



**NON-DISCLOSURE AGREEMENT**  
(the "Agreement")

between

**AT&S Austria Technologie & Systemtechnik Aktiengesellschaft**  
Fabriksgasse 13  
A-8700 Leoben-Hinterberg  
Austria

including its affiliated companies,  
(hereinafter referred to as "AT&S")

and

\_\_\_\_\_

(hereinafter referred to as "\_\_\_\_\_")

Disclosing and Receiving Party are hereinafter jointly referred to as the "Parties".

WHEREAS, the parties wish to undertake ..... (the "purpose").

WHEREAS, during the course of such .... , the parties and their affiliated companies (as defined in clause 7. below) may exchange valuable information which they consider proprietary and confidential.

WHEREAS, "Disclosing Party" shall be defined as the party releasing confidential information to the "Receiving Party".

NOW, THEREFORE, the parties agree that the following terms and conditions apply to the disclosure of such information.

## **1. Exchange of Information**

During the term of this Agreement the Parties hereto will exchange commercial and technical information relating to the purpose mentioned above. The obligation of confidentiality shall apply regardless of the form the data takes. All documents containing confidential information and conspicuously marked "confidential", showing the name of the Disclosing Party at the time of delivery to the Receiving Party, are protected under this Agreement. In case of verbal or visual disclosure, such confidential information shall be confirmed by the Disclosing Party in writing as being subject to the terms of this Agreement within 30 days of such disclosure, with a summary of such disclosure.

## **2. Confidentiality**

The Receiving Party is obliged to keep confidential all information received from the Disclosing Party, including but not limited to, not to disclose such information to third parties directly or indirectly, orally or in writing or in any other way except when expressly authorized in writing by the Disclosing Party to do so. The Disclosing Party retains all rights (including, but not limited to, copyright and the right to apply for intellectual property rights, such as patents, utility models, mask work protection etc.).

The Receiving Party hereto shall use the same degree of care as it would for its own information of like importance, at least use reasonable care to keep confidential all information received hereunder and shall only use the confidential information to achieve the purpose. This obligation shall not apply to such information proven to

- a. be publicly known at the time of disclosure;
- b. having become publicly known inadvertently or by a force majeure situation despite due care having been exercised by the Receiving Party;
- c. already be known by the Receiving Party prior to such disclosure or to be lawfully obtained from a third party after such disclosure;
- d. having been or be developed by the Receiving Party independent of any such information disclosed by the other Party;
- e. be expressly released by the Disclosing Party in writing from the obligations of confidentiality imposed by this Agreement.

Neither this Agreement nor disclosure of confidential information shall constitute or imply any promise or intention to make any purchase of products or services by the Disclosing Party or any commitment by the Disclosing Party with respect to the present or future marketing of any product or service or any promise or intention to enter into any other business arrangement with the Receiving Party.

The obligation to keep information confidential terminates 3 years after expiration of this Agreement.

The Receiving Party is obliged, upon written request by the Disclosing Party, to return to the Disclosing Party without reasonable delay all written or otherwise recorded information, including all copies and samples obtained from the Disclosing Party with the exception of copies to be retained for archiving purposes in fulfilment of compulsory legal regulations. The return may be requested not later than three months after expiration of this Agreement.

### **3. Permitted Disclosures**

The Receiving Party shall only disclose confidential information of the Disclosing Party to its directors, employees and/or other personnel who need to know the confidential information in order to fulfil the purpose. Prior to disclosing confidential information or a confidential sample to any such director, employee and/or other personnel, the Receiving Party shall ensure that each such director, employee and/or other personnel is under a written, statutory or common law obligation to maintain the confidentiality and that such obligation is at least as stringent as the terms under this Agreement. Any breaches of the obligations of confidentiality, non-analysis and non-use contained in this Agreement by such directors, employees and/or other personnel shall be treated as a breach of such obligations by the Receiving Party.

### **4. No Acquisition of rights**

No title, license, copyright or any other rights are granted expressly or implicitly under this Agreement or by the exchange of information regardless of whether or not covered by intellectual property rights or not.

### **5. Duration**

This Agreement shall become effective when duly signed by both parties retroactively with the beginning of the cooperation. The Agreement will expire after 3 years have elapsed, calculated from the day the parties have last exchanged confidential information.



## **6. Modifications and Additions**

Modifications and additions to this Agreement, including this Clause 6., are only valid if in writing and duly signed by both parties.

## **7. Associated Companies**

The parties may directly involve one or more of their affiliated companies in the discussions under this Agreement, which have agreed to be bound by the confidentiality and non-use provisions of this Agreement, and which shall be considered to be a “party” for purposes of this Agreement. The parties may exchange confidential information with such affiliated companies, and each party accepts responsibility that its affiliated companies will abide by the confidentiality and non-use provisions of this Agreement. The term “associated company” includes any entity belonging through direct or indirect majority ownership to the group of entities in which a party is a member through direct or indirect majority ownership interest.

## **8. Severability**

If any Clause contained in this Agreement is, for any reason, held to be invalid or unenforceable, in any respect, such invalidity or unenforceability will not affect the validity of the remaining Agreement.

## **9. Waiver**

Any failure by any party to exercise any right hereunder or the partial exercise of such a right shall not act as a waiver nor preclude the subsequent exercise thereof. No waiver or addendum may be attached to any provisions of this Agreement except by written agreement.

## **10. Exclusiveness**

This Agreement constitutes the entire agreement between the parties and supersedes any prior or contemporaneous oral or written representations regarding the subject matter hereof.

## **11. Governing law**

This Agreement shall be governed by and construed in accordance with the laws of the Republic of Austria, without regard to its conflict of laws principles.

**12. Jurisdiction**

The parties agree that any controversy which may arise shall be decided only by the competent Vienna courts, Inner City.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorised representative(s).

Date.....

Date.....

AT&S Austria Technologie &  
Systemtechnik Aktiengesellschaft

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