

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement ("Agreement") is entered into on _____, 20____ ("Effective Date") between [Lisa Dräxlmaier GmbH, Landshuter Straße 100, 84137 Vilsbiburg (or another DRAEXLMAIER company incl. its complete address)] ("Buyer") and _____, with its principal offices at [street, number, ZIP-Code, Country] and the supplier number 5xxxxx ("Supplier") and both hereafter also referred to as "Party" or "Parties".

The Parties wish to disclose confidential or proprietary information for the purpose of evaluating and negotiating any proposed transaction or business relationship as well as for the purpose of the actual implementation and conducting of any and all transactions or business relationships between the Parties (the "Purpose"), and agree to protect their information on the terms set forth below:

1. **Definition:** "Confidential Information" means confidential information that is disclosed by a Party and/or its Affiliated Company(ies) (the "Disclosing Party") to the other Party and/or its Affiliated Company(ies) (the "Receiving Party") for the Purpose and which is marked or classified (a) in writing or orally as confidential at the time of disclosure, or (b) in any other manner marked or classified as confidential at the time of disclosure. For the Purpose of this Agreement an "Affiliated Company" in relation to a Party shall be defined as a company, which is directly or indirectly controlled by that Party, controls that Party, is under joint management with that Party or is under common control with that Party, whereby control means that at least 50% of the shares or voting rights are being held. Confidential Information shall include, but not be limited to, the following:
 - a) technical and non-technical information in any form, technical specifications, all source code, object code, screen displays, printed computer output, flowcharts, drawings or sketches, models, know-how, processes, algorithms, software programs, databases, formulae in any form, and all notes, memoranda or recordings, or videographic, alphanumeric, audiophonic or telephonic data, regardless of who prepared such work or on which medium it is stored,
 - b) product and marketing plans, customer lists, financial information or projections, business policies or practices, analyses, compilations, studies, regardless of the type of media on which it is stored,
 - c) quotes or any other commercial offers and pricing information exclusively prepared for Buyer and/or provided to Buyer by the Supplier,
 - d) any extract, summary, report, analysis, material antecedent to the development of any of the aforementioned, and any derivative work thereof, and
 - e) Trade Secrets. "**Trade Secret**" means an information which (a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question, (b) has commercial value for a Party because it is secret and (c) has been subject to reasonable steps under the circumstances, by the Party lawfully in control of the information, to keep it secret.
2. **Non Disclosure:** Each Party agrees (a) to keep Confidential Information received from the other Party strictly confidential, (b) not to disclose Confidential Information received from the other Party to any third party not included in Section 3 below, (c) to protect Confidential Information received from the other Party with the same degree of care as it uses for its own information of like importance, but not less than reasonable care, (d) not to disassemble and/or decompile, decode, reproduce, redesign and/or reverse engineer any disclosed Confidential Information or any part of it, and (e) not to use Confidential Information for any purpose other than the Purpose mentioned above.
3. **Exclusions:** Each Party may make Confidential Information received from the other Party available to those of its officers and employees, Affiliated Company(ies), consultants, sub-suppliers, sub-contractors and advisers whose knowledge of the Confidential Information is essential for fulfilling the Purpose of the Agreement and are bound by written confidentiality obligations not less strict than those imposed on the Parties under this Agreement. Each Party shall ensure and remain fully liable that its officers and employees, Affiliated Company(ies), consultants, sub-suppliers, sub-contractors and advisers adhere and are bound to the terms and conditions of this Agreement as if they were parties hereto.

Buyer may make Confidential Information received from the Supplier available to its respective customers whose knowledge of the Confidential Information is essential and shall ensure that these customers are bound by terms of confidentiality equivalent or similar to those of this Agreement.

