

# MUTUAL-NON-DISCLOSURE AGREEMENT

between

**Name:**

**Adresse:**

and

**Lumics GmbH**, Carl-Scheele-Str. 16, D-12489 Berlin, Germany

**WHEREAS** Customer is engaged in the field of

**WHEREAS** LUMICS is engaged in the field of developing, designing and producing devices for optical systems such as laser diodes and Laser modules;

**WHEREAS** the parties wish to cooperate

**WHEREAS** during the optimisation and production process Confidential Information will be exchanged between the parties.

**NOW THEREFORE** in consideration of the foregoing the parties have mutually agreed as follows:

## 1. Confidential Information

- 1.1. All information and any physical material exchanged between the parties during the “optimisation and production process, such as, but not limited to, information on products, processes, technology, test results, materials, design, prices, etc., shall be considered as Confidential Information, subject to the following conditions:
  - 1.1.1. If the information is in writing or in drawing, such information must be clearly marked as “Confidential” or “Proprietary” at the time of disclosure.
  - 1.1.2. In the event the information is orally or visually disclosed or presented as physical samples the disclosing party shall identify the information as confidential or proprietary at the time of disclosure and confirm it in writing to the receiving party within 30 (thirty) days of disclosure.
  - 1.1.3. Information that obviously is confidential or proprietary shall regardless of the requirements set out above in sub-clauses 1.1.1 and 1.1.2 also be considered as Confidential Information.
- 1.2. The following information shall not be considered Confidential Information regardless of its possible designation as such:
  - 1.2.1. Information which at the time of the disclosure is in the public domain.
  - 1.2.2. Information which after disclosure is published or otherwise becomes part of the public domain through no fault or breach of this Agreement by the receiving party.
  - 1.2.3. Information which the receiving party can establish by competent proof was in its possession at the time of disclosure by the disclosing party and was not acquired directly or indirectly from the disclosing party.
  - 1.2.4. Information which is received after the time of disclosure by the receiving party from a third party who did not acquire such information directly or indirectly from the disclosing party under obligations of confidentiality and who is in lawful possession of the said information.
  - 1.2.5. Information which the receiving party can establish by competent proof has been independently developed by employees, agents, consultants or other representatives of the receiving party without the use of Confidential Information received from the disclosing party.
  - 1.2.6. Information which is required to be disclosed by law or any regulatory or government authority.

## 2. Obligations of the parties

- 2.1. In respect of the Confidential Information disclosed during the Optimisation and Production Process, the parties agree to undertake and to be bound:
  - 2.1.1. To keep the Confidential Information strictly confidential and secret and not in any way or at any time to make any use thereof except for the purpose of performing according to the Optimisation and Production Process.
  - 2.1.2. Not to disclose any Confidential Information to any third party (including a parent company or any affiliate) without prior written consent from the other party.
  - 2.1.3. To take all reasonable steps to ensure that the Confidential Information is not inadvertently disclosed in violation of this Agreement.
  - 2.1.4. At no time without the express consent of the other party to derive directly or indirectly from the possession of the Confidential Information any rights, grant of license, title or interest therein, nor to claim any rights to disclose or use for its own benefit such Confidential Information.

- 2.1.5. Not to copy, reproduce, distribute or disclose the Confidential Information and samples without prior written consent to any person other than those employees who are directly and necessarily involved in the execution of this Agreement.
- 2.1.6. To return to the other party immediately upon request all documents and material containing the Confidential Information or any part thereof without prejudice to its obligations pursuant to this present Agreement.

**3. Title**

- 3.1. The parties agree and acknowledge that title and ownership to Confidential Information shall remain vested in the disclosing party at all times.

**4. Liability**

- 4.1. The parties agree to indemnify and hold the other party harmless in relation to any breach of this Agreement.
- 4.2. Neither party is liable for the accuracy, completeness or usefulness of the Confidential Information.

**5. No Commitment**

- 5.1. Confidential Information provided by one party to the other does not, and is not intended to represent a commitment by either party to enter into any business relationship with the receiving party or with any other entity. If the parties desire to pursue business opportunities, the parties will execute a separate written agreement to govern such business relationship.

**6. Duration**

- 6.1. The term of this Agreement shall begin on the date of signature by the last of the parties hereto and the secrecy obligations of the parties mutually undertaken shall survive termination and expiration of the Optimisation and Production Process for a period of 5 (five) years.

**7. Consequences of Termination of the Optimisation and Production Process**

- 7.1. The parties will at the other party's request deliver to the belonging party or destroy all documents received and other tangible embodiments of Confidential Information (including samples) concerning the terminated Optimisation and Production Process. Each party shall ensure that it has retained no copy of any such exchanged Confidential Information concerning the terminated Optimisation and Production Process.

**8. Entire Agreement**

- 8.1. This Agreement embodies the entire understanding between the parties with respect to the subject matter of this Agreement and supersedes any and all prior negotiations, correspondence, understandings and agreements between the parties with respect to the subject matter of this Agreement. This Agreement shall not be modified except by a writing duly executed on behalf of the party against whom such modification is sought to be enforced.

**9. Arbitration**

- 9.1. Any dispute arising out of or in connection with this Agreement shall be settled in accordance with the "Rules of Procedure of the German Institute of Arbitration".
- 9.2. German law shall apply. However, the German choice of law rules shall not apply.
- 9.3. English or German shall be the language used during proceedings.

Either the original or copies, including facsimile transmissions, of this Agreement, may be executed in counterparts, each of which shall be an original as against any party whose signature appears on such counterpart and all of which together shall constitute one and the same instrument.

Place:

**Place:**

Date:

**Date:**

For CUSTOMER:

**For LUMICS:**

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Name and Title:

**Dr. Karl Eberl (CEO)**