

# CONFIDENTIALITY AGREEMENT

between

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

and

, represented by the signatory  
hereinafter business partner  
individually referred to as "party" and collectively as "parties".

## Preamble

This agreement applies to the business relationship between the parties for the supply of:

(in particular pre-contractual discussions and negotiations, conclusion of contracts, performance of contracts). It also applies to future business contacts between the parties, unless this agreement has been extraordinarily terminated by either party.

## § 1

### Obligation of confidentiality

1)

The parties must maintain confidentiality of each other's trade secrets and use them only in connection with the business relationship, in particular not violate any prohibition of action under Section 4 of the German Trade Secrets Act (GeschGehG).

2)

A trade secret within the meaning of this agreement is, based on Section 2 no. 1 of the GeschGehG, information that is not, as a whole 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 and is thus of economic value and that has been subject to reasonable steps under the circumstances, by its lawful holder, to maintain secrecy and concerning which there is a legitimate interest in maintaining secrecy.

Confidential knowledge, data, documents, materials, technical processes and, in addition, information marked as confidential that becomes accessible within the context of the business relationship shall be deemed to be such trade secrets. In this regard, information transmitted orally, physically and visually is included, regardless of the form of transmission. The parties must keep secret all information and data regarding sales, turnover, product compositions and other information that could allow conclusions to be drawn about the parties' position in the market and their current and future sales behavior, as well as the information declared as "confidential" in Appendix 1 to this contract. The parties shall use the trade secrets only for the purpose of conducting the business relationship.

**3)**

No trade secrets are such information that the recipient was demonstrably aware of prior to disclosure by the owner and without breach of a duty of confidentiality; that was obtained by the recipient without the use or reference to trade secrets from the owner himself; or that the recipient is handed over or made accessible by an authorized third party without breach of a duty of confidentiality.

## **§ 2 Disclosure**

**1)**

Unless otherwise agreed, the disclosure of trade secrets to third parties is prohibited, unless the disclosure is made to protect a legitimate interest within the meaning of Section 5 of the GeschGehG, in particular to exercise the right to freedom of expression and information, including respect for the freedom and plurality of the media; to expose unlawful acts or professional or other misconduct if the disclosure is suitable to protect the general public interest; in the context of disclosure by employees to employee representatives if this is necessary for the employee representatives to be able to perform their duties. Section 5 of the GeschGehG remains unaffected by this confidentiality agreement, as does the obtaining, use and disclosure of trade secrets based on public law within the meaning of Section 1 (2) of the GeschGehG.

**2)**

MSM is entitled to make trade secrets of the business partner and its customers available to its employees who require them for the purpose of carrying out this business relationship. The business partner shall, to the extent permitted by law, oblige its employees to maintain confidentiality in the same way as MSM, even after they have left the company.

**3)**

The parties shall also oblige service providers who gain knowledge of the trade secrets of the respective party in the course of implementing the business relationship to maintain confidentiality, at least to the extent of this agreement. Any claims arising from violations of the confidentiality obligation shall be assigned to the respective party, but the parties themselves shall only be liable for their own negligence.

**4)**

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

**5)**

Should third parties gain access within the scope of the business relationship to trade secrets that are strictly confidential and must therefore be treated differently than regulated in this agreement, then the other party must be notified of this in writing without delay.

**6)**

“Third parties” within the meaning of this agreement are not companies of the MSM group.

### § 3

#### Property rights

Without prejudice to the rights to which he is entitled under the GeschGehG, the trade secret holder has all property rights, rights of use and exploitation with regard to the trade secrets. The owner reserves the exclusive right to file for intellectual property rights. The recipient does not acquire ownership or – with the exception of use for the purpose described above – any other rights to use the confidential information (in particular to know-how, patents applied for or granted on it, copyrights or other intellectual property rights) based on this agreement or otherwise due to implied conduct.

### § 4

#### Return of trade secrets

The receiving party shall immediately return all trade secrets provided by the disclosing party, including made copies and duplicates, upon request after termination of the contract. Such 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 does not apply to routinely created electronic backup copies, provided that further confidential treatment of such data is ensured in accordance with the provisions of this agreement. Proof that a backup copy is a routinely created backup copy must be provided by the party claiming it.

The return/deletion (also of electronic backup copies) must, however, be carried out at the latest after the expiry of the confidentiality period regulated in Section 5 (1) of this agreement. The receiving party is not entitled to a right of retention, including a commercial one

## § 5

### Duration of contract

#### 1)

This confidentiality agreement shall come into force upon signature by both parties and shall remain in force until the parties' cooperation has ended. The obligations arising from this agreement shall continue to apply for a period of five years after the termination of this agreement.

#### 2)

Even in the event of extraordinary termination, the parties remain obliged to continue to keep secret and not to use trade secrets of which they become aware up to the point at which the termination takes effect, in accordance with this confidentiality agreement.

## § 6

### Contractual penalty

#### 1)

For each case of infringement of one of the above obligations, the parties promise to pay a contractual penalty, excluding the assumption of a continuation of the infringement. The contractual penalty shall be set at a reasonable amount. The decisive factors for this are the significance of the breached obligation, the disadvantage to the claimant (including intangible disadvantage) and the degree of the breach of obligation and the fault of the party in breach. If the parties cannot agree on a reasonable amount, a judge from the Higher Regional Court of Munich (Oberlandesgericht München) named by the President of the Oberlandesgericht München shall decide on this as an arbitrator after hearing the parties (this may also be done in writing).

#### 2)

Claims for damages that go beyond the contractual penalty shall not be affected by the contractual penalty.

## § 7

### Subsidiarity

If the parties have otherwise agreed or will otherwise agree on confidentiality provisions that go beyond those in this agreement (e.g. development contract, product-specific special agreement), then these agreements shall take precedence over this agreement for the scope of the contract specified therein.



## § 8

### Text form, salvatory 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, the validity of the remaining provisions shall not be affected. In such a case, the parties are obliged to work together to create provisions that legally achieve a result that is as close as possible to the economic purpose of the invalid provision. When closing any gaps in the provisions, the meaning and purpose of the agreement shall be taken into account; if the contract contains a provision for a comparable interest, this shall prevail.

3)

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 are subject to the laws of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

Memmingen, the

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MSM

