

## Non-disclosure and customer protection agreement

between

**GREIPL GmbH**

Brunnwiesen 38

94481 Grafenau

-hereinafter referred to as **“Client”**-

and

**Sample GmbH**

Sample Street 1

95858 Sampleville

- hereinafter referred to as **“Contractor”** -

- Client and contractor hereinafter individually also referred to as **“notifying party”**, **“receiving party”**,  
**“Party”** or jointly referred to as **“Parties”**-

### Preamble

The client develops and produces components, modules and complex machine elements for high-technology applications. As a development and system partner, the client offers a comprehensive range of services, technological progress and innovative strength for customers in future-oriented markets. The client's main areas of expertise, with three own locations in the Bavarian Forest and in the neighboring Czech Republic, are convincing in both mechanical and electronic engineering.

The Contractor acts for the Client as a supplier of components, modules or machine tools.

The Parties intend to hold discussions on or conduct the following activities: the design, development and manufacture of mechanical components, modules or machine tools (**“Objective of the Agreement”**).

In the course of these discussions and activities, it may become necessary for one party to disclose to the other party technical and/or commercial information that is not generally accessible, in particular trade secrets within the meaning of § 2(1) of the German Trade Secret Act.

In order to protect such information, the parties enter into this non-disclosure agreement (“Agreement”):

### **Article 1**

- 1.1 **“Affiliated Companies”** are legal entities which exercise direct or indirect control over the parties to this Agreement (“Parent companies”), or which are directly or indirectly controlled by a Party or its Parent companies. In this context, “control” means the direct or indirect ownership of more than 50% of the shares or voting rights.
- 1.2 **“Confidential Information”** shall mean all information which the notifying party or an enterprise affiliated with the notifying party has transmitted to the receiving party on the basis of the activities described in the Preamble or which has become or will become known to the receiving party in connection with the activities described, whether in writing, orally, stored on data carriers, in the form of samples, models or otherwise, in particular business secrets within the meaning of § 2 No. 1 of the German Law on the Protection of Trade Secrets (GeschGehG). Confidential information should be marked as such (e.g. by a corresponding note or, in the case of oral transmission, by an appropriate indication). In the absence of such a marking or indication, the information shall nevertheless be treated as Confidential Information if its character as a trade secret results from the circumstances of the transmission and/or the information content for a knowing third party. The fact that the parties are conducting discussions and exchanging information is also Confidential Information.
- 1.3 Such information is not Confidential Information for which the receiving party proves that it
  - a) was already known to it at the time of notification;
  - b) was already public at the time of the notification or became public thereafter without violation of this Agreement by the receiving party;
  - c) has been communicated to it by a third party who was authorized to make disclosure to the receiving party; or
  - d) was developed by the receiving party itself or by a third party on its behalf independently and without the use of Confidential Information of the notifying party.

In the event that a court or governmental authority makes a mandatory order for the disclosure of Confidential Information, the receiving party shall have the right to disclose if so required by such order, provided that the receiving party shall promptly notify the notifying party of any such order so as to enable the notifying party to take legal action or remedy against such governmental or court order to prevent disclosure.

### **Article 2**

The receiving party undertakes,

- a) to keep the Confidential Information secret and in particular not to make it available to any third party, even under a non-disclosure agreement; this does not exclude the possibility that Confidential Information

of the notifying party may be disclosed to Affiliated Companies of the receiving party under imposition of a corresponding non-disclosure obligation, to the extent that this is necessary or expedient to achieve the objective of the agreement;

- b) to use the Confidential Information only to achieve the purpose of the Agreement;
- c) not to reverse engineer, disassemble or decompile any prototype, object or software received as Confidential Information;
- d) take all necessary and reasonable precautions to prevent unauthorized persons from gaining access to the Confidential Information, exercising at least the same care as it would to protect its own confidential information and trade secrets; and
- e) to grant access to Confidential Information only to such employees, consultants and freelancers who need such information to achieve the objective of the Agreement and who are under a written obligation to maintain confidentiality of the Confidential Information by the receiving party, whether by their employment contract or otherwise; the confidentiality obligations must be formulated at least equivalent to the obligations in this Agreement and the Confidential Information must also be covered by such obligations. The disclosure of Confidential Information to employees, consultants and freelancers shall be limited to such information that the persons need to fulfill their duties. The receiving party shall remain responsible in the event of unauthorized use, duplication or disclosure of the Confidential Information by employees, consultants, freelancers and Affiliated Companies.

