



# Non-Disclosure Agreement (NDA)

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Non-Disclosure Agreement between

Gremotool GmbH, Wilerstrasse 3, CH-9200 Gossau

and

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(together referred to as the „Parties“)

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## 1 SUBJECT MATTER

### 1.1 Purpose and Scope

This Agreement governs the confidential treatment of all information disclosed to the Parties, or otherwise made available to them, in the course of initiating, preparing, or carrying out their cooperation. The economic and legal independence of the Parties remains unaffected.

### 1.2 Definition of Confidential Information

Confidential Information shall mean all non-public information, whether disclosed orally, in writing, electronically, or in any other form, including but not limited to:

- technical information, drawings, specifications, CAD/CAM data, bills of materials, manufacturing processes, test and measurement data
- technical product data and workpiece-related operational data (including parameters, machining strategies, tolerance and ISO-GPS information, process and operating values)
- commercial information (e.g. prices, terms, calculations, quotations, contracts, strategies)
- information relating to customers, suppliers, employees, know-how, trade and business secrets
- all reproductions, evaluations, analyses, derivations, and summaries thereof.

### 1.3 Affiliated Companies and Third Parties

The protection afforded by this Agreement also extends to confidential information belonging to affiliated companies of the Parties and to their business partners, irrespective of whether such information is disclosed directly or indirectly. An affiliated company shall mean any entity that directly or indirectly controls a Party, is controlled by a Party, or is under common control with a Party (control meaning, in particular, the ownership of a majority of voting or equity interests, or the authority to direct business operations).

### 1.4 Labelling and Form of Disclosure

A specific designation as "confidential" is not a prerequisite for protection; information that is not marked as such, or that is communicated orally, shall also be deemed confidential if its confidential nature is apparent from its content or if it is subsequently confirmed in writing within a reasonable period (e.g. 14 days).

### 1.5 Language and Prevailing Version

The Parties acknowledge and agree that the German version of this Agreement is the sole legally binding and authoritative version. The English version is a non-binding translation provided solely for convenience and understanding. Even if the English version is executed, the German version shall prevail in all respects, including in case of interpretation, dispute or inconsistency.

## 1.6 Exclusions

Information shall not (or no longer) be considered confidential to the extent that the receiving Party can demonstrate that:

- a) it is, or becomes, publicly available without any breach of this Agreement;
- b) it was lawfully known to the receiving Party prior to disclosure;
- c) it was lawfully disclosed by an authorised third party without breach of any confidentiality obligation; or
- d) it was independently developed by the receiving Party without reference to any Confidential Information.

## 1.7 Data Protection / Product Data

The Parties acknowledge without reservation that technical product data and workpiece-related operational data constitute Confidential Information. The Parties undertake to comply with the applicable data protection laws (in particular the Swiss Federal Act on Data Protection (FADP) and related ordinances) and to ensure data integrity. Access to personal data and product-related data shall be granted strictly on a need-to-know basis and solely for the contractually agreed purpose.

## 1.8 No Licence / Rights to Information

This Agreement does not grant any intellectual property rights, licences, or rights of use in relation to the Confidential Information. All rights remain with the disclosing Party.

## 1.9 Purpose Limitation

Confidential Information may be used exclusively for the agreed purpose of the cooperation. Any other use, disclosure, or publication is prohibited unless prior written consent has been obtained.

# 2 MAINTAINING CONFIDENTIALITY

## 2.1 Duty of Confidentiality

The Parties undertake to keep strictly confidential all Confidential Information disclosed to them or obtained in the course of their cooperation (including technical know-how as well as trade and business secrets) and shall not, in whole or in part, make such information accessible to third parties or otherwise disclose it.

## 2.2 Temporal Scope

The duty of confidentiality applies already prior to the conclusion of the contract (during the initiation phase) and continues throughout the cooperation as well as for five (5) years after the termination of the contractual relationship. Statutory mandatory longer protection periods (e.g. for trade and manufacturing secrets) remain reserved.

## 2.3 Permitted Disclosure / Statutory Obligations

The foregoing shall not apply to disclosures required under mandatory statutory duties to provide information, or pursuant to orders issued by authorities or courts, nor to disclosures necessary for the protection of a Party's legitimate rights in legal proceedings. In such cases, the disclosing Party shall, to the extent legally permissible, inform the other Party in advance and without delay, and shall limit the scope and recipients of the disclosure to the minimum necessary ("need-to-disclose").

## 2.4 Exceptions to Confidentiality Protection

The duty of confidentiality does not apply to information that the receiving Party can demonstrate:

- a) is, or becomes, publicly available without breach of this Agreement;
- b) was already lawfully known to the receiving Party prior to disclosure;
- c) was lawfully received from an authorised third party without breach of any confidentiality obligation; or
- d) was independently developed by the receiving Party without reference to the other Party's Confidential Information.

The burden of proof for the existence of an exception lies with the receiving Party.

## 2.5 Standard of Care and Access Restrictions

The Parties shall protect Confidential Information using appropriate technical and organisational measures (at least in line with industry-standard levels of care) and shall restrict access strictly on a need-to-know basis to individuals who require such information for the proper performance of contractual duties and who are themselves bound by written or statutory confidentiality obligations.

## 2.6 No Waiver Through Lack of Marking

The protection of Confidential Information applies irrespective of whether it is marked as "confidential", provided its confidential nature is apparent from its content or is confirmed in writing within a reasonable period following disclosure.

## 2.7 Continued Application to Copies, Derivatives & Summaries

The duty of confidentiality extends to all reproductions, evaluations, analyses, derivations, and summaries of the Confidential Information, irrespective of their form or medium.

## 2.8 No Publication / References

Any public use (e.g. marketing, references, case studies) or disclosure to third parties (e.g. subcontractors) is permitted only with the prior written consent of the disclosing Party; mandatory statutory disclosures pursuant to Section 2.3 remain reserved.

# 3 CONTRACTUAL PENALTY

## 3.1 Trigger and Purpose

If the receiving Party breaches its obligations under this Agreement (in particular confidentiality, purpose limitation, access restrictions, or data integrity), it shall owe the disclosing Party a contractual penalty. The contractual penalty serves to secure and enforce the contractual obligations and to provide a lump-sum compensation for the type of damage and effort typically arising from such breaches.

## 3.2 Amount and Counting Method

The contractual penalty corresponds to the actual damage incurred and proven by the disclosing Party, including loss of profit, internal and external expenses for damage mitigation, costs of fact-finding, forensics, legal enforcement (including legal fees and court costs), as well as reasonable expenses for restoring confidentiality.

Each individual unauthorised disclosure, access, use, or transmission to a third party, as well as each separate incident, shall be deemed a separate breach. Continuing or repeated violations shall be considered multiple breaches if they are based on different acts, recipients, or periods of time.

## 3.3 Judicial Reduction (Art. 163 para. 3 Swiss Code of Obligations)

The statutory right of judicial reduction remains reserved. The Parties acknowledge that an excessively high contractual penalty may be reduced; the structure of this clause reflects the Parties' interest in protection, the difficulty of quantifying damages, and the preventive function of the penalty.

### **3.4 Independence from Other Legal Remedies**

The assertion of the contractual penalty may be made alternatively or cumulatively with other legal remedies (in particular injunctive relief, removal of infringements, interim measures, damages, disgorgement of profits, and rights to information and accounting). Double compensation is excluded; the contractual penalty shall be credited against equivalent damage positions to the extent required by law or ordered by a court.

### **3.5 Fault and Attribution**

The contractual penalty is owed in the event of a culpable breach (intent or negligence). The receiving Party shall be liable for the acts or omissions of its corporate bodies, employees, auxiliary persons, and subcontractors as if they were its own.

### **3.6 Set-off and Additional Damages**

The disclosing Party may claim damages exceeding the contractual penalty. The contractual penalty shall be credited against the proven damage to the extent required by law or ordered by a court; otherwise, cumulative claims remain permissible in accordance with applicable law.

### **3.7 Duty to Cooperate in Case of Incidents**

The receiving Party shall immediately report any justified suspicion of unauthorised use or disclosure, take appropriate remedial measures (containment, recall, deletion, access restrictions), and support the disclosing Party in fact-finding, securing evidence, and enforcing rights.

### **3.8 No Implied Waiver**

Failure to assert the contractual penalty in an individual case shall not constitute a waiver for future cases; partial payments or negotiations do not constitute a waiver of further claims.

## **4 AMENDMENTS**

### **4.1 Written Form**

Amendments and additions to this Agreement shall only be valid if made in writing and signed by both Parties. This requirement also applies to any amendment or waiver of this written-form clause itself.

## 4.2 No Implied Amendment

Oral agreements, emails, silence, or actual conduct shall not constitute an amendment to this Agreement and shall not create any rights or obligations unless expressly and demonstrably agreed in writing.

## 4.3 Partial Invalidity / Severability Clause

Should any provision of this Agreement be wholly or partially invalid or unenforceable, the validity of the remaining provisions shall remain unaffected. The Parties undertake to replace the invalid or unenforceable provision with one that most closely reflects the economic purpose of the original provision.