4. **Term:** The term of this Agreement is five (5) years after the Effective Date referred to above, while the terms of confidentiality with regards to Confidential Information disclosed during the term of this Agreement shall remain binding for three (3) years after the Agreement's expiration date.
5. **Non-Confidential Information:** Confidential Information will not include information that the Receiving Party can show with sufficient and verifiable evidence: (a) was legitimately known or in the possession of the Receiving Party prior to disclosure, or (b) was publicly available or known prior to disclosure through no wrongful act of the Receiving Party, or (c) subsequent to disclosure became publicly available or generally known through no fault and/or no wrongful act of the Receiving Party, or (d) is lawfully obtained from a third party having no obligation of confidentiality, or (e) is independently developed by the Receiving Party without reference or access to the Confidential Information.
6. **Permitted Disclosure:** If a Party is required by a judicial action and/or government or public authority mandate to disclose the other Party's Confidential Information, the Receiving Party may do so, after giving the Disclosing Party reasonable notice prior to any disclosure (if and to the extent permissible by law), and must limit the disclosure to the maximum extent permissible.
7. **Return of Information:** Each Party shall, at the expiration of this Agreement or at any time during the term of this Agreement within thirty (30) days after the Disclosing Party's request, return or destroy all Confidential Information it received from the other Party in written or other tangible form, including all copies, and will thereafter have no right to make any use of any of the Confidential Information. This provision does not apply to: (a) any information referred to in Paragraph 6 above, (b) routinely made automatic back-up copies of electronically-exchanged Confidential Information, and/or (c) Confidential Information which must be retained in order to comply with applicable laws. Any retained Confidential Information under subsection (b) and (c) shall be subject to an additional fifteen (15) years confidentiality obligation after termination under the terms and conditions of this Agreement and no right of use or ownership shall be conferred to the Receiving Party.
8. **No License or Ownership Created, Reservation of Rights, No Warranties:** The Disclosing Party reserves all rights in its Confidential Information. This Agreement shall not transfer, grant or confer any rights, licenses, proprietary, ownership or interests in the Confidential Information disclosed. Nothing in this Agreement shall grant license rights to any patents, know-how or other intellectual property rights and the Disclosing Party and/or its Affiliated Company(ies) shall retain sole ownership of all intellectual property rights in all Confidential Information disclosed.

Any information made available under this Agreement is made available "as is" and no warranties are given or liabilities of any kind are assumed with respect to the accuracy of such information, including but not limited to its fitness for the intended purpose, completeness and non-infringement of third party rights.
9. **Remedies:** The Party that substantially prevails in any action brought to enforce this Agreement will be entitled to its costs of enforcement from the other Party, including reasonable attorney fees. Each Party acknowledges that breach of this Agreement may cause the Disclosing Party immediate, irreparable harm that cannot be adequately compensated by money. Notwithstanding the foregoing, the breaching Party shall reimburse the other Party for any and all damages, costs and expenses the other Party incurred in association with the Agreement breach. In addition to other remedies available, each Party may be entitled to injunctive relief for any such breach without proof of actual damages or the posting of bond or other security. The remedies available under applicable law remain unaffected hereby.
10. **Export Control:** The Parties shall comply with all applicable export control laws and regulations in regards to Confidential Information.
11. **Relationship Created:** This Agreement will not constitute or imply any commitment to enter into any business arrangement.
12. **Entire Agreement:** This Agreement constitutes the entire agreement between the Parties with respect to its Purpose and supersedes all prior agreements relating thereto. No modification of this Agreement will be effective unless made in writing and signed by authorized representatives of the Parties. This Agreement shall be binding to each Party's respective successors or assignees.
13. **Notices:** Each Party's address for purposes of notice and other correspondence under this Agreement is shown on the first paragraph of this Agreement.

14. **Counterparts:** This Agreement may be executed in one or more counterparts, each of which is deemed an original document. An executed facsimile or electronic copy (PDF) of this Agreement shall be effective and enforceable to the same extent as an originally executed Agreement.
15. **Severability:** In the event that any provision or portion of this Agreement is determined to be invalid or unenforceable, in whole or in part, the remaining provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect to the fullest extent permitted by applicable law.
16. **Governing Law and Jurisdiction:** The terms of this Agreement shall be governed by and construed in accordance with the laws of the country (and state/province, if applicable) of the Buyer's principal place of business as listed above without regard to principles of conflicts of laws. The competent courts having jurisdiction over Buyer's principal place of business shall have exclusive jurisdiction and venue for any action or proceedings resulting from this Agreement. The terms and conditions set out in the United Nations Convention for the International Sale of Goods (CISG) are hereby expressly excluded.

This Agreement is effective on the date set forth above.

IN WITNESS WHEREOF, Buyer and Supplier have executed this Agreement under the hands of their properly authorized officers.

SUPPLIER:

BUYER:

(company name, company stamp)

[DRAEXLMAIER company]
(company name, company stamp)

name and function in letters & signature 1

name and function in letters & signature 1

name and function in letters & signature 2

name and function in letters & signature 2