

# NON-DISCLOSURE AGREEMENT

between

Miba [.....]  
[Address]  
[Address]

hereinafter referred to as "Disclosing Party", and

XXX  
[Address]  
[Address]

hereinafter referred to as "Contract Partner" or "Receiving Party".

## 1. Recitals

The Disclosing Party intends to disclose Confidential technical and business information for [...] (hereinafter referred to as the "Purpose") and it is possible that Confidential Information is generated within the framework of the Purpose. The Disclosing Party provides Confidential Information necessary to carry out the Purpose only under the following terms and conditions of this non-disclosure agreement ("Agreement").

## 2. Definitions

**Confidential Information:** "Confidential Information" means all technical and business information, regardless of the form in which it becomes available to the Receiving Party (whether in writing, graphically, orally, visually, electronically, by sending a product or sample, during site visits or otherwise), as well as copies thereof and information generated in connection with the Purpose, provided by the Disclosing Party or any of its Affiliates or representatives. This includes, but is not limited to, information that has been marked "confidential" or "secret" by the Disclosing Party.

Information that (i) is publicly known or becomes publicly known after the conclusion of this Agreement without any action of the Receiving Party, (ii) lawfully became known to the Receiving Party prior to the start of activities in connection with the Purpose or is lawfully disclosed by a third party without obligation to maintain confidentiality, or (iii) becomes known to the Receiving Party in the course of its own research & development activities without utilizing the Disclosing Party's Confidential Information, shall not be considered Confidential Information.

**Affiliate:** "Affiliate" shall mean a company that directly or indirectly controls a Party, is controlled by a Party or is under common control with a Party. The term "control" shall mean direct or indirect ownership of (i) stock or other ownership interest representing at least fifty (50) percent of the voting power of the entity, or (ii) the power to (a) appoint or remove a majority of the board of directors or other governing body of an entity, or (b) determine the management of an entity.

**Third Parties:** "Third Parties" are all individuals and legal entities other than the Parties, their Affiliates and Consultants.

**Consultants:** "Consultants" means patent attorneys, attorneys, accountants, financial advisors, insurance brokers and insurers of a Party.

## 3. Confidentiality obligations

- a) The Receiving Party is obliged to maintain absolute confidentiality with regard to all Confidential Information and to use it exclusively for the execution of the Purpose. The Receiving Party shall limit the access to Confidential Information to those employees who (i) have a need-to-know for the execution of the Purpose and (ii) are bound to confidentiality and non-use obligations in

advance by a written agreement (e.g. in an employment agreement) equivalent in substance and form to the confidentiality and non-use obligations of this Agreement.

- b) Confidential Information may only be disclosed to Affiliates and Consultants under the conditions, that the Affiliate or Consultant: (i) has a need-to-know in the context of the Purpose, (ii) is not a competitor of the Disclosing Party and (iii) is bound to confidentiality and non-use obligations by a written agreement concluded with the Receiving Party in advance, equivalent in substance and form to the confidentiality and non-use obligations of this Agreement, or is bound by statutory confidentiality obligations. The Receiving Party is liable to the Disclosing Party for breaches of this Agreement by its Affiliates and Consultants in the same way as for its own breaches.
- c) Confidential Information shall not be passed on to Third Parties without the prior written consent of the Disclosing Party. In addition to the requirement of consent, the disclosure of Confidential Information to a Third Party is only permitted on a need-to-know basis and under the condition that the Third Party first enters into a written non-disclosure agreement with the Receiving Party which is equivalent in substance and form to the confidentiality and non-use obligations of this Agreement. The Receiving Party shall be liable to the Disclosing Party for breaches of this Agreement by Third Parties in the same way as for its own breaches. Excluded from this restriction is Confidential Information that must be disclosed by applicable law or a court order. To the extent permitted by law, the Receiving Party shall promptly notify the Disclosing Party of any such duty to disclose.
- d) The Receiving Party agrees to take appropriate, state-of-the-art measures to protect Confidential Information from unauthorized use or disclosure, including measures against electronic intrusion, hacking, and cyberattacks on the used computer systems and networks. If there is a risk that Confidential Information has been disclosed to or obtained by unauthorized third parties as a result of a breach of this obligation, the Receiving Party shall promptly notify the Disclosing Party using the e-mail address Cyber-Incident@miba.com and take all appropriate steps to prevent any use or disclosure of the Confidential Information.
- e) The Disclosing Party has no obligation to disclose any Confidential Information nor to enter into any transaction pursuant to this Agreement.
- f) Reverse engineering prohibition: Plans, machines or materials may not be analyzed or reverse engineered by the Receiving Party for the purpose of obtaining information regarding the contents of the plans, machines or materials.

