



## Mutual Non-Disclosure Agreement

concluded by and between:

**OTTO FUCHS KG**  
Derschlager Strasse 26  
D-58540 Meinerzhagen

and

Mustermann GmbH  
Musterstrasse 11  
D-12345 Musterstadt  
Contact

both referred to hereinafter as the “Parties”

concerning: (enter specific project)

The Parties intend to hold talks with a view to future collaboration on the project specified above. In that regard, access to confidential information may need to be provided. The Parties are aware that maintaining absolute confidentiality in respect of such information is an essential requirement for any future collaboration. This Mutual Non-Disclosure Agreement is concluded to allow meetings to be held with the necessary openness prior to conclusion of a cooperation agreement.

### **1. Scope of obligations to maintain confidentiality**

The obligation to maintain confidentiality within the meaning of this Agreement applies in particular to the following types of information:

- a) any information, in principle, which is not in the public domain and which is exchanged between the Parties;
- b) commercial information and data, information and data pertaining to customers;
- c) in particular, any technical information, such as technical drawings and other technical documents, as well as materials, merchandise, samples, specimens, equipment, appliances, technical processes and other technical knowledge (e.g. business secrets);
- d) any intellectual property rights and other legal positions, in particular manuscripts, texts, technical details, photographs, films, videos, recordings, software, audio recordings and similar rights and items.

### **2. Obligation to maintain confidentiality**

The Parties shall keep reciprocally-provided information and documents strictly confidential and shall take all necessary measures to prevent confidential information being disclosed to third parties. Furthermore, the Parties shall disclose such information and documents only to those employees who need to gain knowledge thereof for the purpose of implementing this Agreement or to engage in any subsequent collaboration (“need-to-know” basis). The obligation to maintain confidentiality shall also apply to licensees or customers who gain access to the confidential information in any form whatsoever. The obligation to maintain confidentiality shall apply regardless of whether information is or has been made accessible in verbal, documented,

machine-readable, electronic or other form, for example as equipment, samples, specimens or products.

A Party and its affiliated companies, within the meaning of Sections 15ff of the German Stock Corporation Act (*Aktiengesetz – AktG*) may disclose confidential information to each other. Each Party shall ensure that each of its affiliated companies that receives confidential information shall comply with the provisions of this Agreement.

The Parties shall bind all their employees personally – to the extent permitted by law and insofar as they are not otherwise bound by their employment contracts – to the above obligation in relation to confidential information, over and above their employment relationship and for the duration of this Agreement, and shall take any other precautions that may be necessary within their respective undertakings.

### **3. Exclusion of licence rights**

Unless otherwise provided by separate agreement, the Parties shall not exploit the information they receive, and in particular shall not file any applications for intellectual property rights, unless the respective other Party has given its express written consent. This Agreement does not grant to either Party, either explicitly or otherwise, a licence or other rights of use with respect to the confidential information of the respective other Party. In the event of further research, development or other agreements being concluded, rights, licences and other rights of use with respect to confidential information shall be regulated separately therein. Publishing is not permitted except by express mutual consent.

### **4. Exceptions**

The obligation to maintain confidentiality and not to exploit reciprocally-provided information shall not apply to any information which:

- a) was provably known to the Receiving Party prior to its disclosure,
- b) was in the public domain or freely available prior to its disclosure, or
- c) entered the public domain after disclosure, without involvement and through no fault of the Receiving Party, or
- d) is substantially the same as information disclosed or made available to the Receiving Party by a duly authorised third party at any time,
- e) must be disclosed on the basis of a binding order issued by a government authority or judge, or due to mandatory statutory regulations, provided that the other Party was informed beforehand in writing about such disclosure and that the information has been cleared for release, in writing, by the Disclosing Party.

### **5. Exclusion of the obligation to disclose**

No obligations to reciprocally disclose the special information, to exploit the disclosed information in a product, to guarantee the correctness or completeness of the disclosed information, or to grant a Party licences to industrial property rights or copyrights beyond the rights of use under this Agreement, may be construed from this Agreement.

### **6. Return of confidential information**

On written demand by either Party, confidential documents, electronic data and any copies thereof that have been provided to the respective other Party shall be returned or deleted when the term of this Agreement ends. The above shall not apply if the Parties are obligated by statutory or other provisions to archive copies of documents containing confidential information. This shall also not apply to copies made for automatic electronic archiving or which are produced by a backup system, provided that the obligation under this Agreement to maintain confidentiality remain unrestrictedly in force.

### **7. Requirement of written form**

No verbal side-agreements have been made. Any amendments or additions must be in writing to obtain effect. The same principle applies if this requirement of written form is rescinded. Should any of the provisions in this Agreement be invalid or contain a loophole, the remaining provisions shall retain their validity. The invalid provision shall be replaced by one which comes closest to the original business purpose of the invalid provision.

### **8. Term**

Before signing this Agreement, the Parties may have exchanged information deemed to be confidential information. Such information shall be treated in the same manner as the confidential information exchanged after this Agreement has been signed.

This Agreement is concluded for a term of five years as from the date on which the last signature was applied. The obligation to maintain confidentiality shall end a further five years after this Agreement has ended.

### **9. Governing law and place of jurisdiction**

This Agreement is governed by the laws of the Federal Republic of Germany, under exclusion of the rules governing the collision of laws and under exclusion of the UN conventions on the international sale of goods. Exclusive place of jurisdiction is Meinerzhagen.

Meinerzhagen, (date)

Musterstadt, XX.XX.2019

**OTTO FUCHS KG**

**Mustermann GmbH**

\_\_\_\_\_  
(Name/Function)

\_\_\_\_\_  
(Name/Function)

**OTTO FUCHS KG**

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(Name/Function)