between

**smk systeme metall kunststoff gmbh & co. kg**  Am smk Kreisel 1 70794 Filderstadt

 – hereinafter referred to as „**smk**“–

**PREAMBLE**

smk and \_\_\_\_ intend to exchange confidential information in relation to the following project:

 **„\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_“**

 Therefore, the parties hereby conclude the following

**NON-DISCLOSURE AGREEMENT**

1. The parties hereby undertake to treat as confidential all information which they obtain directly or indirectly from the other party in the context of the project and to use it only in connection with the project. In particular, they undertake not to disclose this information to third parties nor to make it accessible to third parties in any other form and to take all reasonable precautions to avoid access to this information by third parties. Affiliated companies of the parties, and other legal and/or natural persons required to carry out the project, are not considered as third parties. For the purposes of this agreement, an affiliated company is an entity that is directly or indirectly controlled by a party, controls a party or is subject to common control with the respective party. In this context, control is presumed if at least 50% of the shares or voting rights are held. Each party warrants that in the event information is disclosed, its affiliated companies and/or other legal and/or natural persons are or will be obliged in accordance with the provisions of this agreement.

2. The parties undertake not to disassemble, decompile, analyse or reverse-engineer the information obtained.

3. Information as referred to in the preceding paragraphs includes but is not limited to:

* Know-how or results achieved or used within the framework of the project;
* Materials, samples, prototypes, etc.;  Financial information and calculation bases;
* The timetables, objectives and ideas for the implementation of the project;
* Other information that the parties obtain concerning the other party in the context of the project.

This applies irrespective of whether this information is provided by the party itself or by an affiliated company of that party as defined in section 1.

4. The parties shall oblige their employees to maintain confidentiality in accordance with this agreement unless this has already been provided for elsewhere. The group of employees, employees of its affiliated companies as defined in section 1 and/or other legal and/or natural persons who are required for the implementation of the project should be limited as absolutely necessary.

5. The parties undertake to return, erase or destroy, all information received from the other party within the scope of the project, including any copies made or files created therewith, without undue delay following a written request. Confirmation of destruction is to be provided upon request. This obligation shall not apply to

Filderstadt, date

 **smk systeme metall kunststoff gmbh & co. kg**

 Name, Title

 Name, Title

and

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

– hereinafter referred to as „**\_\_\_\_\_\_\_\_**“

routinely made back-up copies of electronic data communications and to information and copies thereof which must be kept in accordance with applicable law.

6. Information is solely owned by the disclosing party. This agreement does not grant the receiving party any license, right to use or other rights to the information obtained.

7. The confidentiality obligations under this agreement do not apply if and to the extent that the information verifiably

* is public knowledge; or
* becomes public knowledge through no fault of the receiving party; or
* was or is lawfully received from a third party; or
* was already known at the time of disclosure or when made available to the receiving party; or
* was developed by the receiving party autonomously and independently without the use of the information obtained.

If disclosure of the information obtained is required in the course of legal or official proceedings or due to mandatory legal provisions, the receiving party shall inform the disclosing party in writing without undue delay prior to disclosure, if legally permissible, and limit the disclosure to what is necessary to fulfil the legal, judicial or official obligations imposed on such party.

8. Unless otherwise agreed between the parties, the disclosing party assumes no warranty and liability for the accuracy, completeness, freedom from third-party proprietary rights and/or usability of the disclosed information. This shall not apply if the disclosing party has acted intentionally or in a grossly negligent manner.

9. Any breach of the confidentiality obligations, e.g., but not limited to, in case of loss or theft of information etc., has to be immediately reported to the disclosing party.

10. The agreement becomes effective upon signature by both parties and shall be valid until the termination of the project. The obligations under this agreement shall survive five (5) years after termination of the agreement.

11. Amendments and supplements to this agreement must be made in writing and signed by both parties. This shall also apply to any change to the requirement for written form.

12. This agreement is exclusively governed by German law subject to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and other conflicts of laws principles. The exclusive place of jurisdiction for all disputes arising under or in connection with this agreement is Stuttgart, Germany.

13. Should any provision of this agreement be or become invalid, the validity of the remaining provisions shall remain unaffected. The parties shall replace the invalid provision and agree on a new valid provision which comes closest to the intention of the invalid provision with regard to its legal and economic purpose. The foregoing shall also apply in the event of a regulatory gap.

place, date , company name

Name, Title

Name, Title