

ACPS AUTOMOTIVE	Non-disclosure Agreement	ACPS-STD-P-008
VICE PRESIDENT GLOBAL PURCHASING		REVISION: 025

Non-disclosure Agreement

between

ACPS Automotive GmbH, Bertha-Benz-Straße 2, 74379 Ingersheim, Germany

- hereinafter referred to as “**ACPS Automotive**” -

and

#, [Address]

- hereinafter referred to as the “**SUPPLIER**” -

- hereinafter also referred to individually as a “**Partner**” and jointly as the “**Contractual Partners**” -

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Preamble

For the purposes of examining whether to enter into a business relationship, the Contractual Partners need to exchange confidential information, as defined in Clause 1 below, which has hitherto been known neither as a whole nor in the form of any details and could not be obtained easily and, therefore, is of economic value and has been protected by the Partner by means of reasonable non-disclosure measures. Now therefore, the Contractual Partners enter into the following mutual Non-disclosure Agreement (hereinafter referred to as the “**NDA**”):

§ 1

Subject Matter of the Agreement/Definitions

- (1) For the purposes of this NDA, confidential information shall mean all information (be it in writing or in an electronic, verbal, digitally embodied or other form) that is disclosed by a Partner to the respective other Partner and its affiliated companies (*verbundene Unternehmen*), as defined in Sections 15 et seq. German Stock Corporation Act (*AktG*), (hereinafter referred to as “**Confidential Information**”) and is marked as confidential or must be regarded as confidential due to its content or has been derived from Confidential Information provided by a Partner (e.g. copies).

- (2) In particular, the Confidential Information shall include all (i) financial (e.g. prices, financial plans or tax information), (ii) economic (e.g. business relations, customer data, business strategies, business plans or distribution channels), (iii) legal (e.g. contracts) and (iv) technical information (in particular, operational and trade secrets, inventions, insights, experiences, know-how, manufacturing processes, machine parameters, design of tools, raw materials used, technologies, plans, drawings, specifications, designs, analyses, studies or concepts), (v) regardless of whether the information relates to the Partner itself or its managing directors, employees or customers, and (vi) the conclusion of this NDA and its contents.

- (3) The Confidential Information does not include information:
 - (a) which was publicly known or generally available already before it was disclosed or delivered by the Partner, or which becomes publicly known or generally available at a later date other than through a breach of any non-disclosure obligation;

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- (b) which was demonstrably known to the Partner without a breach of any non-disclosure obligation already before it was disclosed by the respective other Partner;
 - (c) which was obtained by a Partner itself without any use of, or reference to, Confidential Information of the respective other Partner; or
 - (d) which is delivered or made available to the Partner by an authorised third party without a breach of any non-disclosure obligation.

§ 2

Non-disclosure and Confidentiality Obligations

- (1) By signing this NDA, the Contractual Partners undertake to treat all Confidential Information of which they have obtained knowledge as strictly secret and confidential. Neither Partner may use Confidential Information for its own business purposes or reverse-engineer any Confidential Information without the consent of the respective other Partner; in particular, Confidential Information may not be used to obtain any industrial property rights. This NDA shall also apply to all affiliated companies of the Contractual Partners.
- (2) All Confidential Information must be protected from unauthorised third-party access by appropriate non-disclosure measures. When processing Confidential Information, all legal requirements regarding the protection of trade secrets (according to the German Trade Secrets Protection Act (*GeschGehG*)) and data protection (according to the German Federal Data Protection Act (*BDSG*) and the European General Data Protection Regulation (GDPR)) must be complied with. Confidential Information must be sent in a secure manner (for example, via an ODETTE data line or by using encrypted or password-protected files).
- (3) Confidential Information may only be disclosed to third parties (e.g. employees, legal or tax advisers) who are bound by contractual or legal obligations of confidentiality that correspond to this NDA.
- (4) If, due to any statutory, judicial or official provisions or orders, a Partner is required to disclose any Confidential Information, in whole or in part, it must use all reasonable endeavours to reduce the scope of the disclosure to a minimum; the relevant Partner shall notify the other Partner without undue delay in writing (to the extent permitted by law) and assist the latter as best as possible in taking legal action against the disclosure.

