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# Non Disclosure and Non-use Agreement

entered into by and between

Company X
registered in the Commercial Register of the Local Court of …,
represented by its managing director …,
hereinafter referred to as „Offerer“

and

Company Y
registered in the Commercial Register of the Local Court of …,
represented by its managing director …,
hereinafter referred to as „Manufacturer“.

The Manufacturer and the Offerer are hereinafter partly referred to individually as „Party“ and jointly as „Parties“. This Non Disclosure and Non-use Agreement is hereinafter referred to as „Agreement“.

## Preamble

1. The Manufacturer is one of the leading manufacturers of electrical appliances worldwide and has a large development centre as well as the latest production technologies.
2. The Offerer is the owner of all rights to an invention relating to cooling systems on which a patent application has been filed, which is hereinafter referred to as the „Contractual Invention“. An international patent application was filed on the Contractual Invention under the number … on … and is described in detail in Schedule ./A which forms an integral part of this Agreement.
3. The Offerer considers granting the Manufacturer the right to manufacture and market these cooling systems under a separate license agreement.
4. The Manufacturer is interested in detailed information about the Contractual Invention in view of the possible conclusion of a license agreement.
5. So as to explore the possibility of granting the Manufacturer the right to produce and sell the Contractual Invention, the Offerer intends to disclose, explain and comprehensively present the contractual invention to the Manufacturer (the „Presentation“).
6. The Presentation requires the Offerer to disclose comprehensive secret information with regard to the Contractual Invention to the Manufacturer.

In order to ensure confidential treatment of the secret information the Parties agree as follows:

## I. Obligation of Secrecy

1. The Manufacturer affirms and warrants by way of an independent guarantee to keep the body of technical information, any and all knowledge and documents relating to the construction, production and quality of materials, production, manufacturing processes, application technology and any and all additional information in technical and commercial respects relating to the Contractual Invention including the technical know-how (hereinafter referred to as „Secret Information“) which is disclosed to the Manufacturer by and in connection with the Presentation in writing, orally or in any other way strictly confidential and not to disclose it to third parties.

2. The Parties agree that any and all information which is embodied in samples, drawings, documents, papers, electronic records, data carriers or other storage media (the „Records“) which are handed over to the Manufacturer by the Offerer in connection with the Presentation likewise constitutes Secret Information and shall remain the property of the Offerer. However, this shall not result in any obligation on part of the Offerer to hand over records to the Manufacturer or to give the Manufacturer access to records in any other way. The Offerer shall not assume any liability whatsoever for the correctness or completeness of the information disclosed or for its technical or commercial exploitability.
3. The Manufacturer undertakes to make the foregoing obligations of secrecy binding upon all employees, collaborators and any other persons who participate in the Presentation or otherwise get knowledge thereof and to furnish written proof thereof at the Offerer’s request. This shall also apply to all employees, collaborators, board members as well as to all agents and independent distributors and intermediaries, workers and work contractors with whom the Manufacturer cooperates or to whom the results of the Presentation are disclosed, as well as to the companies affiliated with the Manufacturer as defined by Section 15 ff of the German Stock Corporation Law. Irrespective thereof the Manufacturer will cooperate with third parties outside its enterprise only with the Offerer’s prior written consent.
4. On first demand the Manufacturer shall be obliged to promptly return to the Offerer all samples, documents, electronic records, data carriers and other storage media which the Offerer hands over to the Manufacturer within the scope of or in connection with the Presentation or makes available to the Manufacturer in any other way. With respect to this obligation to return the Manufacturer hereby waives any right of retention irrespective of its legal basis. Furthermore, the Manufacturer undertakes not to make any copies, electronic storage or any other records of the documents handed over and to promptly and completely destroy and/or delete any that have necessarily been made and to confirm this in writing at the Offerer’s request.
5. The obligation of secrecy shall not apply to such experience, technical knowledge and know-how with respect to which the Manufacturer has proved to the Offerer in writing that
    a. regardless of the Presentation or thereafter it has entered or will enter the public domain without any act or fault on part of the Manufacturer, i.e. has been or will be known or generally available to the public; or
    b. regardless of the Presentation it was already known to the Manufacturer; or
    c. regardless of the Presentation it was lawfully disclosed by third parties without restriction in respect of confidentiality or use.
6. The above-mentioned exceptions to the obligation of secrecy shall not apply to a combination of individual pieces of information, knowledge and/or experience, even if one of the above-mentioned exceptions would apply to each individual piece of information, knowledge and/or experience unless the above-mentioned exceptions apply to the combination of the individual pieces of information, knowledge and/or experience itself.

## II. Restrictive Covenant

1. The Manufacturer shall be prohibited from using any experience, technical knowledge and information obtained by, during and in connection with the Presentation as well as any Secret Information for other purposes than for this Agreement and from making use thereof, itself or through third parties, free or against payment, without the express written consent of the Offerer or from otherwise using, exploiting, filing an application for a patent or utility model or otherwise making it the subject of an application for an industrial property right. This obligation will hereinafter be referred to as „Restrictive Covenant“.
2. The Restrictive Covenant shall not apply to such experience, technical knowledge and know-how with respect to which the Manufacturer has proved to the Offerer in writing that
    a. regardless of the Presentation or thereafter it has entered or will enter the public domain without any act or fault on part of the Manufacturer, i.e. has been or will be known or generally available to the public; or
    b. regardless of the Presentation it was already known to the Manufacturer; or
    c. regardless of the Presentation it was lawfully disclosed by third parties without restriction in respect of confidentiality or use.

