

**Non-Disclosure Agreement**

between

**Bertrandt AG**

Birkensee 1, 71139 Ehningen

- hereinafter: "Bertrandt" -

and

- hereinafter: "Contractor" -

**Section 1: Confidentiality**

(1) Bertrandt and/or companies affiliated with Bertrandt in accordance with Sections 15 et seq. of the German Companies Act [AktG] shall commission the Contractor to provide services in the area of

on a recurring basis. As part of these assignments, the Contractor, its employees and vicarious agents may be granted access to confidential data, processes, plans, documents, experience and information of Bertrandt, or the companies affiliated with Bertrandt in accordance with Sections 15 et seq. of the German Companies Act [AktG] (hereinafter collectively: "information").

(2) The Contractor shall treat this information as strictly confidential and, in particular, refrain from disclosing it to third parties. Any disclosure of such information to a third party shall require the prior written consent of Bertrandt.

(3) In order to protect the information, the Contractor shall take all suitable precautions to ensure that the information is kept confidential. Therefore, the Contractor shall, in particular, impose strict confidentiality obligations on its employees and vicarious agents. In particular, the Contractor will ensure that:

- only authorised persons have access to the information/data;
- no details and/or information about the relevant data is disclosed to third parties;

- no third parties can gain access to the data in any way whatsoever while the contractual work is being carried out;
  - no copies or reproductions are made using any technical medium whatsoever, unless Bertrandt gives its prior written consent thereto;
  - the provisions set out in this Agreement are passed on by the Contractor to its employees and vicarious agents by means of suitable contracts, and that the employees and vicarious agents acknowledge these as binding for themselves.
- (4) Where the Contractor is granted access to existing computer systems, networks and/or data connections of Bertrandt, the Contractor shall refrain from all actions that are likely to impair the functioning of Bertrandt's systems and/or to render them inoperable. In addition, Bertrandt's existing computer systems may only be used by the Contractor for the purpose of carrying out its contractual work.

## **Section 2: Surveillance, contractual penalty**

- (1) For the duration of the business relationship between the Parties, Bertrandt, the companies affiliated with Bertrandt in accordance with Sections 15 et seq. of the German Companies Act [AktG] and/or the end customer of Bertrandt or the companies affiliated with Bertrandt shall be entitled to obtain access to the Contractor's business premises or the location at which the contractual work is carried out in order to inspect the measures taken by the Contractor; this shall be subject to a two-day notice period and with the inspection taking place during normal business hours.
- (2) If the obligations imposed in this Agreement should be violated by the Contractor and the information is thus obtained by unauthorised third parties in tangible, oral or other form, the Contractor shall be obliged to pay flat-rate damages in the amount of € 50,000.00 (in words: fifty thousand euros). If Bertrandt can provide evidence that the actual damages suffered by it were higher, the actual damages shall be compensated, considering the flat-rate damages; where the Contractor can provide evidence of no damages or only minor damages, only the damages thus evidenced shall be reimbursed.
- (3) The burden of proof that any disclosure has occurred through no fault of the Contractor shall be borne by the Contractor.

## **Section 3: Exemptions**

- (1) The aforementioned confidentiality obligation shall not apply where the relevant information:
- is already known to the Contractor at the time of transmission;

- is already generally known or accessible or becomes generally known or accessible through no fault of the Contractor;
- is or has been lawfully communicated or made accessible to the Contractor by a third party;
- must be disclosed pursuant to legal regulations or official orders.

The burden of proof in respect of the existence of the aforementioned circumstances shall be borne by the Contractor.

#### **Section 4: Liability, warranty**

- (1) This agreement shall not constitute any entitlement of the Contractor to the transfer of information of any kind.
- (2) Bertrandt does not accept any liability for the correctness of the information provided. In principle, the information shall remain the property of Bertrandt, and its return may be requested at any time. No rights in respect of the transmitted information may be asserted and, in particular, the Contractor shall not be entitled to register rights of any kind in respect of the information.
- (3) The Contractor shall be liable for the negligence of third parties or parties engaged by the Contractor in any case as though the negligent action was taken by the Contractor itself. No exculpatory evidence shall be possible.
- (4) The Non-Disclosure Agreement may be terminated at the end of any given quarter subject to a notice period of three (3) months. In such a case, the confidentiality obligations shall continue to apply and shall expire at the end of the fifth calendar year following the termination of the cooperation or the Non-Disclosure Agreement becoming legally ineffective, with the respective period calculated based on the event that occurs later.

#### **Section 5: Final provisions**

- (1) The Parties hereby conclude this Agreement as a real contract for the benefit of third parties according to Sections 328 et seq. of the German Civil Code [BGB] as follows: Bertrandt's rights with regard to confidential information regulated in this Agreement shall apply equally to all companies affiliated with Bertrandt in accordance with Sections 15 et seq. A list of companies affiliated with Bertrandt is available in the current version on the Supplier Portal accessible at: [Annex: List of authorized companies](#). The list, as amended, shall form part of this Agreement. The rights and obligations of the Contractor arising from this Agreement with regard to the information transmitted may be asserted by the affiliated companies in the same

way as by Bertrandt itself. This shall also apply to any violations of the Contractor's obligations under this Agreement. Bertrandt shall be entitled to update the list of Bertrandt's authorised affiliated companies at regular intervals and, if necessary, add further companies to the list.

- (2) Should current or future provisions of this Agreement be invalid or unenforceable, either in whole or in part, or lose their legal validity or enforceability at a later date, this shall not affect the validity of the remaining provisions of this Agreement. In this case, each contractual partner may demand that such a valid provision be agreed that comes closest to the purpose on which the invalid or unenforceable provision is based. The same shall apply to any regulatory gaps in this Agreement.
- (3) The Parties agree on the exclusive application of German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods and all other conflict-of-law rules. Stuttgart is hereby agreed as the exclusive place of jurisdiction for all disputes arising from or in connection with this Agreement, including matters related to its conclusion and termination, unless another place of jurisdiction is mandatory pursuant to statutory provisions. However, Bertrandt shall be entitled to take legal action against the Contractor at any other admissible place of jurisdiction.
- (4) This Agreement contains the entirety of the arrangements agreed between the Parties with regard to the subject matter of this Agreement. Changes and additions must be made in writing; this also applies to changes to this written form requirement itself.

Ehningen \_\_\_\_\_, dated: \_\_\_\_\_

\_\_\_\_\_  
Bertrandt

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Bertrandt

Annex: List of authorised companies