by and between

**Blaser Group GmbH,**

Ziegelstadel 1

D - 88316 Isny im Allgäu

hereinafter **„Blaser Group“**

and

|  |
| --- |
| [Contract partner] |
| [Adress] |
| [Adress] |
| [Country] |

hereinafter **„contract partner“**

hereinafter jointly and separately referred to as **“Parties“** or **“Party”–**

**PREAMBEL**

1. This Confidentiality and Non-Disclosure Agreement (hereinafter “Agreement”) is entered into on 10.05.2019 by and between the Parties, who agree that:
2. The Parties wish to discuss and exchange certain items and information related to the development and production of [please describe technologie, products, etc.] („Scope“), including information relating to its concepts for selling products, incorporating technology into other existing products, and future product development, which the Parties consider confidential and proprietary.
3. NOW THEREFORE, the Parties, intending to be legally bound and in consideration of the mutual covenants and agreements set forth herein, agree as follows:

**SECTION 1**

**DEFINITIONS/ IDENTIFICATION OF CONFIDENTIAL INFORMATION**

1. "Affiliate" shall mean, in relation to each Party, shall mean, in relation to each Party, any company or other entity directly or indirectly controlling or controlled by or under direct or indirect common control with such Party. Control for the purpose of this definition means direct or indirect ownership of at least (i) fifty percent (50%) of the voting rights or (ii) fif-ty percent (50%) of the registered capital of said entity.
2. "Disclosing Party" shall mean the party or its Affiliate disclosing Information to the Receiving Party;
3. "Receiving Party" shall mean the party or its Affiliate receiving Information from the Disclosing Party;
4. "Concepts" means inventions, discoveries, developments, and ideas, whether patentable or not, including, but not limited to, processes, methods, formulas, techniques, business programs, products, applications, systems, components, technologies and business topics as well as improvements thereof or know-how related thereto, concerning any present or prospective activities of the Disclosing Party.
5. "Confidential Information" as used throughout this Agreement means any and all Concepts, trade secrets and any and all data or information within the Scope disclosed by the Disclosing Party or its Affiliates to the Receiving Party or its Affiliates. Without limiting the scope of this definition, Confidential Information includes: any contract partner files, contract partner lists, co-developer identities, any business, marketing, financial or sales record or reports, business plans, data, plan, policies and procedures, or survey; and any other record or information relating to the present or future business, product, processes, theory, technology or service of the Disclosing Party whether it is written, oral, audio tapes, video tapes, computer discs, machines, prototypes, designs, specifications, articles of manufacture, drawings, copyrightable works, human or machine readable documents. All Confidential Information and copies thereof are the sole property of the Disclosing Party. Confidential Information shall not include any of the following:
6. Information in the public domain at the time of the disclosure, or subsequently becomes within the public domain other than through the Receiving Party;
7. Information which was in the possession of the Receiving Party at the time of disclosure that may be demonstrated by business records of the Receiving Party and was not first acquired, directly or indirectly, from the Disclosing Party;
8. Information which is expressly authorized by the Disclosing Party in writing to release;
9. Information that has been developed independently by the Receiving Party, regardless of a notice by the disclosing Party.
10. When the Parties exchange Confidential Information, such information must be disclosed in writing and be marked "Confidential". Confidential Information transmitted orally must be designated as Confidential Information by a written document from the Disclosing Par-ty to the Receiving Party setting forth the Confidential Information so transmitted within ten (10) days of such oral transmission.
11. Prior to the transmittal of Confidential Information by the Disclosing Party to the Receiving Party, the Disclosing Party shall generally describe the nature of the Confidential In-formation to the Receiving Party to permit the Receiving Party, if desired, to request that such Confidential Information to be transmitted be restricted or limited in detail.

