

Material Testing Agreement

WHEREAS Anton Paar is a member of the Anton Paar group of companies (“**Anton Paar Group**”) which is in the business of manufacturing and selling analytical, laboratory and process instruments that might be of interest for the Company; and

WHEREAS the Company intends to evaluate the feasibility and possibility of using Anton Paar’s products and/or services for the analysis and measurement of its own product(s), material(s) and/or processes and Anton Paar is willing and interested in demonstrating its instruments and equipment on the Company’s samples.

THEREFORE, the parties agree as follows:

1 Materials

- 1.1 For the purposes of demonstrating Anton Paar’s instruments and equipment on the Company’s samples (the “**Purpose**”), the Company provides to Anton Paar the following materials (the “**Materials**”):
- 1.2 Company agrees to provide to Anton Paar the safety declaration *Q15AF10EN-B_Sample Declaration.docx* and a material safety data sheet, which are incorporated herein by reference for all purposes, informing Anton Paar about any possible health or environmental hazards in connection with the Materials and providing appropriate safety and handling precautions in all aspects (the “**Material Safety Instructions**”). If Company does not deliver the Material Safety Instructions prior to delivering the Materials to Anton Paar, Anton Paar shall be free to decline the receipt of the Materials and have the Materials returned to the Company at the Company’s sole risk and costs. The Company shall provide written notice to the Anton Paar if certain Samples have a known ECCN or USML control classification prior to its disclosure and/or transfer.
- 1.3 Prior to delivering the Materials to Anton Paar, Company shall provide all relevant classifications, license requirements and other information with respect to the Materials necessary and helpful for Anton Paar to be able to comply with all applicable laws, rules, regulations and guidelines pertaining to the Materials and the use thereof, including, amongst others, any health, safety, environmental, import and export laws and regulations.

2 Material Testing

- 2.1 Anton Paar agrees to conduct sample testing on the Materials and provide the results to Company at no charge to Company to allow Company to evaluate the feasibility of purchasing Anton Paar’s products. Company acknowledges and agrees that the testing may be conducted by another member of the Anton Paar Group.
- 2.2 Company retains all rights and title in and to the Materials, subject to the limited right of use granted to Anton Paar herein. Upon completion of the test/evaluation or the termination or expiration of this Agreement, whichever is earlier, Anton Paar may, at its sole discretion, return, destroy or otherwise dispose of the Materials at Company’s cost.
- 2.3 Anton Paar shall not distribute or release the Materials to any person other than the Anton Paar Group employees or for any purpose other than to carry out the Purpose without obtaining Company’s prior written permission.

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3 Confidential Information

- 3.1 **“Confidential Information”** means the Materials, all information, data, scientific formulae, procedures, results, know-how, technology or trade secrets disclosed by a party (**“Discloser”**) to the other party (**“Recipient”**) in connection with the Purpose. Confidential Information shall not include information that (as shown by appropriate documentation and other competent evidence in the Recipient’s possession):
- a) is, at the time of disclosure, or subsequently becomes, generally available to the public through no breach of this Agreement by the Recipient;
 - b) Recipient can demonstrate to have had rightfully in its possession prior to disclosure by Discloser to Recipient;
 - c) is independently developed by or for Recipient without the use of the Confidential Information;
or
 - d) Recipient rightfully obtains from a third party who has the right to transfer or disclose it.
- 3.2 For a period of three (3) years from the disclosure, Recipient agrees to (i) treat Confidential Information as confidential and proprietary 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) to prevent the unauthorized use, disclosure, publication or dissemination of any Confidential Information; (ii) not use or disclose to any third party any Confidential Information without the prior written consent of Discloser. Members of the Anton Paar Group shall not be considered third parties under this Agreement.
- 3.3 Recipient may disclose Confidential Information if required by law or any judicial or governmental request, requirement or order to be disclosed, provided that Recipient shall, to the extent legally permissible, promptly notify Discloser of any such disclosure, if reasonably practicable, and reasonably assist Discloser in obtaining a protective order.

4 Limited Warranty

- 4.1 Company warrants that it is entitled to disclose the Confidential Information and to transfer the Materials to Anton Paar for performing activities to further the Purpose and that no third party’s rights are infringed by Anton Paar’s use as contemplated herein.
- 4.2 Company further warrants that Anton Paar may safely use the Materials for the purpose of this Agreement in compliance with the Material Safety Instructions. Other than that, the Materials are supplied with no further warranties, express or implied, including any warranty of merchantability or fitness for a particular purpose.

5 Intellectual Property

- 5.1 Nothing in this Agreement shall be construed as granting any right in favor of a party in relation to the other party’s existing intellectual property rights (which include without limitation copyright, database rights, topography rights, design rights, trade marks, patents, domain names and any other intellectual property rights of a similar nature (whether or not registered) subsisting anywhere in the world).

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6 Liability and Indemnification

- 6.1 Anton Paar does not assume any risk of any damage, loss, or expense associated with or resulting from the conduct of this Agreement, including use, handling, study, storage, return, or disposal of the Materials.
- 6.2 Company shall indemnify, defend, and hold harmless Anton Paar, the members of the Anton Paar Group and their respective officers, directors, employees, and agents from any claim, loss, liability, damage, or expense (including reasonable attorneys' fees and costs) arising from or in connection with the Materials, the Purpose, this Agreement and/or Anton Paar's conduct in connection with this Agreement including Anton Paar's use, handling, study, storage, return, or disposal of the Materials, provided, however, that to the extent that any such claim is a direct result of any gross negligence or willful misconduct of Anton Paar or one of its officers, directors, employees, or agents, Company will not be required to indemnify, defend, and hold harmless Anton Paar.

7 Term and Termination

- 7.1 This Agreement shall commence on the date of the last signature and remain in force and effect for a period of two (2) years after the completion of the testing of the Materials contemplated by this Agreement. This Agreement may be terminated at any time by: (a) mutual written consent of the parties; (b) either party upon thirty (30) days prior written notice; or (c) the non-breaching party, at its option and without waiving any other available remedy, immediately upon providing written notice to the other party, if such other party has breached this Agreement.
- 7.2 The rights and obligations set forth in clauses 3, 4, 5, 6, 7.2 and 9.3 shall survive the termination and/or expiration of this Agreement, regardless of the reason thereof.

8 No Obligation

- 8.1 This Agreement shall not be deemed to establish a relationship of partnership, joint venture, employment, or agency between the parties.
- 8.2 This Agreement is not intended to create any legally binding obligations on the parties with respect to any transaction other than the Purpose and neither party has any obligation or commitment under this Agreement to enter into any further agreement, such as a purchase, license, or engagement.
- 8.3 Nothing herein will be construed as a representation or inference that Anton Paar will not develop products, or have products developed, or receive products from other parties that may be similar to the Company's Materials. Likewise, Company shall be free, in its sole discretion, to use the Materials for its own purposes or distribute it to others for similar purposes.

9 Miscellaneous

- 9.1 This Agreement may be executed in several counterparts, each of which shall be considered an original, and all of which together shall constitute one agreement. This Agreement constitutes the entire agreement with respect to the purposes hereof and supersedes any and all prior or contemporaneous oral or written agreements.

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- 9.2 This Agreement may not be amended except by the written agreement signed by authorized representatives of both parties. Neither party may assign or delegate their rights and obligations under this Agreement, either in whole or in part, without the prior written consent of the other party.
- 9.3 This Agreement shall be governed by and construed in accordance with law of Austria, excluding its conflict of laws provisions, and each party hereby irrevocably submits to the jurisdiction of the courts in Graz, Austria.

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