

Non Disclosure Agreement (NDA)

This private agreement (hereinafter referred to as "Agreement") which is valid to all legal intents and purposes, is entered into on this between

(hereinafter referred to as "") and

APAG Elektronik AG, Zentrum Staldenbach 13, CH-8808 Pfäffikon SZ, Switzerland

(hereinafter referred to as "APAG"),

WHEREAS

The Parties hereto (APAG and) possess trade secrets, technology, know-how and other information relating to their areas of business and relevant interest (Confidential Information);

The parties hereto wish to and deem it necessary that Confidential Information be exchanged;

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. The preliminary statements above are integral parts of this Agreement.
2. "Confidential Information" means all trading figures, data, formulas, procedures, methods, documentation, magnetic media, drawings, designs, electric or electronic circuit diagrams, technical specifications, test results, assessments, manufacturing and test processes, know-how, material directly related to tests, marketing activities, prototypes, proprietary products or analyses of one of the parties hereto (hereinafter referred to as "Describing Party"), that are described, communicated, provided or shown to the other party (hereinafter referred to as "Receiving Party") directly or indirectly by the Describing Party or by any person who is contractually or by virtue of trust bound to the Describing Party, be it orally, by means of demonstrations or in writing, marked or not marked with the word "Secret" or "Confidential" at the time of description or within a reasonable period of time from the description. „Confidential information“ according to S.1 also comprises commercial, financial and legal information relating to the parties, the parties' businesses, the contracts and agreements entered into by the parties and the performance of the parties under these contracts and agreements.
3. Subject to the above, it is hereby understood that the term "Confidential Information" does not include such information for which the Receiving Party is able to prove that it:
 - a) was known to the Receiving Party at the time of description by the Describing Party, on condition that such information was not acquired directly or indirectly from the Describing Party; or

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- b) was or became public knowledge not by action or fault of the Receiving Party; or
- c) was received by the Receiving Party from a third party having the right to convey such information; or
- d) was developed by the Receiving Party independently of any Confidential Information.
4. The Receiving Party undertakes to keep the Confidential Information in strict secrecy and shall, at all time, protect his Confidential Information using due care and diligence, which shall not be less than that used to protect its own confidential information. For the entire duration of the Agreement and for 18 (eighteen) months after expiry thereof, the Receiving Party undertakes not to disclose the Confidential Information in any way to any third party. In accordance with the provisions set out in this Agreement, the Receiving Party may disclose the Confidential Information solely to its representatives, employees, consultants, contractors, customers and other bodies (hereinafter referred to as “Tied Parties”), who must necessarily have access to this Confidential Information in order to fulfill the obligations established in this Agreement. The Receiving Party shall take all the necessary precautions to ensure that the secrecy of the Confidential Information is preserved by the Tied Parties and shall be responsible for ensuring that this secrecy is maintained for the duration of their employment or collaboration, whichever the case, and thereafter. The Receiving Party may not use the Confidential Information to its own or other people’s advantage and, in any case, may not use it for a purpose different from that provided for by this Agreement. Any Confidential Information which the Receiving Party changes into and handles in a tangible form, must promptly be marked with wording containing references to its confidential nature and the proprietary rights of the Describing Party.
5. With this Agreement, the Describing Party does not, explicitly or implicitly, grant the Receiving Party any right or licence in relation to the Confidential Information. The Confidential Information is and remains the property of the Describing Party. All the materials – including without limitations lists, magnetic media, documents, drawing, drafts, designs – which contain in whole or in part Confidential Information provided by the Describing Party to the Receiving Party are and shall remain property of the Describing Party. The Receiving Party may not reproduce any Confidential Information without prior written permission from the Describing Party and shall promptly return to the Describing Party, upon request of the latter or upon termination of the business relationship between the parties, all the Confidential Information as well as all the reproductions made and all the documents or materials containing any part of the Confidential Information.

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6. The term of this Agreement shall be three (3) years as from the above stated date.

The Parties hereto acknowledge that the provisions set out in this Agreement are necessary in order to protect the Confidential Information. The Receiving Party furthermore acknowledges that unauthorized use or disclosure to third parties of the Confidential Information in breach of this Agreement constitutes permanent and irreparable damage towards the Describing Party.

For the case of any breach of this Agreement the breaching Party shall pay the breached Party EUR 100'000 as liquidated damages. The breached party reserves the right to claim provable exceeding damages.

7. This Agreement shall exclusively be governed by Swiss Law. Any dispute that may arise related to or connected with this Agreement, which cannot be amicably resolved by the Parties hereto, shall exclusively be settled by the court of Zurich/Switzerland.

The parties hereby declare and guarantee that the persons who sign this Agreement are duly authorized to represent them.

8. Any amendments and supplements to this Agreement, including a waiver of this written form clause, must be made in writing.

9. The validity of the remaining provisions of this Agreement shall remain unprejudiced should any single provision of this Agreement be or become invalid in whole or in part or should the Agreement contain a loophole. The Parties shall agree on a provision in place of the void provision which comes closest to the sense and purpose of the void or impracticable provision or to what the Parties would have agreed upon had they been aware of the loophole in the Agreement.

Read, approved and signed.

Company:

Company:
APAG Elektronik AG
Zentrum Staldenbach 13
8808 Pfäffikon/Switzerland

Place / Date : Place / date:.....

Signed: **Signed:**.....

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28.10.2013	KS	PS	Creation of a new document	A
29.10.2018	LM,KS	STU	Change number from F-SCM0.05-AGL, logo changed, address	B
03.10.2022	PP	TKA	Last sentence in section 2 has been added.	C

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