

## **NDA – Non-disclosure Agreement - Confidentiality Agreement -**

between the company  
ELA Container GmbH  
- hereinafter referred to as the “Information Provider” -

and the company

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(Information Recipient)  
- hereinafter referred to as the “Information Recipient” -

During the ensuing discussions, the Information Recipient is entrusted with confidential information regarding the Information Provider for the purpose of determining whether possible cooperation is possible. This information is not public and must be treated in strict confidence. The confidential information may only be used within the scope and for the purpose of the activities contractually agreed between the Parties.

For this reason, the Information Provider is required to enter into a confidentiality agreement in order to communicate confidential information. This Agreement protects the confidential information resulting from the Information Recipient's ability to access confidential information of the Information Provider. The following is hereby agreed:

## Section 1 Definitions

- (1) "Confidential information" within the meaning of this Agreement means economically, legally, fiscally, or technically sensitive or advantageous information of the Information Provider that becomes known to the Information Recipient and the Information Provider. Confidential information may be information that is identifiable in any way as confidential or protected by law or whose confidential content is obvious. The term includes all visual material such as documents, papers, notes, documents, digital recordings, etc. as well as verbal communications. This includes, in particular, technical presentations, system concepts and technical drawings, 3D and 2D planning data, technical trade secrets as well as the knowledge gained from these, results and knowledge exchanged. It is irrelevant whether documents or other RF-media were created by the Information Provider, Information Recipient or others, insofar as they embody information relating to the Information Provider. Information shall not be deemed to be confidential if it was already public knowledge at the time it became known to the Information Recipient or subsequently became public knowledge with the consent of the Information Provider.
- (2) "Publicly known information" means information that was demonstrably available to the Information Recipient or its governing bodies, employees and agents (hereinafter referred to as "representatives") prior to its disclosure or that became public knowledge during the term of this Agreement through no fault of their own. The term "confidential information" shall also not include information that the Information Recipient has made available to itself, provided that this is evidenced by written records of such Party or otherwise and that no obligations under this Agreement are contravened.
- (3) "Party" refers to both the Information Provider and the Information Recipient, as well as their affiliated companies, bodies, employees, consultants and any other third parties acting on their behalf, insofar as they are subject to a confidentiality obligation corresponding to the requirements of this or the Principal Agreement.
- (4) "Affiliates" means all companies of the Parties in which the respective Party directly or indirectly holds a stake of more than 50% or over which it has the economic control.
- (5) "Employees" means employees, freelancers and temporary workers of the respective Party

## Section 2 Obligation to Maintain Confidentiality

- (1) Both Parties undertake to treat all confidential information of which they become aware directly or indirectly in the strictest confidence.
- (2) In particular, this means that the Parties are not required to disclose the information to third parties themselves or through employees or to use it for purposes other than those contractually agreed between the Parties.
- (3) Any other use or disclosure of the information is only permitted if and to the extent that the respective party has given its prior written consent.
- (4) The Parties undertake to treat the confidential information received with at least the care it uses in its own affairs.
- (5) The Parties undertake to comply with the statutory and contractual provisions on data protection when processing the confidential information. This also includes state-of-the-art technical security measures (Article 32 GDPR) and employees' obligation to maintain data secrecy (Article 28 (3) (b) GDPR).
- (6) The Parties shall use the confidential information received solely for the purpose of fulfilling the Principal Agreement. The rights to the information that the Information Recipient has received from the Information Provider remain with the Information Provider, unless otherwise contractually stipulated.

## Section 3 Exceptions to the Confidentiality Obligation

- (1) This obligation to protect confidential information does not include information that is publicly known.
- (2) The duty of confidentiality does not apply to courts and authorities insofar as there is a legal obligation (including criminal law) to pass on/disclosure or the respective information is relevant in civil proceedings between the Parties or one of the Parties and a third party. The respective party must be notified and informed immediately of any disclosure of confidential information, unless such disclosure is not permitted by law (e.g. information obligations under the German Money Laundering Act).

