

## NON-DISCLOSURE AGREEMENT.

between

**ADMEDES GmbH** | Rastatter Str. 15 | 75179 Pforzheim, Germany

and

Company \_\_\_\_\_

Address \_\_\_\_\_

E-Mail \_\_\_\_\_

Phone \_\_\_\_\_

This Agreement shall become effective on \_\_\_\_\_ [ **please insert** ], if not filled in, on the date of signature by both Parties ("Effective Date").

### **PREAMBLE:**

The Parties intend to exchange information with a mutual need of secrecy (as hereinafter defined) for the purpose of a possible co-operation in the field of \_\_\_\_\_ [ **please insert generic term of the product line** ] including the planned manufacture of \_\_\_\_\_ [ **please specify the product/ application/ material planned** ].

For the purpose of absolute secrecy of this information the Parties agree as follows:

1. **"CONFIDENTIAL INFORMATION"** shall be information of whatever kind (in particular but not limited to technical, commercial or financial kind) or form (in particular but not limited to written, electronic, oral or visual) which
  - » refers to the above-mentioned purpose;
  - » is marked as being of confidential nature at the time of disclosure, or if unmarked, is either obviously confidential under the circumstances surrounding the disclosure, or designated as being confidential at the time of disclosure;  
AND
  - » is disclosed on or after the Effective Date.

Information for the purpose of the preceding sentence is CONFIDENTIAL INFORMATION regardless of whether it was disclosed by one of the Parties hereunder or any of its Associates, and regardless of whether it was disclosed to the other Party hereunder or to any of such other Party's Associates.

**"Associate"** means (i) any entity which directly or indirectly controls, is controlled by, or is under common control with a Party, or (ii) a third party contractually bound to a Party (e.g. consultant).

A Party and its Associates may pass CONFIDENTIAL INFORMATION to each other. Each Party warrants that any of its Associates will abide by such terms and conditions as laid down in this Agreement.

## NON-DISCLOSURE AGREEMENT.

2. Information shall not or no longer qualify as CONFIDENTIAL INFORMATION from the point in time that such information
- » is or becomes publicly available without breach of this Agreement by the RECEIVING PARTY (e.g. also by placing on the market products of the Disclosing Party from which the Confidential Information can be gained by third parties in the normal use of such products, i.e. in particular not by deliberate „reverse engineering“);
  - » was independently developed or ascertained by the RECEIVING PARTY, by one of its Associates, or by its employees, or by employees of one of its Associates without knowledge of the disclosed Confidential Information;
  - » was lawfully disclosed to the RECEIVING PARTY or to one of its Associates by a third party and without any obligation to keep the information in confidence;
  - » is required to be disclosed by the Receiving Party pursuant to any order of a competent court or an administrative or governmental agency, and the Receiving Party has informed the Disclosing Party so in good time before disclosure and has furnished it the opportunity to jointly proceed against it.

Information shall not qualify as CONFIDENTIAL INFORMATION insofar as it

- » was already in the possession of the RECEIVING PARTY or any of its Associates prior to receipt from the DISCLOSING PARTY.

The RECEIVING PARTY shall bear the burden of proof that any of the exceptions under this clause 2 apply.

Information shall not be deemed to be encompassed by one of the aforementioned exceptions for the mere reason that it is part of general knowledge and experience which as such is encompassed by one of the aforementioned exceptions. Likewise, a combination of particular items of information is not encompassed by one of the aforementioned exceptions for the mere reason that one or more particular items of information of this combination is/are encompassed as such by the aforementioned exceptions, but only if this combination itself is encompassed by one of the aforementioned exceptions.

