

NON-DISCLOSURE AGREEMENT

Reference:**BETWEEN:**

“**[KNDS France or subsidiary]**”, a company incorporated under the laws of France with a capital of XXX Euro, having its registered office at XXX, France, registered at the XXX Trade and Companies Registry under number XXX,

represented by XXX, acting as XXX, duly authorized,

hereinafter referred to as " **[KNDS France or subsidiary]**",

AND

"**[Supplier name]**", a company incorporated under the laws of [Country], having its registered office at XXX, registered at the company registry of XXX under number XXX, [country]

Represented by **XXX**, acting as **XXX**, duly authorized,

Hereinafter referred to as "**[Supplier name]**",

The companies here above being referred to in this Agreement individually as "Party"and collectively as "Parties".

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WHEREAS:

- A. The Parties wish to discuss in greater details the following business matter: XXX (hereinafter referred to as the "Project").
- B. The Parties may, in the course of their discussions, wish to disclose to each other proprietary and/or confidential information.
- C. This agreement (hereinafter referred to as the "Agreement") establishes the rules governing the disclosure, use and protection of such information in the framework of the Project.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:**ARTICLE 1.**

As used in this Agreement:

- "Confidential Information" means any and all information and data, samples, manufacturing processes, formulae, methods, know-how, test results, trade secrets, software, business information, manufacturing specifications, sketches, designs, drawings and any other documents, ideas or reports (or copies, extracts, or translations thereof) whether oral, written, or stored in electronic or other recordable media or which can be obtained by examination, testing, visual inspection or analysis of any material, equipment, product, spare part, hardware or component part thereof. For avoidance of doubt "Confidential Information" also includes analyses, compilations, studies and other material prepared by or in the possession or control of the Recipient(s) (as defined below) which contain or otherwise reflect or are generated from any such information as is specified in this definition.
- "Discloser" means the Party who discloses Confidential Information.
- "Recipient" means the Party who receives and/or obtains Confidential Information.

ARTICLE 2.

Nothing in this Agreement may be construed as compelling either Party hereto to disclose or make available any Confidential Information to the other Party, or to enter into any further contractual relationships with the other Party. Each Party, to the extent of its right to do so, shall disclose to the other Party only such Confidential Information which Discloser deems necessary for the purpose of the Project.

ARTICLE 3.

This Agreement will come into force at the latest date of signature of this Agreement by the Parties.

The duration of this Agreement, which designates the period during which the Parties may exchange Confidential Information, is five (5) years from its date of coming into force. This Agreement may be terminated at any time by either Party on thirty (30) days prior written notice to the other Party.

ARTICLE 4.

The Parties shall abide by the confidentiality obligations contained in this Agreement as from its coming into force. The confidentiality obligations shall survive the expiration or termination of the Agreement for a period of ten (10) years.

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ARTICLE 5.

From the entry into force of the Agreement and for the period stipulated in Article 4 above, the Recipient hereby undertakes that the Confidential Information received from the Discloser shall:

- a) be protected and kept in strict confidence by the Recipient which must use the same degree of care as it uses to protect its own Confidential Information of like importance, but in no case any less than a reasonable degree of care ;
- b) only be disclosed to those persons within the Recipient’s organization who have a specific need to know the Confidential Information and only used by those same persons for the Project’s purpose;

The Recipient agrees to assume responsibility for the actions of such of its executives and employees who may have access to Confidential Information, and agrees to make known to such of its executives and employees to whom Confidential Information may be disclosed, the conditions of this Agreement and to procure that they undertake to be bound thereby.

- c) neither be disclosed nor caused to be disclosed whether directly or indirectly to any third party or persons other than those mentioned in subparagraph (b) above ;
- d) not be used in whole or in part for any purpose other than the Project;
- e) neither be copied, nor otherwise reproduced nor duplicated in whole or in part where such copying, reproduction or duplication have not been specifically authorized in writing by the Discloser, except for those copies necessary to the Recipient and only for the purpose of the Project.

Any copy of such Confidential Information made by the Recipient with the Discloser’s authorization shall be labelled as confidential and/or proprietary if the original documents are labelled as such.

Notwithstanding the preceding, **[KNDS France or subsidiary]**, may disclose any Confidential Information received to any company:

- a) which controls **[KNDS France or subsidiary]**,
- b) or which is controlled by **[KNDS France or subsidiary]**,
- c) or which is under the same control as **[KNDS France or subsidiary]**,

subject to the observance of the confidentiality obligations contained in the present Agreement.

For the purpose of the above paragraphs, “control” means the direct or indirect holding of more than fifty (50) per cent of the issued share capital or of the voting rights in that company.

ARTICLE 6.

The restrictions contained in Article 5 above shall not apply with respect to any Confidential Information for which the Recipient is able to prove that it:

- a) Was accessible to the public prior a) or after the disclosure thereof and in such case through no fault of the Recipient; or
- b) is already known to the Recipient, as evidenced by written documentation in the files of the Recipient; or
- c) has been received from a third party without fault by that third party; or
- d) has been published without any violation of the confidentiality obligations contained in this Agreement; or
- e) has been independently developed in good faith by employees of the Recipient who did not have access to the Discloser’s Confidential Information; or

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- f) its disclosure has been authorized by written consent of the Discloser.