### **Article 3**

- 3.1 All documents, drawings, data carriers, samples and other materials containing or embodying Confidential Information shall remain the property of the notifying party. They - as well as all copies made - must be either returned to the notifying party without delay or destroyed if the notifying party so requests. In this case the destruction must be confirmed in writing. The obligations under Article 3.1 do not apply to routinely made back-up copies of electronic data traffic or to information which must be retained under applicable law. Such backup copies and information shall not be used for any other purpose than archiving and preservation of evidence
- 3.2 All patents, copyrights and other industrial property rights in the Confidential Information provided shall remain with the notifying party. The receiving party shall not obtain any rights of use in the Confidential Information by the Agreement which go beyond the use within the scope and under the terms of this Agreement.
- 3.3 The notifying party shall not be liable for the correctness, usability, freedom from defects or completeness of any Confidential Information provided. Neither shall it be liable for ensuring that the use of the Confidential Information does not infringe any third-party property rights.
- 3.4 There is no legal obligation for the notifying party to disclose Confidential Information to the receiving party or to conclude further agreements with the receiving party.

### **Article 4**

- 4.1 The obligation to confidentiality shall apply for the duration of the cooperation.

- 4.2 The obligations to maintain secrecy and to protect received Confidential Information shall in any case survive the term of this Agreement by 10 (ten) years.

#### **Article 5**

- 5.1 During the duration of the cooperation and for a period of twenty-four months after its termination, the Contractor is not permitted to accept orders from customers of the Client or to work for a customer of the Client, directly or indirectly, independently or employed, occasionally or commercially, without the Client's prior written consent. Customers of the Client within the meaning of this provision are all customers of the Client for whom the Contractor has worked during the duration of the cooperation, or who have become known to the Contractor during the cooperation and who were customers of the Client at the time of the termination of the agreement and/or in the last two years before that.
- 5.2 In the case of large industrial companies, customer protection can be limited to individual branches and/or departments of the customer. Any such limitation of customer protection shall be set out in writing in the respective project order.

#### **Article 6**

- 6.1 In any case of a culpable violation of one of the aforementioned obligations, the Contractor shall pay to the Client a reasonable contractual penalty which is due immediately. The amount of the contractual penalty is at the discretion of the Client and in case of dispute it can be reviewed by the competent court for its appropriateness
- 6.2 If the infringement lasts longer than one month, the contractual penalty shall be forfeited anew for each month or part thereof. Other and further claims of the Client, in particular for omission, information and compensation for further damage, remain unaffected.

#### **Article 7**

- 7.1 There are no verbal collateral agreements to the content of this Agreement.
- 7.2 This Agreement and all amendments and supplements to this Agreement must be made in writing to be valid. Scanned copies of the documents signed in the original such as pdf copies as well as electronically signed documents shall satisfy the written form requirement and shall be deemed originals
- 7.3 This Agreement and the rights resulting therefrom may only be transferred by one Party to third parties with the prior written consent of the other Party
- 7.4 The invalidity of a provision of this Agreement shall not affect the validity of the remaining provisions. In this case, either Party may demand the agreement of a new legally effective provision that best achieves the economic purpose of the invalid provision.
- 7.5 The waiver by either Party of the enforcement of any of its rights under this Agreement in individual cases shall not result in the Party waiving the enforcement of such right in comparable cases in the future. A waiver of claims shall only be effective if it is made in writing.
- 7.6 The Parties agree to protect the personal data of the other Party and to store or process such data only to the extent permitted by applicable data protection laws. The receiving party understands that it may process personal data on behalf of the notifying party as a processor on behalf of the notifying party. As such, the receiving party agrees to process the personal data provided only to the extent necessary to

fulfill the instructions and objectives of the notifying party. In addition, the receiving party shall take reasonable technical and organizational measures to protect such personal data against accidental or unlawful destruction or accidental loss and alteration and against unauthorized disclosure or access. The receiving Party shall take special precautions to protect the personal data received when processing is carried out by means of data transmission via a network and against all unlawful forms of processing. Upon request of the notifying party, the receiving party shall promptly notify the notifying party in writing which personal data of the notifying party it has stored, and shall amend, complete, update, correct or delete such personal data as instructed by the notifying party.

#### **Article 8**

- 8.1 This Agreement shall be governed by German law to the exclusion of the referral provisions of international private law.
- 8.2 The exclusive place of jurisdiction for all disputes arising from and in connection with this Agreement, its validity or its interpretation is Passau.

#### **GREIPL GmbH:**

.....  
(Date)

.....  
(Signature)

.....  
(Signer's name in block letters)

.....  
(Function/Title)

#### **Contractor**

.....  
(Date)

.....  
(Signature)

.....  
(Signer's name in block letters)

.....  
(Function/Title)