## Section 4 Disclosure to Third Parties/Subcontractors

- (1) The information provided or parts thereof may only be passed on to external consultants who are obliged to maintain confidentiality or to such representatives who are required for fulfilling the contract in question and who have been informed of the confidentiality of the information provided and are similarly obliged to do so. The Parties expressly declare that they are responsible for any culpable breach by their representatives.
- (2) A subcontractor may only be engaged in the performance of the contracted activities with the written consent of the other Party. The obligations arising from the agreement must also be imposed on them.

## Section 5 Contractual Penalty

- (1) In the event that a Party or one of its subcontractors culpably violates the obligations listed in Section 2 against the other Party, the other Party shall pay a contractual penalty to be determined at its reasonable discretion and reviewed by the competent court in the event of a dispute.
- (2) Payment of the contractual penalty does not preclude the assertion of the right to injunctive relief or compensation in excess of this.
- (3) The contractual penalty shall be deducted from any compensation that may be payable.

## Section 6 Control and Deletion Rights

- (1) Within fourteen (14) days of the Information Provider's written request, the Information Recipient shall return all confidential information to the Information Provider on further documents produced on the basis of this information or provide the Information Recipient with traceable evidence of the destruction of the information and documents. This does not apply if there is an obligation to store data by law or due to an official or court order. In the latter case, the Information Recipient may only continue to store the confidential information for the purpose of fulfilling these obligations.
- (2) The Information Provider shall be entitled to check compliance with this Agreement to the extent necessary or to have it checked. To this end, the Information Recipient shall, by agreement, grant unhindered access to and access to information-processing systems, files and information associated with the performance of the activities. The Information Recipient must provide the Information Provider with all information required to fulfil the control function. Upon request, the Information Recipient must inform the Information Provider of which confidential information has been returned or destroyed and which is stored. Any notification that certain documents or information have been retained shall be justified.
- (3) Should a Party become aware that Confidential Information has been passed on contrary to this Confidentiality Agreement, the Party shall notify the other Party without delay.

## Section 7 Term

The term of this Agreement shall commence upon signature and shall correspond to that of the Principal Agreement. The confidentiality obligations shall continue to apply for a period of 5 years from the end of this period. This non-disclosure obligation shall also continue to apply if the intended Cooperation Agreement is not concluded or is terminated, unless the development has become obvious in the meantime, for which the Information Recipient bears the burden of proof.

## Section 8 Miscellaneous

- (1) Neither Party shall make or permit any person to make any public announcement (oral or written) with respect to this Agreement or its respective interests in the Purpose without the prior written consent of the other Party. Neither Party may use the name(s) or trademarks of the other Party or its affiliates or otherwise identify the other Party or its affiliates without prior consent.
- (2) Each Party confirms that it is acting in its own name and not for the benefit of another person.

## Section 9 Final provisions

- (3) In the event that any provision of this Agreement is or becomes invalid or unenforceable, in whole or in part, or in the event that this Agreement contains unintentional loopholes, this shall not affect the validity of the remaining provisions of this Agreement. In place of the invalid, unenforceable or missing provision, a valid and enforceable provision shall be deemed to have been agreed between the Parties, as the Parties would have agreed, taking into account the economic purpose of this Agreement, had they been aware of the invalidity, unenforceability or absence of the relevant provision at the time of entering into this Agreement. The Parties are obliged to confirm such a provision in the appropriate form, but at least in writing.
- (4) Amendments and additions to this Non-disclosure Agreement, the declaration of termination and the amendment of this clause must be made in writing in order to be valid (Section 126 (1) and (2) of the German Civil Code). The written form may not be replaced by electronic form (Section 126 (3) and 126a BGB) or text form (Section 126b BGB).
- (5) This Agreement is subject to the law of the Federal Republic of Germany to the exclusion of private international law.
- (6) The exclusive place of jurisdiction for all disputes arising from or in connection with this Agreement is the District Court of Osnabrück.
- (7) Otherwise, liability shall be governed by the provisions of the Primary Agreement.

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Town/city, date

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Signature  
ELA Container GmbH  
Information Provider

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Town/city, date

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Signature  
Information Recipient