

(Post-)contractual non-disclosure agreement and non-utilisation obligations (NDA)

Version 02/2019

PREAMBLE:

With regard to the business relationship between the two parties, the contractual partners will need to provide each other with information that is not generally and freely accessible, and which contains the business and corporate secrets of the respective parties. The following non-disclosure and non-utilisation obligations are hereby agreed upon in order to protect both sides' interests with regard to these business and corporate secrets:

I. Scope of application

These and the following provisions apply in full to any and all business relationships with one and/or all of the companies listed in the following sections or, as the case may be, their legal successors:

- a) GT GUMMI-TECHNIK GmbH, Saliestr. 24, 70736 Fellbach, HRB Stuttgart 261098, VAT ID: DE 147330713
- b) GTP GUMMI-TECHNIK-PLASTIK GmbH, Robert-Bosch-Str. 5, 71409 Schwaikheim, HRB 260574, VAT ID: DE 147330326

II. Definition

The phrase 'business and corporate secrets' refers to all the knowledge, methods and technical, commercial and economic experiences in the possession of the company in question, as well as pieces of data, documents, pieces of information and ideas (both internal and external, and regardless of whether or not the items in question are patented or patentable) that one contractual partner shares with the other contractual partner, provided that the items in question were documented in writing, graphically, in sketches, photographically, through magnetic or other technical recording methods, through samples, through models or in any other manner, or provided that the items in question are documented in one of the aforementioned manners within a brief span of time after they have been passed on verbally.

III. Non-disclosure and non-utilisation

1. The contractual partners hereby acknowledge that the pieces of information and data corresponding to clause II. that are obtained from the other contractual partner shall be considered to constitute the business and corporate secrets of the other party. Furthermore, they also pledge not to make the said items available to third parties, and to maintain the confidentiality of the items in question. In the same manner, the employees and other agents of the receiving party shall also be obligated to maintain the strict confidentiality of the information in question in accordance with this agreement. Furthermore, employees shall only be entrusted with the business and corporate secrets of the other party insofar as the employees in question are required to contribute directly to the execution of the business relationship.
2. The contractual partners are obligated to ensure that they do not utilise, exploit or patent the pieces of information and data corresponding to clause II. that they have obtained from the other contractual partner, which relate to the fulfilment of the direct business relationship between the contractual partners, or which have been provided by the other contractual partner within the context of the said business relationship, unless the contractual partner in question has approved of such a course of action in advance in writing. Furthermore, the contractual partners are also obligated to ensure that they do not apply for utility patents associated with the said pieces of information and data or make such pieces of information and data available to third parties in any manner whatsoever unless the other contractual partner has approved of such a course of action in advance in writing.
3. The contractual partners are obligated to ensure that they do not use or place at the disposal of third parties any pieces of information and data corresponding to clause II. that they have obtained from the other contractual partner, which are related to the fulfilment of the direct business relationship between the contractual partners and which have been provided within the context of the said business relationship, unless the third parties in question have been indirectly and/or directly entrusted with the task of providing the respective services to and/or by the corresponding contracting party, and unless they (i.e. the third parties in question) are also subject to the relevant non-disclosure and non-utilisation obligations.
4. The business and corporate secrets of a given party are always entrusted to the other party in a manner associated with the retention of all the relevant rights, and no explicit retention is required in any individual case.
5. If one of the contractual partners raises the corresponding written request or the contractual agreement comes to an end, the other contractual partner shall promptly return to the first contractual partner any and all information that is in his possession, along with any and all written and digital pieces of data that were created by the first contractual partner and which draw, either in whole or in part, upon the confidential material in question. Instead of asking for such data to be returned, the relevant contractual partner can also demand that it be destroyed or deleted. Once this has been done, the contractual partner in question should notify the other contractual partner to that effect in writing. Even after the confidential material has been returned or destroyed, the relevant contractual partner shall continue to be fully bound by his contractual non-disclosure and non-utilisation obligations.

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6. However, the obligations associated with clauses III. 1. – III. 3. shall no longer apply to the following pieces of information if the receiving party proves that the information in question

- a) was known to it before the date of receipt; or
- b) became known to the public or publicly available before the date of receipt; or
- c) became known to the public or publicly available after the date of receipt without it (i.e. the receiving party) having been responsible for the said scenario; or
- d) had been provided to it at an arbitrary point in time by a third party that was authorised to supply the said information.

The exceptions from the non-disclosure and non-utilisation obligations which have been specified for this agreement under a), b), c) and d) do not apply to a combination of individual pieces of information even if the exceptions in question do apply to each one of the individual pieces of information, unless the combination itself falls under the said exceptions.

7. Depending on which one of the two scenarios turns up last, the non-disclosure and non-utilisation obligations corresponding to clause III. shall continue to remain in force for an additional period of 5 years after the end of this agreement, or for an additional period of 5 years after the completion of the last-received assignment.

IV. Contract duration

The agreement enters into effect on the day on which it was signed by the parties. It ends when it is cancelled by one of the parties or, as the case may be, when the parties cancel it in writing by common accord. In such cases, the written cancellation should be supplied using a registered letter with return receipt.

Clause III. of this agreement continues to remain valid beyond the end of the contract duration. However, under such circumstances, the validity of clause III. shall be subject to the time limit specified in clause III. 7..

V. Other provisions

- 1. This agreement is subject to the written form. The same condition also applies to a waiver of the written form requirement. Additional agreements and other changes and additions made to this agreement should also be put down in writing.
- 2. This agreement also applies to legally-affiliated companies or domestic or foreign holding companies. If these companies and/or corporations violate this agreement, the parties shall bear the brunt of the said violations and submit to any potential claims that the other partner might raise as a result.
- 3. This agreement is binding for the parties and their respective legal successors and representatives; this also relates to the relevant benefits.
- 4. If individual provisions of this agreement turn out to be legally invalid, it shall have no effect on the effectiveness of the agreement's remaining provisions. Under such circumstances, the contractual partners shall be obligated to modify the ineffective provisions in a manner that ensures that the resultant provisions are legally permissible, and that they come as close as possible to the original economic objective of the provisions in question. This condition also applies to situations in which individual provisions are opposed to the regulations of the EEC/EU and/or the laws of the respective country.
- 5. Stuttgart is the place of fulfilment for all of the obligations of the contractual partners which follow from this agreement.
- 6. Any and all disputes that either arise as a result of this agreement or are related to it (including situations involving the termination of this contract and those involving the continuing influence of the contract after it has been terminated) shall be subject to the jurisdiction of the court that is responsible for the city of Stuttgart, unless another place of jurisdiction has been mandated on the basis of legal regulations.
- 7. This contract is subject to the laws of the Federal Republic of Germany.

VI. Binding version

In case of doubt, the German version of this agreement shall be binding.

VII. Severability clause

If individual provisions of this contract are or become invalid, it shall have no effect on the effectiveness of the remaining provisions. The ineffective provisions should be replaced with the agreed-upon provision that most closely approximates the economic goals of the parties.

VIII: Acceptance

By signing this agreement, the signatory accepts the latest versions of the cited conditions in full. It shall be made available upon request. Furthermore, the signatory also affirms that he is fully aware of the rights and obligations associated with this agreement, and that he has, if necessary, obtained legal advice regarding the same. The agreement enters into force on the date of signing.

.....
Place, date*

.....
Company (block letters)/Seal*

.....
Legally valid signature*

.....
Signatory (block letters)*

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GT GUMMI-TECHNIK GmbH GTP GUMMI-TECHNIK-PLASTIK GmbH

Head Office
Salierstr. 24
D – 70736 Fellbach
Telephone (0711) 5 20 07 -0
Telefax (0711) 5 20 07 -10

Volksbank Stuttgart:
IBAN: DE36 6009 0100 0100 9000 03 SWIFT: VOBADDESS
Kreissparkasse Waiblingen:
IBAN: DE30 6025 0010 0002 0128 52 SWIFT: SOLADESWBN
Commerzbank:
IBAN: DE89 6004 0071 0517 1806 00 SWIFT: COBADEFFXXX

Registered office: Fellbach
HRB Stuttgart 261098
VAT ID: DE 147330713
CEO/President: MBA Philipp Wagner



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Head Office
Salierstr. 24
D – 70736 Fellbach
Telephone (0711) 5 20 07 -0
Telefax (0711) 5 20 07 -10

Volksbank Stuttgart:
IBAN: DE36 6009 0100 0100 9000 03 SWIFT: VOBADSS
Kreissparkasse Waiblingen:
IBAN: DE30 6025 0010 0002 0128 52 SWIFT: SOLADESWBN
Commerzbank:
IBAN: DE89 6004 0071 0517 1806 00 SWIFT: COBADEFFXXX

Registered office: Fellbach
HRB Stuttgart 261098
VAT ID: DE 147330713
CEO/President: MBA Philipp Wagner