## 4.4 Execution of the Agreement

This Agreement shall be executed in two counterparts of equal content. Each Party shall receive one counterpart.

# 5 TERMINATION

## 5.1 Commencement and Duration

This Agreement enters into force upon signature by both Parties. It applies for the duration of the project/cooperation and – unless otherwise agreed – for an indefinite period.

The Agreement shall automatically terminate 36 months after signature unless it is terminated earlier in accordance with Section 5.2.

## 5.2 Ordinary Termination

Either Party may terminate this Agreement at any time by giving 30 days' written notice with effect at the end of a calendar month (email with a qualified electronic signature or handwritten signature).

## 5.3 Extraordinary Termination for Good Cause

Either Party may terminate this Agreement with immediate effect for good cause. Good cause shall in particular be deemed to exist if:

- a) the other Party materially breaches its obligations under this Agreement (e.g. confidentiality, purpose limitation, access restrictions, data integrity) and fails to remedy the breach immediately despite written warning;
- b) bankruptcy or insolvency proceedings are opened over the assets of the other Party, a composition or restructuring procedure is initiated, or the Party is insolvent;
- c) the other Party becomes subject to regulatory or criminal orders that render performance of the Agreement impossible or materially jeopardise the protection of Confidential Information.

## 5.4 Survival of Obligations

The obligations set out in this Agreement regarding confidentiality, purpose limitation, data integrity, non-disclosure, and return/deletion shall remain in force for five (5) years after termination of the Agreement. Statutory mandatory longer protection periods (in particular for trade and manufacturing secrets; unlimited protection) remain reserved.

## 5.5 Return, Deletion and Blocking

Upon termination of this Agreement, all Confidential Information received from the disclosing Party, including copies, derivatives, evaluations, and backups, shall be promptly:

- a) returned or – where return is impossible or impractical – securely deleted or destroyed; and
- b) upon request of the disclosing Party, the deletion/destruction shall be confirmed in writing (including a brief description of the measures taken).

Exceptions: Statutory retention obligations, regulatory orders, and technically unavoidable archive/backup copies within standardised backup cycles remain permissible, provided that such information is retained solely for evidence/compliance purposes, access-restricted (need-to-know, logging), and automatically deleted once the applicable retention periods expire.

## 5.6 Enforcement After Termination

Termination of this Agreement does not affect the Parties' right to claim contractual penalties (Section 3), injunctive relief, removal of infringements, interim measures, or damages. Claims already accrued remain unaffected.

## 5.7 No Waiver, No Settlement

Termination shall not constitute a waiver of claims arising from past or ongoing breaches. Settlement negotiations, silence, or partial payments do not constitute a settlement unless expressly agreed in writing.

## 6 APPLICABLE LAW, DISPUTE RESOLUTION AND JURISDICTION

### 6.1 Applicable Law

This Agreement is governed exclusively by substantive Swiss law, to the exclusion of conflict-of-law rules (in particular the Swiss Private International Law Act, to the extent waivable).

### 6.2 Amicable Settlement / Mediation

In the event of disagreements, the Parties shall first seek an amicable resolution. If no solution is reached within 30 calendar days after written notification of the dispute, either Party may propose the initiation of a mediation procedure before a mutually agreed neutral institution (e.g. Swiss Bar Association, SBA Mediation Office). Unless otherwise agreed, the costs of the mediation shall be borne equally by the Parties. Initiating mediation does not prevent either Party from applying for interim measures.

### 6.3 Jurisdiction

Subject to an agreed mediation, the ordinary courts at the registered office of Gremotool GmbH (Canton of St. Gallen, Switzerland) shall have jurisdiction over all disputes arising out of or in connection with this Agreement. Mandatory statutory places of jurisdiction remain reserved.

### 6.4 Place of Performance

Unless otherwise provided in this Agreement, the place of performance shall be the registered office of Gremotool GmbH.

### 6.5 Interim Measures

Notwithstanding Section 6.2, the Parties are entitled to apply for interim measures (including ex parte measures) before the competent courts, in particular to secure confidentiality, injunctive, or removal claims.

### 6.6 Preservation of Evidence and Confidentiality in Proceedings

The Parties shall cooperate reasonably in the preservation of evidence and shall maintain the confidentiality of information disclosed in any proceedings. Disclosure shall be limited to what is strictly necessary.

## 7 SIGNATURE

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Place, Date\_\_\_\_\_

Place, Date\_\_\_\_\_

Gremotool GmbH, CH-Gossau

Company, Location\_\_\_\_\_

René Baumann

First and Last Name\_\_\_\_\_

Philipp Hugentobler

First and Last Name\_\_\_\_\_

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