#### **4. Export Controls**

The Parties undertake to actively point out Confidential Information which is subject to restrictions under national or international legislation (e.g., EC Dual Use Regulation, EAR, ITAR) or on the basis of international treaties or embargo provisions, and to comply with the provisions specified in the respective applicable legislation.

#### **5. Copies, Return of Documents**

The Receiving Party is not authorized to copy, duplicate or make a written record of Confidential Information unless absolutely necessary for the Purpose. All such copies, reproductions and written records shall be the property of the Disclosing Party.

The Receiving Party must return, destroy or delete all Confidential Information upon the Disclosing Party's written request. This does not apply to Confidential Information being part of (i) files created pursuant to automated archiving or backup procedures where access is restricted so that they cannot be used in the ordinary course of business, or (ii) the Receiving Party's permanent records that must be retained due to legal requirements. The provisions of this Agreement shall survive the termination of this Agreement with respect to any such retained Confidential Information for as long as it is retained.

#### **6. Contractual Penalty / Injunctive Relief**

If the Receiving Party or a third party attributable to it breaches any of the aforementioned obligations, it shall pay a contractual penalty in the amount of EUR 50,000.00 for each breach, regardless of

culpability. The right of the Disclosing Party to claim compensation for actual damages or other claims shall remain unaffected.

It is agreed and acknowledged that it might be impossible to measure in money the damage that may arise from a violation or threatened violation of this Agreement, and that such violation may cause irreparable harm to the Disclosing Party and that the Disclosing Party may not have an adequate remedy at law. Therefore, the Disclosing Party is entitled to seek injunctive relief, including specific performance, to enforce such obligations, and if any action should be brought in equity to enforce any of the provision of this, the Receiving Party shall not raise the defense that there is an adequate remedy at law.

## **7. Term and Termination**

This Agreement shall become effective upon signature of all Parties and shall be valid for five (5) years. Upon the expiration of this initial term, the Agreement shall automatically renew for successive one (1) year periods, unless terminated in writing by either Party subject to a notice period of three months prior to the end of any such extension. The obligations under this Agreement shall continue for five (5) years after termination.

The Agreement shall apply to both Confidential Information disclosed during the term of this Agreement and to Purpose-related Confidential Information disclosed by the Disclosing Party prior to the signing of this Agreement.

## **8. No Warranty, No Liability**

ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS", WITHOUT ANY WARRANTY OF ANY KIND WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, ITS USE. THE DISCLOSING PARTY SHALL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND WHATSOEVER IN CONNECTION WITH THE PERMITTED USE OR MISUSE OF ITS CONFIDENTIAL INFORMATION BY THE RECEIVING PARTY.

## **9. No Transfer of Rights**

The rights and ownership of Confidential Information remain with the Disclosing Party. No such rights are granted to the Receiving Party. There is also no obligation to grant such rights. The Receiving Party is not entitled to apply for property rights with regard to the Confidential Information. The Receiving Party shall not attempt to derive rights of prior use or other rights from its knowledge of the Confidential Information.

## **10. General Provisions**

There are no written or verbal side agreements with regard to the subject matter of this Agreement. Amendments must be in written form and in a single document to be valid. A written agreement is also required for a waiver of this written-form requirement.

The invalidity or inapplicability of a provision of this Agreement shall not affect the validity or applicability of the remaining provisions. Should a provision of this Agreement be invalid or inapplicable, or should this Agreement contain gaps, this shall not affect the validity and applicability of the remainder of the Agreement. Rather, the Parties shall then be obliged to agree effective provisions to replace the ineffective provisions or to supplement the gaps in such a way that the new contractual provisions to be agreed come as close as possible to the economic purpose of the ineffective provisions and the rest of the Agreement.

## **11. Applicable law and Jurisdiction**

Austrian Law shall apply to this Agreement, excluding its conflict-of-laws-rules and the UN Convention on Contracts for the International Sale of Goods (CISG).

In the event that all Parties have their registered office inside the European Union, the court with subject matter jurisdiction in Linz (Austria) shall have exclusive jurisdiction over all disputes arising from or in connection with this Agreement, including disputes regarding its validity, violation, dissolution, or nullity.

In the event that one or more Parties have their registered office outside the European Union, all disputes arising out of or in connection with this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with the said Rules. The seat of arbitration shall be Vienna, Austria, and the arbitration shall be conducted in the English language. The award rendered by the arbitrator(s) shall be final and binding on the Parties and may be entered and enforced in any court having jurisdiction.

**[Full name of Miba]**

_____	_____
Name:	Name:
Position:	Position:
Date:	Date:

**[Full name of Contract Partner]**

_____	_____
Name:	Name:
Position:	Position:
Date:	Date: