

## CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

### 保密协议

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”.

本保密协议（“协议”）由 [莉莎德科斯米尔有限公司，地址：Landshuter Strasse 100, 84137 Vilsbiburg, Germany (或另一个德科斯米尔公司，包括其完整地址)]（“买方”）与 [供应商名称]，主要营业地 5xxxxx，供应商编号：\_\_\_\_\_（“供应商”）于20xx年xx月xx日（“生效日期”）订立。双方中的一方在下文中称为“一方”，双方合称为“双方”。

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:

为双方潜在交易或商务关系的评估与谈判，亦为双方任何交易或商务关系的实施和履行之目的（“目的”），双方拟披露保密信息或其拥有所有权的信息，双方特此同意按照下列条款保护其信息：

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:

**定义：**“保密信息”指一方和/或其关联方（“披露方”）为特定目的而向另一方和/或其关联方（“接受方”）披露的、具有下列标识和分类的保密信息：（a）披露时以书面或口头形式标识为保密的信息；或（b）披露时以其他方式标识为保密的信息。基于本协议之目的，一方的“关联公司”是指由该一方直接或间接控制的公司，直接或间接控制该一方的公司，与该一方同处于共同管理之下的公司或与该一方受到相同控制的公司，该控制是指至少拥有 50%的股份或投票权。保密信息应当包括但不限于下列信息：

- 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, 不论由何者制作或存储在何种媒体之上的任何形式的技术或非技术性信息、技术要求、所有源代码、目标代码、界面显示、电脑输出打印、流程图、图纸或草图、模型、专有技术、工艺流程、计算方法、软件程序、数据库、任何形式的公式、所有的笔记、备忘录或录音、影像记录、字母数字、伴音或电话数据，
- 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, 不论存储在何种媒体之上的产品和营销计划、客户名单、财务信息或财务预测、商业策略与实践、分析、汇编、研究，
- c) quotes or any other commercial offers and pricing information exclusively prepared for Buyer and/or provided to Buyer by the Supplier, 专为买方和/或由供应商提供给买方的报价或任何其他商务要约和价格信息；

- (d) any extract, summary, report, analysis, material antecedent to the development of any of the aforementioned, and any derivative work thereof, and  
为开发上述任何信息而进行的摘录、总结、报告、分析或材料，以及上述信息所产生的任何衍生品，和
- (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.  
商业秘密。“商业秘密”是指以下信息：（a）作为整体或精确配比或配件组装而一般不为接触相关信息领域的人员所知悉或轻易获取的秘密，（b）因其秘密性而对一方具有商业价值的信息，以及（c）依法有权掌控该信息之人在特定情形下采取合理措施对其予以保密的信息。

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.

**不披露：**每一方同意：（a）对从另一方所获取的保密信息严格保密，（b）不将从另一方所获取的保密信息向下述第3条所列举之外的任何第三方披露，（c）对从另一方所获取的保密信息与自己所拥有的同等重要的信息予以同样谨慎的保护，但不得低于合理谨慎程度，（d）不对任何经披露的保密信息或其任何部分进行分解和/或反编译、解码、复制、重新设计和/或反向工程，及（e）不将保密信息用于除上述目的之外的任何其他目的。

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.

**例外：**任何一方都可以将从另一方获取的保密信息披露给为达到本协议之目的必须知悉该保密信息且受到与本协议双方依据本协议所承担保密义务同样严格的书面保密义务约束的管理人员和雇员、关联方、顾问、分供应商、分包商和参谋。任何一方都应当确保并完全负责使其管理机构和雇员、关联方、顾问、分供应商、分包商和参谋遵守本协议，并像本协议当事人一样受本协议的条款和条件的拘束。

买方可以将将从供应商处所获取的保密信息向必须知悉该保密信息的相关客户披露，并确保该客户受到相当或类似本协议的保密条款的拘束。

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.

**有效期：**本协议在上述有效期开始之日起五（5）年内有效，对在本协议有效期内所披露保密信息的保密义务在本协议有效期届满后叁（3）年内依然具有拘束力。

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.

**非保密信息：** 保密信息不包括接受方能够充分并可验证地证实的下列信息：（a）接受方在披露时业已合法知悉或拥有，或（b）非因接受方不当行为而于披露前为公众所拥有或知悉，或（c）披露后非因接受方的过错和/或接受方不当行为而为公众所拥有或知悉，或（d）从不负担保密义务的第三方处获悉；或（e）由接受方在未参考或未接触保密信息的情况下独立开发所得。

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.

**披露许可：** 如果一方基于司法行为和/或政府机关或公共机关的命令而必须披露另一方的保密信息，接受方应当在披露前向披露方进行合理通知的情况下（在法律允许的范围内）进行披露，该披露必须控制在最大允许限度之内。

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.

**信息的返还：** 一方应在本协议期满后或本协议有效期内按照披露方的要求于叁拾（30）日内返还或销毁其从另一方所获取的书面或以其他有形形式存在的保密信息，包括所有副本，并自此开始无权以任何方式使用任何保密信息。上述规则不适用于下列情形：（a）上述第 6 条所提及的信息，（b）计算机系统常规自动备份的以电子形式交换的保密信息，和/或（c）为遵守当时有效的法律而必须保留的保密信息。依据本条款（b）和（c）的要求所保留的保密信息应当在本协议终止后额外十五（15）年内继续遵守本协议条款和条件所约定的保密义务，未授予接受方任何形式的使用权或所有权。

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.

**不创设许可或所有权、权利保留、不保证：** 披露方保留对保密信息的所有权利。本协议不构成对所披露保密信息的任何权利、许可、所有者、所有权或利益的移转、许可或授权。本协议的任何内容都不构成对专利、专有技术或其他知识产权的许可，披露方和/或其关联公司是所有披露的保密信息的知识产权的唯一所有权人。

本协议项下所提供的任何信息均按“原样”提供，对此类信息的准确性不作任何保证或承担任何责任，包括但不限于对其合乎目的性、完整性以及未侵犯第三方权利的保证。

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.
- 救济:** 为执行本协议而进行诉讼且基本上占上风的一方有权请求另一方承担相应的执法费用, 包括合理的律师费。每一方都认可本协议的违约行为可能会给披露方造成直接、无法挽回、无法以金钱形式予以充分补偿的损害。尽管如此, 违约方应当赔偿另一方因协议违约行为所遭受的任何和全部损失、成本和费用。除现有的救济方式之外, 每一方都有权申请违约禁令救济, 且无需举证实质损害亦无需支付任何保证金或提供其他担保。现行有效法律规定的救济不会因此而受到影响。
10. **Export Control:** The Parties shall comply with all applicable export control laws and regulations in regards to Confidential Information.
- 出口监管:** 双方应当遵循所有涉及保密信息的现行有效的出口监管法律和法规。
11. **Relationship Created:** This Agreement will not constitute or imply any commitment to enter into any business arrangement.
- 关系的创设:** 本协议不构成创设或暗示创设任何商务关系的承诺。
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. The Agreement is written in both English and Chinese. In the event of any conflict between the two versions, the English version shall prevail.
- 完整协议:** 本协议构成双方就本协议目的达成的全部协议, 并取代双方之间此前曾经就此达成的所有相关协议。除由双方授权代表正式签署书面文书对本协议予以修订以外, 本协议不得以其他任何方式修订。本协议对任何一方的继受者或受让者均具拘束力。本协议以中英文草拟。中英文版发生歧义的, 应以英文文本为准。
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.
- 通知:** 本协议项下的通知和其他通讯应发送至本协议上述第一段中所列出的地址。
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.
- 副本:** 本协议可以一份或多份副本签署, 每一副本都视为原件。本协议的传真形式或电子形式 (PDF) 与本协议原件具有同等效力且同样可执行。
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.
- 可分割性:** 本协议的任何条款或部分被证明全部或一部无效或不可执行的, 本协议其他条款的效力不因此而受到影响, 在现行有效法律允许的最大限度内完全有效。
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.

**适用法律和司法管辖:** 本协议的条款受上述买方地址中买方主要营业地所在国家法律（如适用，州/省的法律）的管辖并依据其进行解释，排除冲突法的适用。仅买方主要营业地有管辖权的法院为管辖法院，对因本协议所引起的任何诉讼或程序具有司法管辖权。特此明确排除《联合国国际货物销售合同公约》（CISG）中所列条款和条件的适用。

This Agreement is effective on the date set forth above.  
本协议于上述日期生效。

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

有鉴于此，本协议由下列买方和供应商的正式授权代表所签署。

**SUPPLIER:**

供应商:

(company name, company stamp 公司名称、公章)

\_\_\_\_\_  
name and function in letters & signature 1  
姓名和职务（正楷和签名 1）

\_\_\_\_\_  
name and function in letters & signature 2  
姓名和职务（正楷和签名 2）

**BUYER:**

买方:

**[DRAXLMAIER company / 德科斯米尔公司]**  
(company name, company stamp 公司名称、公章)

\_\_\_\_\_  
name and function in letters & signature 1  
姓名和职务（正楷和签名 1）

\_\_\_\_\_  
name and function in letters & signature 2  
姓名和职务（正楷和签名 2）