

NONDISCLOSURE AGREEMENT

between

PASS GmbH & Co. KG
Berliner Straße 11
58332 Schwelm

('Pass') or ('a party')

and

(each a 'party')

(together the 'parties')

Recitals

The parties intend to exchange confidential information within the scope of their business relationship. This nondisclosure agreement is intended to ensure that no misuse is made of this information and that the information provider does not suffer any disadvantages from this information transfer. This nondisclosure agreement applies to all confidential information and knowledge which is brought to the attention of either party, particularly during the joint business relationship, the preliminary discussions, and the handling of the business relationship, or which arises over time.

§ 1 Definitions

1.

'Confidential information and knowledge' means all financial, technical, economic, legal, and tax-related information; information regarding business activities, the employees, or the management; and other information (including data, recordings, and know-how) concerning one or both parties or a company associated with them and which is directly or indirectly disclosed to a party – or to its bodies, employees, consultants, or other nonparties that work for it (a 'nonparty' means an entity not a party to this agreement) – by the other party or by a company associated with the other party, or which a party otherwise gains knowledge of (the party gaining such

knowledge, the 'receiving party'). Confidential information and knowledge does not need to be stored on any particular data storage device or on such a device at all, and includes without limitation oral information. It is also irrelevant whether documents or other data storage devices were created by the vendor or the prospect if they relate to either party or a company associated with that party.

2.

For the purpose of this clause, confidential information also includes the fact that a party has gained knowledge of confidential information, the existence and the content of this agreement, and all other information related to the conclusion or execution of the initiative, including the fact that talks on the initiative are taking place, and the state of the talks.

3.

Confidential information and knowledge include without limitation:

a)

all product-specific knowledge and documents; flowcharts; process descriptions; linking specifications; drawings; formulas; samples; materials; prototypes; factory models; production processes; and technical, business and financial data, etc., that are forwarded to a party.

b)

discussions, sketches, problem solutions, process samples, knowledge of patents, licences, other copyrights, etc., which arise in the course of the execution of the order and for which patent or industrial property rights can be applied for.

c)

type designation, quantities, information on transport and packaging, prices, price calculations, and customer and supplier relations.

d)

information received orally and visually (during a tour of the company, for example).

4.

'Authorised persons' means the receiving party, its bodies and employees, companies associated with that party, and those companies' organs and employees, insofar as they (1) are respectively subject to a nondisclosure agreement toward the receiving party that meets or exceeds the level of protection under this agreement and (2) need to be acquainted with the initiative. Authorised persons also include consultants of the receiving party who are professionally or contractually bound to maintain confidentiality.

5.

'Associated companies' means companies in the sense of §§ 15 ff. Stock Corporation Act ('Aktiengesetz' or 'AktG').

6. 'Employees' means employees of the vendor, of the prospect, or of their respective associated companies; and workers without employee status such as freelancers and temporary staff.

§ 2 Confidentiality; Secrecy

1. The parties shall (1) treat the confidential information as strictly confidential, (2) not pass it on or make it otherwise accessible to nonparties who are not authorised persons, and (3) take suitable precautions to protect the confidential information (at least the precautions they take to protect highly sensitive information about their own respective companies). Subcontractors and other nonparties may be given access to the confidential information after only approval by the party concerned, and within the scope of the performance of the commissioned activities. Approval may also be implied. The obligations arising from this agreement must also be imposed on the subcontractor or other nonparty.

2. The receiving party shall use the nonreceiving party's confidential information only to prepare, implement, and handle the joint business relationship. Neither party shall use the confidential information to gain a competitive commercial advantage over the other party, a company associated with the other party, or a nonparty. The parties shall not use the confidential information and knowledge for orders from other clients, or for their own purposes not related to the joint business relationship.

3. The parties shall comply with the statutory and contract provisions on data protection when processing confidential information. This includes taking state-of-the-art technical security measures (Art. 32 GDPR) and obligating employees to maintain data secrecy (Art. 28(3)(b) GDPR).

4. The receiving party shall inform the disclosing party without undue delay if it knows of or suspects an imminent or actual breach of the disclosing party's confidentiality interests. This protects the disclosing party's confidentiality interests towards everyone.

5. All documents affected by this nondisclosure agreement must be returned to the respective party on request without undue delay when the existing business relationship is terminated if not before. When those documents are returned, any copies, transcripts, etc. must be destroyed as well. The parties shall not retain any records.

6. The above obligations to protect confidential information do not include information that is publicly known. Furthermore, the duty of confidentiality does not apply toward courts and authorities if there is a legal obligation (including under criminal law) to pass on,

disclose, or store the information, or if the information is relevant in civil law proceedings between the parties or between one of the parties and a nonparty. If either party learns that confidential information concerning the other party has been disclosed, it shall inform the other party without undue delay unless doing so is forbidden by law.

§ 3 Industrial property rights

1.
Only the party disclosing confidential information is entitled to industrial property rights to that information whether or not those rights have already been applied for.
2.
If either party discloses confidential information, the nondisclosing party shall not attack the existing protective rights to that information or assist any nonparty in doing so.

§ 4 Contract penalty

Irrespective of any claim for damages, each party shall pay a contract penalty of 5,000 euros each time that party culpably breaches this agreement. If the breach continues, the contract penalty will be imposed again with each week of the breach. The parties' obligation to pay the contract penalty also extends to breaches by their respective employees.

§ 5 Period of validity

1.
Unless otherwise agreed, the obligations under this agreement apply permanently.
2.
The agreements here apply whether or not the confidential information or knowledge is disclosed or created during the cooperation phase or the preliminary discussions, or whether the main contract should be, for example, fully or partially void, annulled, or terminated, or otherwise cease to be valid.

§ 6 Final provisions

1.
Any amendments to this contract must be in written form ("Schriftform" under § 126 of the German Civil Code). This also applies to this clause requiring the written form.
2.
Pass does not guarantee the confidential information is correct or complete and is not liable in that respect.

3.
Should individual provisions of this contract be or become void or unenforceable, the parties shall replace the void or unenforceable provisions with another provision that fulfils their economic purpose to the greatest extent possible.

4.
The forum for all disputes arising from this contract or its execution is Schwelm. However, Pass may also bring an action against the other party at any other forum.

5.
The law of the Federal Republic of Germany applies.

Schwelm, _____, _____,

Pass

Other party