3. The above-mentioned exceptions to the Restrictive Covenant shall not apply to a combination of individual pieces of information, knowledge and/or experience, even if one of the above-mentioned exceptions would apply to each individual piece of information, knowledge and/or experience unless the above-mentioned exceptions apply to the combination of the individual pieces of information, knowledge and/or experience itself.

## III. Contractual Penalty, Additional Claims

1. The Manufacturer undertakes to pay to the Offerer for each individual objective breach of the obligations of secrecy and/or Restrictive Covenant, waiving the defence of causal connection, a reasonable contractual penalty in the reasonably exercised discretion of the Offerer. If the Manufacturer claims that the contractual penalty is not reasonable, each Party shall be entitled to call upon the President of the Berlin Chamber of Industry and Commerce to appoint an expert who will finally decide that issue as an arbitrator. The expert shall also decide on the costs of his services in accordance with the principles of Section 91 ff of the Code of Civil Procedure. Furthermore, the expert shall decide in his reasonably exercised discretion on the detailed wording of the expert arbitration clause. The President of the Berlin Chamber of Industry and Commerce shall appoint only one expert even if several requests are made.
2. The Offerer's right to claim any damages or raise any other claims going beyond the claims specified in paragraph 1. shall not be affected. Any contractual penalty paid shall not be offset against the Offerer's more extensive claims for damages resulting from the breach of this Agreement. The application of Section 341 (3) of the Civil Code shall be excluded.
3. If the Manufacturer has filed applications for industrial property rights contrary to the obligations of this Agreement, the Manufacturer shall be obliged to assign to the Offerer, free of charge and without delay, any property rights of any kind whatsoever granted to the Manufacturer.
4. In the event that the Manufacturer enters into any contracts of use and/or exploitation committing a breach of the provisions of this Agreement, the Manufacturer shall be obliged to assign to the Offerer, free of charge and without delay, all present and future rights existing under or arising out of any such contracts.
5. The Manufacturer's comprehensive liability for damages to the Offerer shall also apply to any breach of the above-mentioned obligations by the persons or enterprises mentioned in paragraph 3 of Article I.

## IV. Accidental Inventions

If as a result of the Presentation in context with the Manufacturer's own development activities accidental inventions, inventions relating to improvements or further developments are made in connection with the Contractual Invention („Continuation Inventions"), the Offerer shall exclusively be entitled to such inventions and the Manufacturer undertakes to promptly inform the Offerer in writing. The Offerer shall in particular be exclusively entitled to industrial property rights of any type for which applications on accidental inventions may be filed, including the right to apply for such rights.

## V. Term

1. This Agreement shall enter into force on the date of signing by both Parties. The obligation of secrecy and the Restrictive Covenant shall be in force until all property rights, e.g. patent, utility model and design rights as well as any other property rights, including patents of addition and process patents for which the Offerer or its successors in title file applications relating to the contractual invention, have expired and until the technical knowledge developed in connection with the contractual invention has entered the public domain without any breach of the obligation of secrecy on part of the Manufacturer.
2. Irrespective of the preceding paragraph 1 this Agreement shall remain in force for seven years after its signing.

## VI. Legal Effects

It is agreed that this Agreement shall not include any assignment of rights or licenses or create any obligation whatsoever to enter into a license agreement or any other agreement nor shall it create an obligation to enter into any

negotiations directed thereto or any other business relations.

## VII. Final Provision

This Contract reflects the final Agreement of the Parties on the terms and conditions specified herein. There are no collateral agreements, whether oral or written.

## VIII. Amendments and Additions

No amendments and additions to this Agreement shall be effective unless the same shall be in writing in a uniform document signed by the contracting parties unless a notaries certification is required. This formal requirement shall also apply if the requirement of a written document is departed from.

## IX. Partial Invalidity

If any one or more of the provisions of this Agreement should be invalid or ineffective or become ineffective due to later circumstances or if both Parties mutually agree that there is a loophole in the Agreement, the validity of the remaining provisions shall not be affected thereby. The contracting Parties agree that in such a case the Agreement shall be supplemented by valid provisions corresponding to the legal and economic purpose of the invalid or incomplete provisions of the Agreement.

## X. Governing Law

This Agreement shall be governed exclusively by the substantive laws of the Federal Republic of Germany excluding any conflict of law provisions. This shall also apply to the issue of the conclusion of this Agreement as well as to the legal consequences of its after-effect.

## XI. Arbitration

1. The Parties shall endeavour to amicably settle any disputes arising out of or in connection with the performance of this Agreement. If an amicable settlement cannot be reached, the contracting Parties shall submit all disputes arising out of or in connection with the present Agreement or its validity or also the validity of this arbitration clause to an arbitration tribunal consisting of one or a plurality of arbitrators in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce, ousting the jurisdiction of the courts. The German language shall be used in the arbitral proceedings. The place of arbitration shall be Braunschweig/Germany.
2. Summary proceedings shall expressly be excluded from this arbitration clause and shall be reserved to the courts of law.
3. The arbitration tribunal shall be bound by the award of the expert arbitrator referred to in Article III. of this Agreement.

## XII. Counterparts

This Agreement shall be executed in two counterparts in German and shall be legally binding exclusively in the German version.

Place, date
Offerer

Place, date
Manufacturer