

CONFIDENTIALITY AGREEMENT

between

Any Oetiker Location

- hereafter "OETIKER" -

and

Any Supplier who provides products/services to OETIKER

- hereafter "Counterparty" -

In connection with any actual and/or future business cooperation of the parties in the field concerning any project (hereinafter the "Purpose") the parties have already disclosed or will disclose confidential information to each other, or one party will otherwise gain knowledge of confidential information of the other party.

To ensure confidentiality and restricted use of the confidential information, the parties agree as follows:

1. In this agreement "Confidential Information" shall mean all information that one party - including related entities and affiliated companies of such party - discloses to the other party - including related entities and affiliated companies of such other party - in connection with the Purpose, or of which the other party otherwise gains knowledge, which is not obviously and demonstrably public knowledge, irrespective of its form or the nature of its disclosure. Confidential Information shall include, but shall not be limited to, financial information, strategies and intentions, business ideas, customer names as well as supplying or buying sources, technical information and ideas, know-how, inventions (whether or not they are patentable or otherwise protectable as registered intellectual property), specifications, drafts, designs, drawings, samples, prototypes, software of all kind as well as all intellectual property and all personal data according to the applicable data protection acts. The fact, the content, and the result of the negotiations of the parties regarding the Purpose shall also qualify as Confidential Information.

The Parties acknowledge and agree that – unless otherwise agreed in writing – all rights in the Confidential Information and to its content and subject, in particular property rights, intellectual property rights including know how rights, which were made available by one party (hereinafter the "Disclosing Party") to the other party orally, in writing, in physical or other form or which such other party has gained with, without or against the knowledge and the will of the Disclosing Party, remain the sole property of the Disclosing Party. For the avoidance of doubt, the foregoing also applies with regard to any work product created or developed in the course of this cooperation which incorporates Confidential Information of both Parties.

2. The parties undertake to keep all Confidential Information of the other party including all recordings and copies created thereof confidential, to deliver it firm-internally only to employees likewise committed to maintaining confidentiality, to make it available to third parties neither totally nor partly and to protect it against unauthorized access. As for this clause, third parties shall also include subsidiaries and other affiliated companies or their employees, respectively, except that Confidential Information may be disclosed to affiliated companies and its employees if they have a reasonable need to know such Confidential Information with view to the Purpose and provided that they are subject to an equivalent confidentiality obligation.
3. The parties further acknowledge that Confidential Information of the other party may only be used within the agreed limits and for the agreed purpose. The parties undertake to refrain from any use or exploitation of Confidential Information of the Disclosing Party which has not been permitted in writing by the Disclosing Party, including from filing applications for registration of intellectual property in their own names. The Receiving Party shall be prohibited from obtaining information by using it in a manner not in accordance with its intended purpose, such as by examining or dismantling a product or object which has been temporarily or permanently provided by the Disclosing Party and which is not publicly available (*reverse engineering*).
4. Publications of entire work results in connection with the Purpose or parts thereof require without exception the prior written consent of both parties, whereby each party may only refuse to give such consent for clearly justified reasons, and such publications may in no way impair or hinder the attainment of intellectual property rights by either party.
5. The aforementioned undertakings to confidentiality are not applicable to information which:

- a) was at the time of receipt already publicly known;
- b) was at the time of receipt already legitimately known to the party receiving such information (hereinafter the "Receiving Party");
- c) has after its receipt become publicly known without influence by the Receiving Party;
- d) was made available to the Receiving Party by another source in a legally permissible manner and without confidentiality or non-use obligations.

Upon request of the Disclosing Party, the conditions of the aforementioned exceptions are to be proven by the Receiving Party.

