

## Mutual Confidentiality Agreement

between

Novoplast - Verpackungen GmbH & Co. KG  
Unterzeiler Weg 5  
88299 Leutkirch

– represented by Ms. Vera Kowitz and Mr. Thomas Leipold  
– (hereinafter referred to as “Novoplast”)

and

\_\_\_\_\_

– represented by \_\_\_\_\_ - (hereinafter referred to as “customer”)

### Preamble

The parties intend to hold start negotiations with a view to future cooperation involving the supply of goods by Novoplast to the customer, which may lead to the conclusion of contracts. To this end, the Parties intend to exchange confidential information. In order to avoid misuse of this confidential information, the parties agree as follows:

### § 1 Project

The present Confidentiality Agreement (hereinafter referred to as the “agreement”) is concluded for the purpose of exploring the possibilities of cooperation with regard to the delivery of goods by Novoplast to the Customer (hereinafter referred to as the “project”). The project includes all future supply contracts between the parties to the contract as well as the phase of contract initiation and the phase after the conclusion of the respective supply contract.

## **§ 2 Definitions**

The following definitions shall apply to this agreement:

2.1 "Trade secret" is an information,

- which is not generally known among or readily accessible, either in its entirety or in the precise configuration and assembly of its components, to persons within the circles that normally deal with the kind of information in question and which is therefore of economic value, and
- which is subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret, and
- in respect of which there is a legitimate interest in its confidentiality.

2.2 "Disclosure" means the opening of a trade secret and/or confidential information within the meaning of § 3 of this agreement (hereinafter referred to as "confidential information") to a third party, whereby "disclosure" shall not be equated with "publicity".

2.3 "Holder" means the party lawfully controlling a trade secret and/or confidential information.

2.4 "Recipient" means the party to which a trade secret and/or a confidential information is disclosed. The recipient has no control over the trade secret and/or confidential information and is not authorized to use or disclose the trade secret and/or confidential information contrary to this agreement. By disclosing the trade secret and/or confidential information, the recipient does not become "holder" within the meaning of the above definition.

## **§ 3 Confidential information**

3.1 Confidential information within the meaning of this agreement is all information which - irrespective of its media form (e.g. - not conclusively - in writing, electronically, digitally embodied or in any other form; orally only if a mutually signed transcript of the oral information exists) - is disclosed by the respective holder to the respective recipient for the purpose of the project. As confidential information shall in particular be regarded:

3.1.1 Trade secrets, know-how as well as technical and/or economic interim results, results and other knowledge gained or used in the frame of the project, the description of the project, the prospective schedules, targets and ideas for carrying out the project, as well as other information not publicly available that the partners exchange in the frame of the project, in particular calculated, marketing, competition and other information. The information comprises technical, software-technical, design and/or copyright protected know-how, interim results and results, as well as reports and records drawn up in the frame of the project.

3.1.2 All documents and information of the respective holder which are subject to technical and/or organisational steps to keep them secret and which are marked as confidential and/or are to be regarded as confidential according to the type of information and/or the circumstances of transmission.

3.1.3 The existence of this agreement and its content, the fact of cooperation between the parties and, where supply contracts are concluded between the parties, their existence and content.

3.2 The parties agree that even if a confidential information does not qualify as a trade secret within the meaning of the German Trade Secret Act ("Gesetz zum Schutz von Geschäftsgeheimnissen") shall nevertheless be subject to the confidentiality obligations pursuant to § 4 of this agreement.

#### **§ 4 Confidentiality obligations**

4.1 The contracting parties herewith undertake to treat all confidential information obtained directly or indirectly within the frame of the project from the respective other contracting party or jointly elaborated, as follows:

- to treat them confidentially and neither to pass them on to third parties nor to make them accessible to third parties in any other form;
- to protect them against unauthorized access by third parties through reasonable steps to keep them secret;
- to use the confidential information only in connection with the project described under § 1 or not to use the confidential information in projects other than the contractual project or to make it the subject of an application for intellectual property rights without the contractual partner's written consent.

4.2 Furthermore, the parties agree basically on a possible exchange of information between the parties by uncoded or unprotected e-mail communication, knowing the non-existing confidentiality in the internet and in e-mail communication, and declare that this is not a breach of this confidentiality agreement.

