

between

and

**Anton Paar GmbH**, Anton-Paar-Straße 20, 8054 Graz, Austria.

## BACKGROUND

The parties intend to disclose to each other certain confidential information for the purpose of evaluating each party's potential interest in mutual business activities relating to

## OPERATIVE PROVISIONS

### 1 DEFINITIONS

- 1.1 **"Recipient"** means the party receiving Confidential Information.
- 1.2 **"Discloser"** means the party disclosing Confidential Information to the other party.
- 1.3 **"Purpose"** means
  - a) any discussions and negotiations between or within the parties with respect to or in connection with the establishment of a business relationship between the parties; and subsequently,
  - b) any activities in connection with the business relationship between the parties.
- 1.4 **"Confidential Information"** means any data or information that is proprietary to the Discloser relating to each party's respective business or affairs (including, but not limited to, current and future products, designs, business plans, operations, know-how, technologies, customers, employees, procurement, contracts, research and development, manufacturing processes and plans, marketing strategies, financial information, intellectual property, and related information) disclosed to Recipient after the effective date of this agreement by the Discloser or any third party on behalf of Discloser, whether in written, oral or any other tangible or intangible form. Confidential Information includes any information generated by (or for) Recipient that contains, reflects, or is derived from any of the foregoing.
- 1.5 Confidential Information shall not include information that Recipient can demonstrate:
  - a) is at the time of disclosure, or subsequently becomes, generally available to the public without breach of this agreement by Recipient;
  - b) to have had rightfully in its possession prior to disclosure to Recipient by Discloser;
  - c) is independently developed by Recipient without the use of any Confidential Information; or
  - d) Recipient rightfully obtains from a third party who has the right to transfer or disclose it; or
  - e) was disclosed to a third party with the Discloser's prior written consent; or

- f) was disclosed to a third party after the period of seven (7) years from the date of the disclosure.

## 2 NON-DISCLOSURE AND NON-USE OF CONFIDENTIAL INFORMATION

- 2.1 Recipient agrees to treat Confidential Information confidential and use the same degree of care that it uses to protect its own confidential and proprietary information of similar importance (but in no event less than reasonable care). Recipient warrants that it will take all necessary cautions to prevent the unauthorized use, disclosure, publication or dissemination of Confidential Information. Recipient may disclose the Confidential Information only to its directors or employees who have a need to know the Confidential Information for the Purpose, provided that such party agrees to be bound by this or comparable agreements to the same extent as Recipient is bound and Recipient agrees to be responsible for any breach by these employees and directors. Recipient shall not create a copy or reproduce in any form (electronic or otherwise) any materials or documents containing Confidential Information, except as reasonably necessary to further the Purpose. All copies of the Confidential Information will as of their creation become the property of Discloser. Recipient will return any and all tangible Confidential Information provided to it by Discloser and copies thereof, to Discloser within 30 days after Discloser's written request, provided, however, Recipient shall destroy such information if Discloser elects so. In case of any breach of this agreement, the Recipient shall return the Confidential Information and all copies thereof immediately.
- 2.2 The parties acknowledge and agree that they are part of organizations of one or more legal entities in different jurisdictions and that it may be required for them to provide information to their respective Subsidiaries (as defined below). Therefore, the parties agree that
- a) Recipient may disclose Confidential Information to its Subsidiaries without Discloser's consent, if and to the extent such disclosure is required in order to fulfill the Purpose; and
  - b) a disclosure to or by a party's respective Subsidiaries shall be considered as disclosure to or by the respective party; and
  - c) each party is responsible and liable for its respective Subsidiaries' compliance and due delivery of the obligations set out in this agreement.
- 2.3 For the purposes of this agreement, "**Subsidiaries**" shall mean any subsidiary, in which a party holds, directly or indirectly, fifty percent (50%) or more of the controlling or voting rights.

## 3 INJUNCTIVE RELIEF AND COMPENSATION

- 3.1 The parties will compensate each other for any damages arising from the breach of the present agreement. The parties hereby acknowledge that the unauthorized disclosure or use of Confidential Information could cause irreparable damage and substantial disadvantage to the parties or their current or future customers which may be difficult to determine. Therefore, the parties agree that the party which has suffered a disadvantage shall be entitled, in addition to any other rights and remedies that it may have, to seek injunctive relief in order to enforce the obligations under the agreement.
- 3.2 In addition and regardless of negligence or fault or proof of an actual damage, the parties agree to contractual penalty in the amount of EUR 15,000.00 for the event of a breach of this agreement. Further claims of the injured party remain unaffected.

## 4 RESTRICTIONS AND WARRANTY

- 4.1 Recipient (i) shall not disclose Confidential Information, neither in whole nor in part, to any third party; (ii) shall only use the Confidential Information for the Purpose; and (iii) shall not, without the Discloser's written consent, neither in whole nor in part, commercially exploit or use the Confidential Information. Notwithstanding the foregoing, Recipient may make such disclosure if it is required to do so by law, provided always that Recipient has informed Discloser about such disclosure at least two business days prior to the disclosure.
- 4.2 Discloser warrants that it authorizes the Recipient to use the Confidential Information for the Purpose.
- 4.3 Nothing in this agreement or any disclosure hereunder creates any obligation to disclose Confidential Information, use the Confidential Information in any product, warrant the accuracy or completeness of the Confidential Information, or the fitness of the Confidential Information for a particular purpose, or grant any license or other right to Confidential Information under copyright or other intellectual property right to the Discloser other than the right to use the Confidential Information for the Purpose.
- 4.4 The Discloser disclaims all warranty that the use of the Confidential Information does not infringe upon the rights of any third party or otherwise causes damages. The Discloser shall not be liable for any damages resulting from the infringement of third party rights or otherwise.

## 5 WAIVER

- 5.1 Any failure or delay to enforce any provision of this agreement shall not constitute a waiver thereof or of any other provision, unless the respective party expressly waives its right to enforce such provision in writing.

## 6 ASSIGNMENT

- 6.1 Neither party may assign or otherwise transfer its rights and obligations out of this agreement, neither in whole nor in part, without the other party's prior written consent.

## 7 APPLICABLE LAW & JURISDICTION

- 7.1 This agreement shall be governed by and construed in accordance with Austrian law, excluding its conflict of laws provisions and each party hereby irrevocably submits to the jurisdiction of the courts in Graz, Austria.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed by their duly authorized representatives.

**Anton Paar GmbH**

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Graz, \_\_\_\_\_

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(signature)

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Title:

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