic or other form including any copies or reproductions of such information in any form or medium and any part or parts of the same;

“**Disclosing Party**” means a Party disclosing Information;

“**Purpose**” means the purpose set out in the Appendix 1;

“**Receiving Party**” means a Party receiving Information;

“**Representative**” means any one or more director, officer, temporarily contracted personnel or professional adviser. For OTTO FUCHS, Representative shall also have the meaning set out in Paragraph 15 and subsequent of the German Stock Corporation Act (§§ 15ff. AktG).

2.SCOPE, PURPOSE AND DURATION OF THIS AGREEMENT: The Parties are willing to disclose certain Information solely for the Purpose and subject to the terms of this Agreement. The Receiving Party may in turn disclose Information to such of its Representatives whose knowledge of such information is reasonably necessary for the Purpose. This Agreement shall continue in full force and effect until its automatic expiry on the abandonment or fulfilment of the Purpose except that Clauses 3.1, 3.5, 3.7, 6.2, 6.3, 6.7, 6.8 and 7 shall survive any termination or expiry of this Agreement for further 5 years.

3.RECEIVING PARTY’S OBLIGATIONS: The Receiving Party warrants and undertakes:

3.1 to keep all Information secret and confidential and not to disclose the Information to any person and/or Representative (including without limit, for any patent application) other than as permitted under Clause

3.1.1 below and not to use the Information for any purpose other than the Purpose;

3.1.1 only to disclose Information to such of its Representatives as are directly concerned with the Purpose and whose knowledge of the Information is necessary for the Purpose

3.2 to ensure that any Representative to whom the Receiving Party discloses Information adheres to the terms of this Agreement as if each such Representative had undertaken with the Disclosing Party in the same terms and the Receiving Party will be responsible for any breach of the terms of this Agreement by any such Representative;

3.3 to ensure that access to all Information is appropriately restricted and that all documents, materials and things containing or embodying Information are at all times adequately maintained and safeguarded in a secure environment.

3.4 to maintain on any Information and to reproduce on any copies the proprietary and confidentiality markings and other legends contained on the Information and the Receiving Party shall not add any further markings to such Information without the prior written consent of the Disclosing Party;

3.5 to inform the Disclosing Party immediately upon becoming aware of or suspecting any fact or circumstance which would, if confirmed, constitute or give rise to a breach of this Agreement;

3.6 not to use, copy, record, publish, export or distribute any Information in whole or in part, except as may reasonably be necessary for the Purpose; and

3.7 to comply with the instructions of the Disclosing Party with respect to the return or destruction of Information and in particular: (a) to return to the Disclosing Party upon demand (and in any event without such demand on termination or expiry of this Agreement), all Information and all copies or reproductions thereof in whatever form in the possession of the Receiving Party or any of its Representatives (including without limitation all things embodying Information and all work product derived from or containing any Information); and (b) upon demand by the Disclosing Party to ensure and certify the destruction of all such things, including the permanent erasure of any memory device or medium.

Notwithstanding the foregoing, the Receiving Party and its Representatives may retain Information (i) to comply with applicable laws and regulations or (ii) as part of its automatic electronic archiving and back-up procedures; provided however, that any such retained Information shall remain subject to the terms and conditions of this Agreement.

4. NON APPLICATION: The warranties and undertakings contained in Clause 3 above do not apply to Information which:

4.1 prior to its disclosure was lawfully in the possession of the Receiving Party; or

4.2 is in the public domain through no fault or cause of the Receiving Party; or

4.3 can be shown to have been independently developed by the Receiving Party; or

4.4 can be shown to have been lawfully known to the Receiving Party prior to disclosure; or

4.5 is lawfully made available to the Receiving Party by a third party entitled to disclose the same.

5. COMPELLED DISCLOSURE: If the Receiving Party or any of its Representatives believes it is required by law or is otherwise obliged, to disclose any Information to any third party for any reason, the Receiving Party will provide the Disclosing Party with immediate written notice of such requirement or obligation (together with a copy of any relevant access request, court order, or other evidence giving rise to such belief) to enable the Disclosing Party to seek appropriate protective relief and/or to take steps to resist or narrow the scope of any required disclosure. The Receiving Party shall co-operate with the Disclosing Party with respect to such matters and shall in any event disclose only such Information as it has ascertained, after taking legal advice, it is legally compelled to disclose, and shall use all reasonable endeavours to ensure that all Information so disclosed is accorded confidential treatment in terms of this Agreement. The Receiving Party will always notify the Disclosing Party in writing of the means, content and timing of such disclosure prior to such disclosure being made.

6. GENERAL:

- 6.1 The Disclosing Party shall have no obligation to disclose any Information nor to enter into any further agreement or business relationship with any Receiving Party as a result of entering into this Agreement. Nothing in this Agreement shall operate to create a partnership, agency, joint venture or other business relationship between the Parties nor shall the Receiving Party have any authority to act in the name of or on behalf of the Disclosing Party in any way. All Information and related intellectual property rights (including any arising from the Receiving Party's use of Information) shall remain the property of the Disclosing Party and, apart from the limited rights described in this Agreement, neither the Receiving Party nor any of its Representatives shall be entitled to any right or licence in respect of the whole or any part thereof.
- 6.2 The rights and remedies of the Parties shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time by the Disclosing Party to the Receiving Party or its Representative nor by any failure of or delay by the Disclosing Party in ascertaining or exercising any such rights or remedies.
- 6.3 Without prejudice to any other rights and remedies the Disclosing Party may have, the Receiving Party acknowledges and agrees that damages alone may not be an adequate remedy for any breach of the provisions of this Agreement by the Receiving Party or its Representatives and accordingly, the Receiving Party agrees that the Disclosing Party may be entitled, without proof of special damage, to the remedies of injunction, specific performance and other equitable relief.
- 6.4 The Receiving Party shall not and shall neither seek nor purport to, assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written agreement of the Disclosing Party. The Contracts (Rights Of Third Parties) Act 1999 shall not apply to this Agreement. No person who is not a Party to this Agreement (including any employee, officer, agent, representative or contractor of either Party) shall have the right to enforce any term of this Agreement which expressly or by implication confers a benefit on that person without the express written agreement of the other Party.
- 6.5 The Receiving Party shall not use any trademark, service mark, logo or any corporate or business name of the Disclosing Party.
- 6.6 No variation of this Agreement shall be effective unless it is in writing, refers specifically to this Agreement and is signed by an authorised person on behalf of each of the Parties.
- 6.7 If any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, or indications to that effect are received by any of the Parties from any competent authority, the Parties shall amend that provision in such reasonable manner as achieves the intention of the Parties without illegality.
- 6.8 This Agreement shall be subject to and interpreted in accordance with the Laws of Germany, and will be subject to the exclusive jurisdiction of the German courts. The Receiving Party's obligations contained in this Agreement shall be in addition to and not in substitution for its duties at common law.

7. EXPORT CONTROL: The Parties acknowledge that any Information provided or received under this Agreement may be subject to government export control laws and regulations and each of the Parties agree that they will strictly comply with all applicable requirements under such laws and regulations. As such, each Party warrants and undertakes that it will not export or transfer by any means, electronic or otherwise, any Information without complying in all respects with the applicable export control legislation, codes of conduct, the relevant export licence(s), guidelines, notices and/or instructions in relation to any such export or transfer of Information.

duly authorised for and on behalf of

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**OTTO FUCHS Surface Technology
GmbH & Co. KG**

Company

Stamp

Signature

Signature

Print Name

Print Name

Function

Function

Date

Date