- 6. If a party is required by law or by order of a court or a regulator to disclose Confidential Information of the other party, then:
 - a) the disclosure must be limited to the scope required;
 - b) the party required to disclose information shall notify the Disclosing Party to the extent permissible and if possible, prior to the disclosure.
- 7. The Receiving Party shall immediately upon and according to the first request of the Disclosing party return to the Disclosing Party, destroy or delete all Confidential Information of the Disclosing Party including recordings and copies created thereof and confirm such destruction/deletion in writing. The Receiving Party may only keep one set of all information concerning the Purpose including the Confidential Information subject always to the provisions of this agreement. Excluded from the obligations to return, destroy respectively delete are only back-up copies generated according to standard business practice by an automated data back-up system.
- 8. Any violation of the confidentiality or non-use obligations under this agreement by any party results in liability for damages of such party. Each party shall be liable for actions and omissions of its own employees, and of employees of affiliated companies to which Confidential Information was disclosed in accordance with this agreement. It is understood by the parties that monetary damages alone may not be an adequate remedy for any breach of the provisions of this agreement and that its provisions may be specifically enforced by an injunction issued by a court of competent jurisdiction. Failure to enforce any provisions of this agreement shall not constitute a waiver of any term hereof.
- 9. The parties undertake to immediately notify each other about each violation of the confidentiality and non-use obligation, or about any indications of such, of which they become aware, and to take reasonable measures to minimize damages.
- 10. A party being in breach of one or multiple provisions of this agreement shall pay to the non-defaulting party without delay liquidated damages in the amount of CHF 25'000 (twenty-five thousand Swiss Francs) for each violation or breach. The payment of the liquidated damages does not release such party from compliance with the provisions of this agreement. The right to claim further losses and/or damages remains reserved, whereby the liquidated damages paid or to be paid by the defaulting party shall be credited against such losses and/or damages.]
- 11. Oetiker shall have the right to audit Counterparty's records and facilities related to the performance of this agreement. Such audits may be conducted by Oetiker or its authorized representatives at reasonable times during normal business hours upon providing 10 days' written notice to Counterparty. The purpose of such audits is to ensure compliance with the terms of this agreement and to verify the accuracy of Counterparty's performance.

12. For the purpose of this agreement an affiliated company shall mean any company that directly, or indirectly through one or more intermediaries, exercises control over the company specified or is under control by, or under common control with, the company specified.
13. This agreement shall not constitute, create, give effect to or otherwise imply a joint venture, agency relationship, partnership, a cooperation or a corporate relationship and shall not grant to either party the right to engage in legal transactions or to undergo obligations in the name or to the debit of the other party. This agreement does further not give rise to a right or duty of neither party to conclude a contract or enter into a business relationship with the other party or to disclose information to the other party. Finally, unless this agreement expressly provides for otherwise, no licenses or other rights irrespective of their nature are granted by means of this agreement.
14. Except as expressly stated in this agreement, neither party makes any express or implied warranty or representation concerning its Confidential Information, including but not limited to the accuracy or completeness of the Confidential Information.
15. This agreement becomes effective on the date of the last signature and remains in force for a period of two (2) years. Either party may terminate this agreement upon three (3) months' prior written notice. Notwithstanding the foregoing, the nondisclosure provisions of this agreement are continuing and shall survive the termination of this agreement for a period of five (5) years from the disclosure of the respective Confidential Information.
16. This agreement shall supersede all prior agreements and undertakings relating to the purpose and exchange of Confidential Information with respect to the Purpose (i) between the parties hereto, and (ii) between their related entities and affiliated companies.
17. It is understood by the parties that the confidentiality obligations under this agreement shall also apply to any related entities, affiliated companies and employees of each party. The parties shall be responsible that these confidentiality obligations are observed by their related entities, affiliated companies and employees.
18. Any modifications or amendments to this agreement (including this clause) shall require written form.
19. This confidentiality and non-use agreement shall be governed exclusively by, and interpreted in accordance with, the substantive laws of the country where the supplier's Primary Oetiker location is situated or is anticipated to be. If there is any doubt regarding the applicable country, the laws of Switzerland shall apply. The U.N. Convention on Contracts for the International Sale of Goods shall not apply."
20. Any dispute arising out of or in connection with this agreement or its subject matter or formation shall be referred to the exclusive jurisdiction of the courts mentioned on the previous section.