

# NON-DISCLOSURE AGREEMENT

between

Magnet-Schultz GmbH & Co. KG, Allgäuer Straße 30, 87700 Memmingen, Germany  
represented by the undersigned hereinafter "MSM"

and

,represented by the undersigned  
hereinafter business partner  
referred to individually as a "Party" and collectively as the "Parties".

## Preamble

This agreement applies to the business relationship between the parties

(in particular pre-contractual talks and negotiations, conclusion of contracts, execution of contracts). It shall also apply to future business contacts between the parties, unless it has been terminated extraordinarily by one of the parties beforehand.

## § 1 Secrecy obligation

1)

The parties undertake to keep each other's business secrets confidential and to use them only in connection with the business relationship, in particular not to violate any prohibition of action under § 4 of the Law on the Protection of Trade Secrets (GeschGehG).

2)

A business secret within the meaning of this agreement is, in accordance with § 2 No. 1 GeschGehG, such information which is not generally known or readily accessible, either in its entirety or in the precise arrangement and composition of its components, to persons in the circles which normally handle this type of information and which is therefore of economic value and which is the subject of secrecy measures which are reasonable under the circumstances and for which there is a justified interest in secrecy.

Such business secrets shall be deemed to be confidential knowledge, data, documents, materials, technical processes and, moreover, such information marked as confidential which becomes accessible within the scope of the business relationship. In each case, regardless of the form of transmission, i.e. information transmitted orally, physically and visually shall be covered. The parties will keep secret all information and data concerning sales, turnover, product compositions and other information which could allow conclusions to be drawn about the parties' position in the market and their present and future sales behavior, as well as the information declared "confidential" in Annex 1 to this agreement. The Parties shall use the trade secrets only for the purpose of carrying out the business relationship.

**3)**

Trade secrets do not include information that was demonstrably known to the recipient prior to disclosure by the holder and without breach of a confidentiality obligation; was obtained by the recipient without use of or reference to trade secrets by the holder itself; or is given or made available to the recipient by an authorized third party without breach of a confidentiality obligation.

## **§ 2 Disclosure**

**1)**

Unless otherwise agreed, disclosure of business secrets to third parties is excluded, unless the disclosure is made to protect a legitimate interest within the meaning of § 5 GeschGehG, in particular to exercise the right of freedom of expression and freedom of information, including respect for freedom and plurality of the media; to uncover an unlawful act or professional or other misconduct, if disclosure is likely to protect the general public interest; in the context of disclosure by employees to the employee representation, if this is necessary to enable the employee representation to fulfil its duties. § 5 GeschGehG shall also remain unaffected by this non-disclosure agreement in all other respects, as shall the obtaining, use and disclosure of business secrets on the basis of public law provisions within the meaning of § 1 (2) GeschGehG.

**2)**

MSM is entitled to make business secrets of the business partner and its customers accessible to its employees who need them for the purpose of carrying out this cooperation. To the legally permissible extent, the business partner shall oblige its employees to maintain secrecy in the same way as MSM, even after leaving the services.

**3)**

The parties shall also oblige service providers who gain knowledge of business secrets of the respective party in the implementation of the business relationship to maintain secrecy at least to the extent of this agreement. Any claims arising from breaches of the duty of confidentiality shall be assigned to the respective party, but the parties themselves shall only be liable for their own fault.

**4)**

The parties agree that further measures to protect the trade secrets are not required. If they are, these special requirements / measures are listed in Annex 1.

**5)**

If, in the course of the business relationship, business secrets become accessible to third parties which are strictly confidential and are therefore to be treated differently from the way in which they are regulated in this agreement, then this must be notified to the other party in writing without delay.

**6)**

"Third Parties" in the meaning of this Agreement are not companies of the MSM company group.

### **§ 3**

#### **Property rights**

The trade secret owner shall, without prejudice to the rights it has under the GeschGehG, have all rights of ownership, use and exploitation with regard to the trade secrets. The owner reserves the exclusive right to apply for protective rights. The recipient shall not acquire any ownership or - with the exception of use for the purpose described above - any other rights of use to the confidential information (in particular to know-how, patents applied for or granted thereon, copyrights or other property rights) on the basis of this Agreement or otherwise due to implied conduct.

### **§ 4**

#### **Return of trade secrets**

Business secrets transmitted by the disclosing party, including copies and transcripts made thereof, shall be surrendered by the receiving party immediately upon request after termination of the contract. Corresponding data stored on computers or other data carriers (e.g. CD-ROM; USB stick, etc.) of the receiving party shall be deleted at the request of the disclosing party. This shall not apply to routinely made electronic backup copies, insofar as further confidential treatment of such data is ensured in accordance with the provisions of this Agreement. Proof that the backup copy was made routinely must be provided by the party relying on it. The return/deletion (also of electronic backup copies) must, however, take place at the latest after the expiry of the confidentiality period regulated in § 5 para. 1. The receiving party shall not be entitled to a right of retention, including a commercial right of retention.

## § 5

### Duration of contract

#### 1)

This non-disclosure agreement shall come into force upon signature by both parties and shall have a term until the end of the cooperation of the parties. The obligations under this agreement shall continue for a period of 5 years after the termination of this agreement.

#### 2)

Even in the event of extraordinary termination, the parties shall remain obliged to continue to keep secret and not to use any business secrets that become known to them up to the time the termination takes effect in accordance with this confidentiality agreement.

## § 6

### Contractual penalty

#### 1)

For each case of breach of one of the above obligations, the parties promise to pay a contractual penalty, excluding the assumption of a continuation connection. The contractual penalty shall be in accordance with reasonable discretion. Decisive for this are the significance of the breached obligation, the disadvantage of the creditor (including the immaterial disadvantage) and the degree of the breach of obligation and the fault of the debtor. If the parties do not agree on this, a judge of the Munich Higher Regional Court appointed by the President of the Higher Regional Court shall make a binding decision on this as an arbitrator after hearing the parties (even only in writing).

#### 2)

Claims for damages in excess of the contractual penalty shall remain in force in addition to the contractual penalty.

## § 7

### Subsidiarity

If the parties have otherwise regulated or will regulate a confidentiality going beyond that in this agreement (e.g. development agreement, product-specific special agreement), then these agreements shall take precedence over this agreement for the scope of the agreement specified therein.

**§ 8****Text form, severability clause, choice of law, place of jurisdiction****1)**

Amendments and supplements to this agreement must be made in text form.

**2)**

Should individual provisions of the agreement be or become invalid or unenforceable in whole or in part, this shall not affect the validity of the remaining provisions. In such a case, the parties are obliged to cooperate in the creation of provisions by which a result that comes as close as possible to the ineffective provision in economic terms is achieved in a legally effective manner. When closing any loopholes, the meaning and purpose of the agreement shall be taken into account; if the agreement contains a provision for a comparable interest, this shall be decisive.

**3)**

The exclusive place of jurisdiction for all disputes arising from this agreement is Memmingen.

**4)**

All disputes arising out of or in connection with this Agreement shall be governed by the laws of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

Memmingen, the

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MSM

