

Between \_\_\_\_\_ and \_\_\_\_\_

**Elma Electronic AG**

Hofstrasse 93

CH-8620 Wetzikon

Hereinafter referred to as «Disclosing Party», «Receiving Party» or «Parties»

**Preamble**

Whereas the Parties intend to cooperate and enter into an agreement regarding \_\_\_\_\_

Whereas the Parties will disclose confidential information to each other during the negotiations and agree that the confidentiality of such information should be protected regardless of whether an agreement is concluded.

Now therefore, the Parties agree as follows:

**CLAUSE 1 - DEFINITIONS**

The following terms shall have the meanings hereinafter assigned to them:

«Confidential information» means:

Any technical, commercial, financial or other information or indication, related to the business of the Parties, in particular, but not limited to technical, commercial, financial or other information, communicated between the Parties, which the Disclosing Party has indicated to be confidential or which may otherwise be deemed to be of a confidential nature. Confidential information shall include any copies made of it as well as any products, samples, models, not disclosed patents and / or any further intellectual property rights etc. that may contain or reveal Confidential Information.

For the confidentiality of the afore-mentioned information, it is not of importance if the information is made available to the interested Party in writing, verbally, before or after signing of this agreement.

«Agreement» means:

This non-disclosure agreement.

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## **CLAUSE 2 – PURPOSE OF THE AGREEMENT**

Purpose of this agreement is to set out the rights and obligations of the Parties relating to the use, protection and security of confidential information, as far as they concern the business activities at minimum of one Party.

## **CLAUSE 3 - OBLIGATION OF CONFIDENTIALITY**

The Receiving Party shall not use the confidential information for any other purpose, than that for which it was provided. The confidential information may not, without the written consent of the Disclosing Party, be copied, reproduced, transmitted, communicated or otherwise made accessible to a third party.

The Receiving Party shall only disclose confidential information to employees and subcontractors to the extent that they need to have access to the confidential information. The Receiving Party shall impose the obligations as under this agreement upon these employees and subcontractors and shall stipulate towards any subcontractors that they impose these same obligations upon their employees. The obligation of confidentiality shall also extend beyond the termination of the respective employment or subcontracting contract(s).

The Receiving Party shall inform the Disclosing Party at its request about the names and functions of these employees and subcontractors. The Parties shall keep the negotiations confidential.

## **CLAUSE 4 - EXCEPTIONS TO THE OBLIGATION OF CONFIDENTIALITY**

The obligation of confidentiality is not applicable to information which:

- a) at the time of the disclosure is in the public domain, or which later becomes part of the public domain without a breach of this agreement.
- b) the Receiving Party can prove to have been in its possession prior to the disclosure by the Disclosing Party.
- c) the Receiving Party can prove to have received from a third party who has not violated a confidentiality obligation towards the Disclosing Party.
- d) the Receiving Party is required to disclose to comply with mandatory laws and regulations, court orders, to defend or prosecute litigation, provided that the Receiving Party provides prior written notice of such disclosure to the Disclosing Party to the extent permitted by applicable law and takes reasonable and lawful actions to avoid and/or minimize the extent of such disclosure.

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## **CLAUSE 5 - PROTECTION OF INTELLECTUAL PROPERTY RIGHTS**

All intellectual property rights with regard to the confidential information shall remain with the Disclosing Party. The disclosure of confidential information does not confer or grant any rights to the Receiving Party. The Receiving Party shall refrain from filing an application to obtain intellectual property rights protection with regard to the confidential information.

Irrespective of any existing intellectual property right, the Receiving Party shall refrain from copying products in any way whatsoever.

## **CLAUSE 6 - BREACH OF CONFIDENTIALITY**

If the confidential information is culpably used contrary to this agreement, the Receiving Party undertakes to pay to the Disclosing Party liquidated damages of EUR 50'000 (in words: Euro fifty-thousand) for each breach unless the Disclosing Party proves that the actual damage is higher, in which case the Disclosing Party is entitled to the amount of the actual damage. If the breach of this agreement is a continuing breach, the Disclosing Party shall be obliged to claim a further payment (penalty) of about EUR 50'000 (in words: Euro fifty-thousand) for every further week of a culpable breach of confidentiality. Due to the high requirement of security of the Parties it is further agreed that a summing up of different culpable breaches to one legal unit of breaches will not occur, what means that every culpable breach will cause a separate penalty in the above-mentioned amount.

If the Disclosing Party proves that its damage is higher than the penalty stipulated in the chapter above, the Receiving Party has the right to claim for the effective damage in consideration of any aforementioned penalties. Payment of liquidated or actual damages does not release the Receiving Party from the obligations according to this agreement.

## **CLAUSE 7 – DURATION OF THE OBLIGATION OF CONFIDENTIALITY**

The obligation of confidentiality shall continue to exist after the end of the negotiations between the Parties as far as the secret information have not come in the public domain. This obligation shall also continue to exist after the expiration of the cooperation agreement, if such an agreement ensues from these negotiations.

## **CLAUSE 8 – RETURN OF INFORMATION**

At the request of the Disclosing Party all confidential information, including copies, shall be returned within 30 days to the Disclosing Party or, when stored on electronic media, shall be permanently deleted.

## **CLAUSE 9 – MODIFICATIONS TO THE AGREEMENT**

Amendments and additions to this agreement shall only be valid if made in writing (i.e. letter, telefax, e-mail). This also applies to an agreement canceling the written form requirement.

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## **CLAUSE 10 - APPLICABLE LAW**

This agreement shall be governed by the law of Switzerland.

## **CLAUSE 11 – SETTLEMENT OF DISPUTES**

All disputes between the Parties, arising out of or in connection with this agreement, shall be finally settled under the rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules.

## **CLAUSE 12 - MISCELLANEOUS**

This agreement applies as maximum closed agreement. A transformation of any right of this agreement by one Party, as part or in whole is invalid as long as it is not agreed by written confirmation of the other Party.

If any of the provisions of this Agreement shall become or held invalid or unenforceable, all other provisions hereof shall remain in full force and effect. The invalid or unenforceable provision shall be deemed to be automatically amended and replaced by a valid or enforceable provision which economically accomplishes as far as possible the purpose and the intent of the invalid or unenforceable provision.

Date, place

Signed

On behalf of

Position

Date, place

Signed

On behalf of

Position