Notwithstanding the foregoing, the Recipient may disclose such portion of Confidential Information which it is legally required to disclose to satisfy a legal demand by a competent court of law or government body, provided however that in these circumstances, the Recipient shall immediately and prior to such disclosure notify the Discloser and, upon request and at the expense of the latter, shall co-operate with the Discloser in the event it elects to contest such disclosure.

ARTICLE 7.

Any Confidential Information disclosed by either Party under this Agreement which is classified Information shall be identified as such by the Discloser at the time of disclosure, and shall be protected, used and handled by the Recipient in accordance with security procedures and for the duration prescribed by the appropriate government.

ARTICLE 8.

Each Party undertakes to comply with all applicable export control laws and regulations and to obtain the required authorizations from the competent authorities prior to disclosure of export controlled data. The Discloser shall identify the Confidential Information concerned and inform the Recipient Party of any applicable restrictions.

If required by French regulations and at the request of YYY, the Recipient shall forthwith provide a non-re-export certificate duly signed in the form attached hereto.

Each Party represents and warrants that in the performance of the Agreement, it will comply with all applicable anticorruption laws, regulations and administrative requirements and shall take no action that could lead to any sanction under applicable laws, regulations and administrative requirements.

ARTICLE 9.

Prior to any disclosure of Confidential Information to any third party (excluding any company defined in the last two paragraphs of article 5) having a need-to-know the Confidential Information for the purposes of the Project only, the Recipient shall obtain the prior written agreement of the Discloser and shall enter with such third party into a non-disclosure agreement with terms no less restrictive than those contained in the present Agreement.

ARTICLE 10.

It is expressly agreed between the Parties that communicating or obtaining Confidential Information in the framework of this Agreement can in no way be interpreted as expressly or implicitly granting the Recipient, any right whatsoever (licensed or otherwise) regarding the Confidential Information itself, or with regard to any inventions or discoveries said Confidential Information may give rise to.

The same is true with regard to author right or any other rights pertaining to literary and artistic property rights (copyright), trademarks or trade secrets.

The property rights of any Confidential Information belong, subject to the rights of third parties, to the Discloser, which is expressly acknowledged by the signing of this Agreement by the Recipient.

Furthermore, the Recipient shall expressly refrain from using all or part of the Confidential Information received from the other Party when filing a patent, design registration, a trademark or equivalent.

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ARTICLE 11.

The Confidential Information communicated shall not benefit from any guarantee, explicit or implicit, any terms, conditions, guarantees and declarations expressly reserved for a subsequent and specific negotiation, as well as any agreement that might result from it, if applicable.

ARTICLE 12.

Any Confidential Information and copies thereof disclosed by either Party to the other Party shall, subject to any third parties' rights, remain the property of the Discloser and shall be returned or destroyed (including all copies, documents, memoranda, notes and other materials of the Recipient which contain Confidential Information) by the Recipient immediately upon request of the Discloser or within thirty (30) days following the expiration of termination of Agreement. In the case of destruction, the Recipient shall provide a written certificate to the Discloser that such destruction has taken place, if the Discloser so requests.

ARTICLE 13.

This Agreement shall be governed and construed in accordance with French law.

All disputes arising in connection with this Agreement which cannot be amicably settled by the Parties hereto within sixty (60) days after their occurrence 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.

This arbitration shall take place in Paris, FRANCE. The language of the proceedings shall be English.

The arbitration award will be final and binding for both Parties.

ARTICLE 14.

This Agreement constitutes the entire understanding between the Parties with respect to its subject matter and replace and cancel any prior declarations, negotiations, commitments, oral or written communication, acceptances, understandings or agreements between the Parties regarding any operations applied or provided for by this Agreement.

ARTICLE 15.

No amendment to the terms and conditions of this Agreement shall be valid or binding on the Parties unless made in writing and signed by duly authorised officers or representatives of each Party.

ARTICLE 16.

Neither Party shall have the right to assign or transfer any or all of its rights and obligations under this Agreement to any third party without the prior written agreement of the other Party. Such agreement shall however not be unreasonably withheld by the other Party.

ARTICLE 17.

Nothing in this Agreement requires the payment of fees nor reimbursement of expenses. If such payment and/or reimbursement is required for any activity, the terms and conditions thereof shall be mutually agreed upon between the Parties at the time by a separate written agreement.

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ARTICLE 18.

No failure or delay by either Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall a single or partial exercise thereof preclude any other or further exercise of any right, power or privilege hereunder.

Made in two original copies intended for each of the Parties

For [KNDS France or subsidiary]	For [Supplier name]
Date:	Date:
Name: XXX (Or person with a delegated signing authority from his manager)	Name:
Position: XXX (Or position of the person mentioned above)	Position:
Signature:	Signature: