

CONFIDENTIALITY AGREEMENT

Production Material

hereafter referred to as the “Agreement”
between

[Complete Name of the company],

a [nationality of the company] company with registered number [...],
whose registered office is at [Address],

Please select the SAS company directly concerned by the Project. Example: If the NDA concerns a program of a French OEM and SAS Automotive France SAS is nominated, SAS Automotive France SAS should be the SAS entity concluding the NDAs with the suppliers

hereinafter referred to as „SAS“

and

[...],

a [nationality of the supplier company] company with registered number [...],
whose registered office is at [Address],
hereinafter referred to as „Supplier“

hereafter referred to individually as the “Party” or collectively as the “Parties”.

Preamble

The Parties wish to investigate mutual cooperation possibilities in connection with the project [Please define the project] (hereinafter referred to as the “Project”). For the purpose of these preliminary assessments, the Parties are prepared to exchange certain information which is either confidential, proprietary or otherwise not generally available to the public.

This Agreement shall ensure the protection and preservation of proprietary and/or confidential information which shall be disclosed or made available between the Parties.

1. Confidentiality Undertaking

- 1.1 In this Agreement, “Confidential Information” shall include any type of information of a commercial or technical nature, that the disclosing Party provides for the purpose of the Project and that is proprietary to the disclosing Party and/or its Affiliated Companies (as defined in Sec. 1.4), including but not limited to data, documents, computer software and programs, technology, know-how, inventions, concepts, processes, whether or not covered by intellectual property rights, independently from its form (tangible or intangible) or from the type of medium used.
- 1.2 The Parties undertake and represent to each other to handle Confidential Information confidentially and with Due Care, to use Confidential Information only for the purpose of the Project, and to make copies of Confidential Information only to the extent necessary to pursue the purpose set forth in this Agreement, with all such reproductions being considered also as Confidential Information. None of the Parties shall exploit or otherwise commercially use the other Party’s Confidential Information. For the purposes of this Agreement, “Due Care” shall mean the same degree of care exercised by the receiving Party with respect to its own information which are of the same nature as Confidential Information.
- 1.3 Within the scope of the Project, staff members of one of the Parties may visit production plants of the other Party e.g. in order to inspect appliances, tools and/or assembly/production facilities. Any information disclosed to the visitors shall be considered as Confidential Information and shall be subject to this Agreement.
- 1.4 The receiving Party shall limit the disclosure of Confidential Information received from the disclosing Party to those of its directors, employees and Affiliated Companies who have a need to know such Confidential Information for the proper execution of the Project. Affiliated Companies of SAS for the purpose of this Agreement are the German company SAS Autosystemtechnik

GmbH & Co. KG and companies which SAS Autosystemtechnik GmbH & Co. KG directly or indirectly controls. Affiliated Companies of Supplier for the purpose of this Agreement are the following entities [please provide name of Affiliated Companies]. *The group of Supplier should be clearly defined to assess which companies will access SAS Confidential Information*

- 1.5 The receiving Party shall take steps to make the above listed persons or entities use Confidential Information disclosed to them in accordance with the terms of the present Agreement.
- 1.6 As an assembler, SAS may need to pass on Confidential Information to the OEM, subcontractors and sub-suppliers for the purposes of the Project. SAS shall provide the Supplier with a list of such entities and shall take steps to make them use Confidential Information disclosed to them in accordance with the present Agreement. In the event that Supplier needs to pass on Confidential Information disclosed by SAS to subcontractors and sub-suppliers for the purposes of the Project, the Supplier shall provide SAS with a list of such entities and shall take steps to make them use Confidential Information disclosed to them in accordance with the present Agreement.
- 1.7 No Party shall copy or use any Confidential Information for any other purposes than the conduct of the Project.
- 1.8 During and after the term of this Agreement, Supplier shall not advertise or otherwise disclose its relationship with SAS or any relationship of SAS with SAS' customers without SAS' prior written consent in each individual case. Supplier shall not have any right or license to use the trademarks, service marks or logos of SAS or SAS' customers for any purpose without first obtaining prior written consent in each individual case from an authorized representative of SAS.

2. Exemptions

- 2.1 The obligations of the Parties arising from Section 1 shall not apply to information:
 - 2.1.1 available to the general public at the time of disclosure or Confidential Information which became available to the general public thereafter;
 - 2.1.2 legitimately disclosed by a third party;
 - 2.1.3 already in the possession of or known to the receiving Party at the time of disclosure, or;
 - 2.1.4 developed independently by the receiving Party without the use of any Confidential Information disclosed by the disclosing Party;
- 2.2 all of the above without any breach of any obligation of confidentiality.

3. Disclosure

- 3.1 Notwithstanding the provisions of Sec. 1 and 2, any Party may disclose any Confidential Information received from the disclosing Party if, and to the extent that, it is required to do so by the disclosure requirements of any law, rule, or regulation or any order, decree, subpoena, or ruling or other similar process of any court, tribunal, arbitral tribunal or governmental authority or of any regulatory body. Prior to making such disclosure, the Party subject to the disclosure obligation shall – to the extent possible – provide the disclosing Party with written notice of any such requirement.
- 3.2 The Party required to make such disclosure shall cooperate with the disclosing Party, in order to minimize as far as possible the extent of the disclosure of Confidential Information.
- 3.3 In addition, any Party and its Affiliated Companies shall be entitled to disclose Confidential Information within the context of the defense of its own interest before a court tribunal, a governmental authority or any regulatory body having the power to impose sanctions (of a financial or non-financial nature) on the said Party. The same shall apply if one of the Parties has to defend its interest within the context of alternative dispute resolution procedures such as but not limited to mediation, conciliation or arbitration.
- 3.4 The Party making such disclosure shall cooperate with the disclosing Party, in order to minimize as far as possible the extent of the disclosure of Confidential Information.

4. Return and Destruction

- 4.1 Upon expiration of this Agreement, each Party shall, as far as technically feasible and economically reasonable, destroy without any delay all documents, duplicates and/or files containing Confidential Information.
- 4.2 However, each Party shall be entitled to keep relevant documents containing Confidential Information after the expiration of this Agreement in order to comply with the mandatory provision of any applicable law (e.g. relevant tax legislation). The retention of Confidential Information shall not exceed the time prescribed by the said applicable law. After expiration of the mandatory retention period, the Parties shall destroy all documents, duplicates and/or files containing Confidential Information as prescribed in Sec. 4.1.
- 4.3 The destruction of the Confidential Information shall be confirmed to the other Party without undue delay in writing upon request. Without limiting the generality of the foregoing, it is understood and agreed that the receiving Party's computer systems may automatically back-up electronically received Confidential Information. To the extent that such computer backup procedures create copies of the Confidential Information disclosed under this Agreement, the receiving Party may retain such copies in its archival or back-up computer

storage for the period it usually archives backed-up computer records, which copies shall be subject to the provisions of this Agreement until the same are destroyed and not be used, said destruction to be confirmed to the other Party without undue delay in writing.

5. Reservation of rights

Confidential Information shall remain the exclusive property of the disclosing Party. The Parties agree that the disclosure of Confidential Information under this Agreement does not affect any of the disclosing Party's ownership rights in such Confidential Information nor any of its relevant intellectual and proprietary rights such as governing patents, trademarks, copyrights or trade secrets.

6. Data Protection

The Parties shall ensure that all members of staff having access to Confidential Information comply with applicable legislation in relation to data protection. This includes that technical security measures are adapted to the current state of the art (Article 32 GDPR (General Data Protection Regulation)) and that employees committed themselves to confidentiality (Article 28 (3) (b) GDPR) according to the respectively applicable legal situation. All members of staff shall be made aware of the consequences of non-compliance with data protection legislation and be properly trained.

7. Duration

- 7.1 This Agreement takes effect upon the joint signature by the Parties and also includes information exchanged by the Parties prior to the signature of this Agreement in connection with the Project.
- 7.2 The Parties' obligations contained in this Agreement to keep confidential and restrict the use and disclosure of the Confidential Information shall expire (i) five (5) years after its conclusion by the Parties or (ii) five (5) years after the end of the business relationship between the Parties in relation to the Project, whichever is the latest.

8. No warranty or representation

The Parties do not make any representation or warranty as to the accuracy or completeness of the Confidential Information and no Party shall be held liable under this Agreement as a result of the use of, or reliance on, any Confidential Information.

9. Applicable Law and Jurisdiction

- 9.1 This Agreement shall be governed by and construed in accordance with [Please insert applicable law] substantive law, at the exclusion of any conflict-of-law rules.
- 9.2 The Court of [Please insert competent jurisdiction] shall have exclusive jurisdiction for any dispute out of or in connection with this Agreement, including its validity, execution or termination.

10. Miscellaneous

- 10.1 **Written Form.** Any changes, amendments or supplements to this Agreement must be evidenced in writing. This also applies to any waiver of the written form requirement.
- 10.2 **Severability.** If any provision of the Agreement is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provision of the Agreement. Further, to the extent possible, the provision shall be replaced through mutual agreement by a valid and enforceable provision with the same or similar result.

Made on [Please insert date]

For SAS

For the Supplier

Version

(according to CES Reloaded document version)

Version	Summary Change Description	Prepared by	Date
1.0	Establishing in new CES reloaded Management System	W.-C. Federhaff	08.06.2016
2.0	Added space for signatures	W.-C. Federhaff	22.07.2016
3.0	Added document version history	L. Eirich	28.07.2016
4.0	Changed name of document	S. Mahler	07.12.2016
5.0	Footer changed	W.-C. Federhaff	05.02.2018
6.0	New sections added: 1.3; 1.8; 3.3; 3.4; 4.2; Chapter 6 (Data Protection) added; Updated wording	W.-C. Federhaff	30.05.2018
7.0	Logo changed	V.Stahl	04.03.2020