**SECTION 2**

**USE OF CONFIDENTIAL INFORMATION**

The Receiving Party shall:

1. receive and maintain the Confidential Information in confidence; The receiving Party shall treat Confidential Information as confidential and not disclose it or make it otherwise available to any third parties, with the exception that
   1. Affiliates of a Party shall not be deemed to be third parties but shall be aware of the existence of this Agreement and shall be advised by the relevant Party to this Agreement to keep Confidentiality in accordance with any and all provisions of this Agreement.
   2. Confidential Information may be disclosed in a court proceeding or administrative process due to a judicial order or decree. The receiving Party will inform the other Party in writing in due time of the disclosure of the Confidential Information and ask the recipient to maintain confidentiality.
2. examine the Confidential Information at its own expense;
3. accept the Confidential Information for the sole purpose of evaluation in connection with the Receiving Party's business discussions with the Disclosing Party;
4. not reproduce the Confidential Information or any part thereof without the express written consent of the Disclosing Party;
5. not use or utilize the Confidential Information other than as contemplated by the Terms of this Agreement without the express written consent of the Disclosing Party;
6. utilize the best efforts possible to protect and safeguard the Confidential Information from loss, theft, destruction, or the like;
7. comply with any other reasonable security measures requested in writing by the Disclosing Party; and
8. not use the Confidential Information or any part thereof as a basis for the design or cre-ation of any method, system, apparatus or device similar to any method, system, appa-ratus or device embodied in the Confidential Information unless expressly authorized in writing by Disclosing Party.

**SECTION 3**

**PFLICHTEN IM ZUSAMMENHANG MIT DER NUTZUNG VON VERTRAULICHEN INFORMATIONEN**

1. Each Party shall safeguard and protect the other Party’s Confidential Information at least with the same standard it protects its own Confidential Information in the course of its due performance of business.
2. All Confidential information provided by the Disclosing Party shall remain the property of the Disclosing Party. The Receiving Party agrees to return any and all Confidential Information including any copies to the Disclosing Party within 5 days of written demand by the Disclosing Party, however, the Receiving Party is entitled to keep one set of copies of Confidential Information for archival purposes in its legal department. If the Receiving Party is obliged under any mandatory legal provisions or binding orders of a competent authority or has a legitimate interest to keep a copy of any Confidential Information the Par-ties agree that the Receiving Party may keep such copy and use it solely to fulfill its obligation or legitimate interest.
3. Contract partner agrees that for a period of five (5) years from the date of this Agreement, it will not actively initiate contact with Blaser Group's or Blaser Group affiliated companies employees in order to solicit, entice or induce any employee of Blaser Group to terminate an employment relationship with Blaser Group to accept employment with contract partner. This section shall not apply if such an employee of Blaser Group applies for a position with contract partner on his own motion.

**SECTION 4**

**PENALTY CLAUSE**

1. For each and every breach of any obligation as set forth under SECTION 1 to 8 of this Agreement a penalty in an amount that both Parties shall discuss and find fair and reasonable has to be paid to the other Party. To discover a fair and reasonable amount the Parties shall consider (i) significance and severity of the breach, (ii) harm suffered by the other Party (including non-material harm) and (iii) degree and severity of fault (intention, gross negligence, negligence etc.). If the Parties do not reach a decision on a fair and reasonable amount of a contractual penalty such amount shall be decided by a Federal Judge to be nominated by the President of the Higher Regional Court of Munich, Bavaria, Germany. The Parties shall have the right to demand a (written) hearing. The decision shall be irrevocable and binding to the Parties.
2. For each and every breach of SECTION 3 of this Agreement a penalty in an amount of three (3) gross monthly salaries which the affected employee received from his current employer. In case the employee enters into an employment contract with the Party in breach with Section 9 of this Agreement such contractual penalty as set forth under sentence 1 shall become doubled.

**SECTION 5**

**WARRANTY/ NO JOINT LIABILITY**

1. Each of the Parties hereby warrants that it has a good faith belief that it possesses an unrestricted right and/or title as to the use of its Confidential Information disclosed pursuant to this Agreement.
2. No Party shall be liable towards the other Party for the correctness or completeness of the provided Confidential Information despite the provision of such incorrect or incomplete Confidential Information happens intentionally or with gross negligence.
3. For the purpose of clarity, it is remarked that any right and liability as set forth under this agreement always applies in the relationship solely to the Disclosing or Receiving Party or as the case may be its Affiliates. None of the aforesaid Disclosing or Receiving Party is authorized to represent or oblige its Affiliate, unless this is explicitly agreed in writing in an individual contract. Disclosing and Receiving Party as well as any of its Affiliates are liable as a partial debtor and not as joint and several debtors. Each Party and its Affiliates shall be solely and in no case jointly liable for its obligations under this contract and any individual purchase contract.