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- (5) Upon termination of the cooperation, the Confidential Information must be returned in full or be irretrievably destroyed or erased, unless this would conflict with any retention obligations that have been agreed between the Contractual Partners or with any statutory retention obligations or the Confidential Information is needed to perform a subsequent contract (cf. Clause 4 below) or erasing or returning the Confidential Information is not possible for technical reasons (e.g. because of automated backups in a backup file). Upon request, the destruction or erasure must be confirmed in writing. Where Confidential Information has been stored electronically, it shall be destroyed by irretrievably destroying the data storage medium or by completely and permanently erasing the files in the most secure manner according to the state of the art.

- (6) No ownership or licence rights, rights of use or other rights shall be granted by this NDA or through the delivery of Confidential Information. Such rights can only be acquired by separate agreement.

§ 3
Consequences of Non-compliance

If a Partner, or a third party for whom a Partner is liable pursuant to Sections 31, 278, 831 German Civil Code (*BGB*), breaches any of the obligations under this NDA, the breaching Partner must pay a contractual penalty in a reasonable amount unless it is not responsible for the breach. The amount of the contractual penalty shall be determined by the injured Partner at its reasonable discretion, pursuant to Section 315 German Civil Code (*BGB*). The reasonableness of the contractual penalty so determined may be reviewed by the competent court in the event of a dispute. The injured Partner's claims according to statutory law, in particular claims for injunctive relief or for damages (which shall be reduced by the contractual penalty already paid), shall remain unaffected.

§ 4
Effective Date, Term of the Agreement

- (1) This NDA shall take effect upon signature by both Contractual Partners, the date of the last signature being decisive, and shall be entered into for a period of five years (hereinafter referred to as the "**Fixed Term**").

- (2) If any agreement regarding further cooperation, such as a purchase agreement, a contract for work and services or a service agreement (hereinafter referred to as "**Subsequent Contract**"), is entered into between the Contractual Partners during the Fixed Term or after the Fixed Term has ended, the Contractual Partners agree to renew

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the non-disclosure obligation for the term of the Subsequent Contract. The right to terminate this NDA with due notice for any or no reason during the Fixed Term or the term of the Subsequent Contract shall be excluded.

- (3) The non-disclosure obligation shall end three years after the expiry of the Fixed Term (cf. Clause 4(1) above) or after the termination of the Subsequent Contract (cf. Clause 4(2) above). If either Partner lawfully terminates this NDA early for good cause, the non-disclosure obligation shall end three years after the notice of termination was received.

§ 5 Final Provisions

- (1) Should any provision of this NDA be or become invalid or impracticable, in whole or in part, or should this NDA contain an omission or gap, this shall not affect the validity of the remaining provisions hereof. Any invalid or impracticable provision shall be deemed replaced with such valid and practicable provision as comes closest to the purpose of the invalid or impracticable provision. In the event of an omission or gap, a provision shall be deemed agreed which corresponds to what would have been agreed according to the purpose of this NDA if the Contractual Partners had considered the matter from the start.
- (2) Verbal ancillary agreements in relation to this Agreement have not been made. Any amendments and additions to this Agreement must be made in writing. This shall also apply to this requirement of the written form itself. This NDA shall also be binding on the Contractual Partners' legal successors.
- (3) This NDA shall be governed by, and construed in accordance with, German law.
- (4) The exclusive place of jurisdiction for all disputes arising from or in connection with this NDA shall be the registered office of ACPS Automotive. However, ACPS Automotive shall also be entitled to commence legal proceedings at the registered office of the SUPPLIER and at any other admissible place of jurisdiction.

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For ACPS Automotive GmbH:

signature

signature

name in letters

name in letters

Legal Counsel

Supplier Quality Manager

title

title

place, date

place, date

For supplier:

signature

signature

name in letters

name in letters

title

title

place, date

place, date