4.3 The confidentiality obligation under this agreement also extends to all employees and agents of the contractual parties as well as their affiliates within the meaning of §§ 15 ff. AktG (German Stock Corporation Act), irrespective of the nature and legal form of the cooperation. The parties undertake to impose corresponding confidentiality obligations on this group of persons, insofar as this has not yet been done. The parties shall also be liable in the event of a breach of confidentiality by their employees, agents or affiliated companies.

## **§ 5 Exceptions to the confidentiality obligation**

Not to be regarded as confidential information within the meaning of § 3 of this agreement is information that verifiably:

- has already been generally known or published when this agreement was concluded, or
- has become generally known after conclusion of this agreement without fault of the respective recipient or
- has been or will be lawfully obtained by a third party.

In this case the parties also will agree on a passing on or own publication of information and take into account legitimate interests of the contracting partner. The parties agree that any disclosure or publication of information known to the parties, necessary and in accordance with the project (e.g. for obtaining permits or approvals, purchasing or presentation to customers/third parties) shall not constitute a breach of this agreement.

If it turns out that information has been independently obtained and developed by the receiving party without access to confidential information of the other party being necessary, this confidentiality agreement shall nevertheless apply, although the parties to the agreement shall then bring about a regulation regarding the further procedure for this information. Any prior or continued use rights existing to this information shall remain unaffected by this for the time being.

## **§ 6 No acquisition of rights on confidential information**

At no time the parties shall acquire any rights (for example ownership, license, reproduction or use rights) on the confidential information of the other party. The party (holder) who communicates the information to the other party (recipient) is solely entitled to exploit this confidential information and reserves all rights for applications for intellectual property rights (patents, trademarks, utility models or designs, national and international). The respective recipient must refrain from commercially exploiting or imitating the confidential information off the project in any form itself or through third parties (in particular by means of so-called "Reverse Engineering").

## **§ 7 Data Protection**

The contractual partners comply with the applicable data protection regulations (in particular THE GDPR and the BDSG). You may process the personal data provided, transmitted or become known exclusively for the agreed purpose of the contract. The personal data are subject to the confidentiality obligations under this non-disclosure agreement.

All persons employed by them are effectively obliged to comply with data protection laws (obligation to maintain confidentiality).

The contractual partners shall inform the other contractual partner about special incidents (loss of data, unlawful access, etc.) with respect to personal data of the other contractual partner.

## **§ 8 Duration of the agreement**

This agreement shall take effect upon signature and is valid for an unlimited duration. The confidentiality obligation according to § 4 of this agreement shall remain in force even after a possible termination of the project.

## **§ 9 Surrender of documents**

Each party (holder) may at any time request the other party (recipient) to surrender the confidential documents, drawings, data, objects and other embodied information received from it. Stored data shall be deleted. This also applies to copies of documents or backup copies of files. The destruction or deletion must be proven to the respective other party in a suitable manner. The request for surrender or destruction can not be made later than 3 months after the end of the project.

## **§ 10 Penalty**

10.1 For each breach of the above confidentiality obligation, the infringing party undertakes to pay to the other (injured) party a reasonable contractual penalty which shall be determined by the other (injured) party at its reasonable discretion taking into account all circumstances of the case and which, in the event of a dispute, shall be subject to review by the competent court.

10.2 The assertion of the contractual penalty shall not preclude the assertion of a claim for damages exceeding contractual penalty.

## § 11 Applicable law and place of jurisdiction

11.1 This agreement is exclusively subject to German law to the exclusion of private international law.

11.2 To the extent legally permissible, the parties agree on the District Court München I ("Landgericht München I") as exclusive place of jurisdiction for any disputes arising out of or in connection with this agreement.

## § 12 Final provisions

12.1 Amendments and supplements to this agreement must be made in writing in order to be effective. The same applies to any amendments of the written form requirement itself.

12.2 Should any of the provisions of this agreement be ineffective, invalid or impracticable for other actual or legal reasons, the parties agree to replace this provision by a valid provision which comes as close as possible to the economic result of the omitted provision. The same shall apply in case of an omission. The invalidity of individual provisions shall not affect the validity of the remaining provisions.

## Date and Signature

Leutkirch, \_\_\_\_\_

Ort                      date

\_\_\_\_\_

Vera Kowitz

Thomas Leipold

für Novoplast – Verpackungen GmbH & Co. KG  
Unterzeiler Weg 5  
88299 Leutkirch

\_\_\_\_\_, \_\_\_\_\_

location                      date

\_\_\_\_\_

signature

for \_\_\_\_\_

\_\_\_\_\_