**SECTION 6**

**INTELLECTUAL PROPERTY**

1. Neither party, by virtue of disclosure of the Confidential Information, grants, either expressly or by implication, estoppel or otherwise, any right or license to any patent, trade secret, invention, trademark, copyright, or other intellectual property right.
2. The Receiving Party agrees and acknowledges that no license, either expressed or implied, is granted to the Receiving Party by the Disclosing Party to use any of the Confidential Information.
3. It is understood that the Parties will discuss and consider the rights and title to any developments and/or inventions made jointly or by either of the Parties and that made use of Confidential Information received from another Party.

**SECTION 7**

**NO PUBLICITY**

Each of the Parties agrees not to disclose its participation in this undertaking, the existence or terms and conditions of the Agreement, or the fact that mutual discussions are being held without permission of the other party which permission shall not be unreasonably withheld, other than as qualified by the requirements of law.

**SECTION 8**

**TERM AND TERMINATION**

This Agreement shall commence on the date first above written and end on [select date]. The Receiving Party's right to use the Confidential Information shall begin upon receipt of any Confidential Information and, unless otherwise agreed to by the Parties, shall continue until the Disclosing Party provides the Receiving Party written notice of termination of this Agreement. The obligation of non-disclosure or any economic non-use of any Confidential Information shall end only after the time period of five (5) years after the disclosure of Confidential Information.

**SECTION 9**

**GOVERNING LAW AND ARBITRATION CLAUSE**

1. This Agreement and all questions relating to its validity, interpretation, performance and enforcement (including, without limitation, provisions concerning limitations of actions), shall be governed by and construed in accordance with the laws of the Federal Republic of Germany notwithstanding any conflict-of-laws doctrines.
2. All disputes arising in connection with this Agreement or its validity shall be firstly discussed, negotiated and reasonably tried to be settled in an amicable manner. If such negotiations fail, any dispute shall be finally settled in accordance with the current Arbitration Rules of the German Arbitration Association (DIS) without recourse to the ordinary courts of law. The place of arbitration shall be Munich, Bavaria. The arbitral tribunal consists of three arbitrators. The substantive law of Germany is applicable to the dispute and the language of the arbitral proceedings is English. The prevailing party in such dispute shall be entitled to reasonable legal fees.

**SECTION 10**

**MISCELLANEOUS**

1. This Agreement supersedes and cancels all prior confidentiality agreements related to the Scope and sets forth all of the covenants, promises, agreements, conditions and under-standings between the Parties and there are no covenants, promises, agreements or conditions, either oral or written, between them other than herein set forth. No subsequent alteration, amendment, change or addition to this Agreement including any changes or amendments to this provision shall be binding upon either party unless reduced in writing and signed by the Parties.
2. This agreement shall be non-assignable by the Parties unless prior written consent of the other party is received. If this Agreement is assigned or otherwise transferred with such consent, it shall be binding on all successors and assigns.
3. Each and every provision hereof shall inure to the benefit of and shall be binding upon the heirs, assigns, personal representatives, executors and administrators of each party, and all successors in the interest of the parties. No person shall have a right or cause of action arising or resulting from this agreement except those who are parties to it and their successors in interest.
4. The headings of the sections and subsections in this Agreement are for convenience purposes only and shall not affect the interpretation of any of the provisions hereof.
5. In the event any provision of this Agreement is deemed to be void, invalid, or unenforceable, that provision shall be severed from the remainder of this Agreement so as not to cause the invalidity or unenforceability of the remainder of this Agreement. All remaining provisions of this Agreement shall then continue in full force and effect. If any provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope and breadth permitted by law.

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Place, date Place, date

Signature Signature

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(Blaser Group GmbH) (Contract partner)