

Confidentiality Agreement

between

– hereinafter the “Supplier” –

and

**INDEX-Werke GmbH & Co. KG
Hahn & Tessky
Plochinger Strasse 92
D-73730 Esslingen am Neckar, Germany**

– hereinafter “INDEX” –

Confidentiality Agreement

1 Purpose of the Agreement

In the course of working together, the Supplier and INDEX may disclose confidential information to one another. This information is to be protected by this Agreement. The disclosing party is hereinafter referred to as the **“Disclosing Party”** and the party receiving the confidential information as the **“Recipient”**.

2 Confidentiality Obligation

- 2.1 The Recipient agrees to treat any information provided to it by the Disclosing Party—whether verbally, in writing, or in any other form, or otherwise made available—regardless of its content (e.g., price lists, customer data, other data, samples, drawings, and other technical and commercial information, business intentions, problems, solutions, software, and documents relating to industrial property rights), which is designated as “confidential,” “secret,” or similar, or which by virtue of its nature is clearly to be kept secret (hereinafter collectively referred to as “Confidential Information”), as entrusted trade secrets and to keep it confidential vis-à-vis **Third Parties**.
- 2.2 Information is not Confidential Information where the Recipient can demonstrate that the information: (i) was already publicly known before it was made available to the Recipient; (ii) becomes publicly known through no fault of the Recipient; (iii) was already lawfully in the Recipient’s possession at the time it was made available; or (iv) was made available to the Recipient by a third party entitled to disclose the information without breaching a confidentiality obligation.
- 2.3 Confidential Information may be used by the Recipient solely for the purpose specified in Section 1 and must not be used or exploited for any other purposes, in particular for the Recipient’s own commercial purposes, and may not in particular be exploited under intellectual property law. Unless otherwise prohibited by copyright law or other applicable laws, the Recipient is not permitted to obtain any trade secret by observing, examining, disassembling, or testing products or items provided by the Disclosing Party.
- 2.4 The Recipient shall make the Confidential Information available only to those employees who absolutely need the information to fulfill the purpose under Section 1.1. The Recipient shall conclude corresponding written confidentiality agreements with the employees. For clarification: freelancers are not employees, but are third parties within the meaning of this Agreement.

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- 2.5 The Recipient is entitled to disclose the information where the Disclosing Party has given prior written consent. The Recipient is also entitled to disclose the Information if required by law or by court or official orders; the Recipient must—to the extent permitted by law—notify the Disclosing Party in writing as soon as possible and must limit the scope of the disclosure as far as possible.
- 2.6 The parties may only use their business relationship for advertising purposes with the prior written consent of the other party.
- 2.7 The obligations under this Section 2 shall remain in effect for a period of five years after the end of this Agreement. If the parties work together under a contract between the parties, these obligations shall remain in effect for a period of five years following the end of the parties working together under contract. Statutory obligations of confidentiality, in particular under the German Trade Secrets Protection Act (GeschGehG), remain unaffected.

3 No transfer of rights

The disclosure of information under this Agreement shall not constitute prior art with respect to any intellectual property applications filed by the Disclosing Party. The Disclosing Party reserves the right to apply for protection for the Confidential Information sent to the Recipient. The disclosure of Confidential Information does not confer on the Recipient the right to file for protection itself. The Recipient shall not derive any rights of prior use from knowledge of Confidential Information of the Disclosing Party.

4 Protection of Confidential Information

- 4.1 The Recipient shall store all documents, files, data media, and other materials containing Confidential Information that are provided by the Disclosing Party separately from its other documents and shall take special measures to protect them against unauthorized access.
- 4.2 The Recipient shall protect Confidential Information stored in data processing systems using possible state-of-the-art technical measures to prevent both external access by third parties and unauthorized use of the Information by employees. Where data is personal data, technical and organizational security measures must be implemented in accordance with Article 32 GDPR, and employees must be placed under obligation to ensure data integrity and confidentiality in accordance with Article 5(1)(f) GDPR. If there is suspicion of unauthorized access to information, the Disclosing Party must be informed immediately on

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becoming aware of the situation; in the event of a significant security incident, the Disclosing Party must be informed within 24 hours.

- 4.3 On request by the Disclosing Party, the Recipient shall, at the Disclosing Party's option, either immediately destroy all Confidential Information, including any copies made, or return such Confidential Information to the Disclosing Party. The Recipient shall also confirm in writing that it no longer possesses any Confidential Information.
- 4.4 Electronically stored information must be permanently deleted if it cannot be returned or if returning it is impractical; confirmation of deletion must be provided in writing on request. The obligation to delete excludes IT backup copies that are strictly necessary; however, they shall remain subject to the obligation of confidentiality without restriction and for an indefinite period.

5 Term

This Confidentiality Agreement shall enter into force on being signed by the parties. The obligations of the Recipient under this Agreement—including, in particular, the contractual penalty—shall end when the last disclosed Confidential Information has become publicly known and readily accessible without any breach of this Agreement or any other legal obligation. Statutory obligations of confidentiality, in particular under the German Trade Secrets Protection Act (GeschGehG), remain unaffected.

6 Contractual Penalty

- 6.1 The Recipient must pay a contractual penalty of up to €25,000.00 for each breach of the obligations under Section 2, unless the Recipient is not at fault for the breach. The amount of the contractual penalty shall be determined by the Disclosing Party at its reasonable discretion (Section 315 of the German Civil Code (BGB)) and shall, on request by the Recipient, be reviewed by the competent court to determine whether it is reasonable.
- 6.2 In the event of a continuing breach, each month or portion thereof shall be deemed a separate breach.
- 6.3 The right to claim damages remains reserved in each case; the contractual penalty shall be credited to the claim for damages.

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7 Final Provisions

- 7.1 Unless expressly provided for otherwise, the written form requirement specified in this Agreement is also satisfied by text form. Any amendments and/or supplements to this Agreement must be in writing; this also applies to this written form clause itself. No verbal ancillary agreements have been made.
- 7.2 This Agreement is governed by German law. All disputes arising from or in connection with this Agreement shall be settled definitively in accordance with the Rules of Arbitration of the German Institute of Arbitration (DIS), excluding the ordinary courts. The number of arbitrators shall be determined in accordance with Section 10.2 of the DIS Rules of Arbitration (2018). The place of arbitration shall be Stuttgart; the language of the proceedings shall be German.
- 7.3 If any provision of this Agreement is invalid in whole or in part, the remainder of the Agreement shall nevertheless remain valid. The parties agree to replace invalid provisions with valid provisions so that the economic purpose of the Agreement is achieved as far as possible. The same procedure shall apply to any unintended omission by the parties and to any provisions that cannot be fulfilled.

Esslingen,

Place/date

Place/date

[Partner]

[INDEX]

Stamp/signature(s)

Stamp/signature(s)