3. The RECEIVING PARTY is obliged to hold any Confidential Information whenever received by the DISCLOSING PARTY in strict confidence and to treat such information with the same diligence it applies to its own trade or business secrets and in particular not to in any way disclose such information to third parties without the prior written consent of the Disclosing Party. The RECEIVING PARTY will take all appropriate precautionary measures to also prevent involuntary disclosures to such third parties.
4. The RECEIVING PARTY undertakes not to use Confidential Information without the prior written consent of the Disclosing Party for any other purpose than the purpose stated in the preamble (or any other purpose which the Parties might determine in writing in the future), in particular not to commercially exploit Confidential Information, and to disclose Confidential Information to their employees and consultants only to the extent necessary for such purpose.
5. On demand - which may be made at any time - by the Disclosing Party, the Receiving Party is obliged to return to the Disclosing Party Confidential Information within one (1) month which it received or recorded in written or other tangible form together with any copies of whatever form or storage or - to the extent this might not be expectable - to destroy the pertinent objects carrying the information and to confirm the destruction in writing to the DISCLOSING PARTY. CONFIDENTIAL INFORMATION in electronic form shall be deleted analogically to the provisions of the preceding sentence. This clause 5 shall be effected, however, with the exemption that the RECEIVING PARTY may retain a single archival copy of the CONFIDENTIAL INFORMATION for the sole purpose of proving the contents of this CONFIDENTIAL INFORMATION.
6. Information of a general nature gained by the personnel of either Party in the performance of this Agreement may subsequently be used by them as part of their acquired skill base; provided, however, that the foregoing shall not be taken as authorizing usage of detailed CONFIDENTIAL INFORMATION. To the extent that such use does not infringe an intellectual property right of the DISCLOSING PARTY, the RECEIVING PARTY and its Associates shall be free to use Residuals for any purpose. The term "Residuals" means information in non-tangible and non-electronic form which may be mentally retained by persons who have had access to the Confidential Information of the disclosing party. The RECEIVING PARTY may reassign its employees.
7. No license or right, express or implied, to any patent, trademark, design right, copyright or other intellectual property right is granted under this Agreement by the disclosing party, except for the limited right to use the Confidential Information under the terms set forth herein. The disclosed information remains the exclusive property of the Disclosing Party. The disclosure does not constitute a bar to novelty.

## NON-DISCLOSURE AGREEMENT.

8. Nothing contained in this Agreement shall limit either Party's right to provide products or services, or prevent either Party from similar discussions or agreements with unrelated third parties, as long as such Party does not violate the obligations imposed by this Agreement.
9. Nothing in this Agreement shall be construed as compelling either Party to disclose any particular item of Confidential Information.
10. Each Party agrees to indemnify and hold the other harmless from any damage, loss, cost, or liability (including legal fees and reasonable attorneys' fees) arising out of or resulting from any unauthorized use or disclosure of the Confidential Information by this Party, its employees or representatives, or by this Party's Associate, the Associate's employees or consultants, or resulting from any other violation of this Agreement. However, neither Party makes any warranty as to the accuracy or completeness of any CONFIDENTIAL INFORMATION it or its Associates discloses, or that such information is free of third party intellectual property rights.
11. This Agreement shall terminate three years after the Effective Date. The RECEIVING PARTY's obligation to protect and not to use the CONFIDENTIAL INFORMATION of the DISCLOSING PARTY shall expire three years after termination of this Agreement.
12. The interpretation, construction and effect of this Agreement shall be governed and construed in all respects in accordance with the laws of the Federal Republic of Germany, with the exception of choice of law provisions.
13. All disputes arising out of or in connection with the present contract shall be finally settled under the Swiss Rules of International Arbitration of the Swiss Chambers of Commerce. The place of arbitration shall be Karlsruhe/Germany. The language to be used in the arbitration shall be English.

Temporary relief by the competent courts of state is not excluded by this provision.

14. The assignment of rights of either Party under this Agreement without the prior written consent of the other Party shall be prohibited, unless the assignee is a successor of the assigning Party with respect to substantially all of the assigning Party's assets related to the subject matter of this Agreement.
15. Modifications and amendments to this Agreement must be in writing to be valid.

Should a provision of this Agreement be or become void or unenforceable, the rest of this Agreement shall remain in force. In this case, the invalid or unenforceable provision shall be replaced by a valid and enforceable provision which serves the economic intention of the respective void respectively unenforceable provision best. This also applies in case the Agreement proves to be incomplete.

Pforzheim, on the \_\_\_\_\_

**ADMEDES GmbH**

By \_\_\_\_\_

Frank Nauheimer

CFO

Pforzheim, on the \_\_\_\_\_

\_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_