

Non-Disclosure Agreement  
("Agreement")

between

1. Webasto Roof & Components SE,  
Kraillinger Straße 5,  
82131 Stockdorf,  
Germany,

- „Webasto“ - ,

and

2. Supplier Name:  
  
Supplier Address (Street):  
  
Supplier Address (City):  
  
Supplier Address (Country):

- „Supplier“ - ,

- Webasto and Supplier individually also as „Party“ or jointly as „Parties“ -

## 1. Purpose

- 1.1 Within the scope of the business relationship the above-mentioned Parties intend to disclose Confidential Information generally and for individual nominated projects ("**Purpose**"), which shall be treated confidential according to the provisions of this Agreement.

## 1.2 „Confidential Information“

As defined by this Agreement is all information regardless of whether it is embodied, electronically transmitted or verbally disclosed that is provided by one Party or its Affiliated Companies (as defined below) to the other Party or its Affiliated Companies within the scope of project or that comes to the attention of the other Party by other means, in particular but not limited to all commercial information, intentions, experiences and knowledge, technical information, technical drawings other technical documents as well as materials, goods, samples, prototypes, equipment, machinery, technical processes and other technical know-how, all industrial property rights, copyrights and other legal positions, manuscripts, texts, technical designs, photographs, films, videos, recordings, software, computer programs or similar rights and objects. Confidential Information is also all information already exchanged by the Parties in orders or discussions in the context of the Project prior to the conclusion of this Agreement.

1.3 An “**Affiliated Company**” means a legally independent entity that

- a) holds the majority ownership in one Party or exercises control over one Party, or
- b) is under the control or in the major ownership of one Party, or
- c) is together with one Party under the common Control or in the major ownership of another entity.

“**Control**” thereby means the direct or indirect power of control to exercise a dominant influence on the business management and guidelines of an entity, either by way of holding voting shares, by way of contract, or otherwise.

1.4 The Parties undertake to treat the Confidential Information and this Agreement confidential, i.e. not to disclose these or make them accessible to any third parties unless agreed otherwise in this Agreement or otherwise agreed prior in written and not to divulge and/or use for any other purpose. The Parties shall use at least the same degree of care they use to protect their own confidential information, as long as that is at least reasonable care.

1.5 The receiving Party may only duplicate Confidential Information to the extent that this is absolutely necessary for the Purpose.

## 2. **Exemption of confidentiality**

Obligations concerning the confidential handling of Confidential Information in accordance with this Agreement shall not exist if, and to the extent that, the receiving Party can prove that, in a lawful way, the Confidential Information concerned

- a) was on the date of disclosure, or afterwards became, public knowledge and freely accessible through no fault of the receiving Party, or
- b) was disclosed to the receiving Party by a third party without violation of a non-disclosure obligation, or
- c) was already in the possession of or known to the receiving Party on the date of disclosure, or
- d) was developed by the receiving Party independently of the Confidential Information, or
- e) was expressly approved for publication beforehand in writing by the disclosing Party, or
- f) must be disclosed in accordance with statutory regulations or regulations under administrative law or by reason of an unimpeachable judicial decision, and the receiving Party makes this requirement known to the disclosing Party without undue delay and the extent of the disclosure is restricted as far as possible. The receiving Party will ensure confidential handling of the Confidential Information by the court or the authorities to the best of its ability.

## 3. **Dissemination to employees**

3.1 Each Party undertakes to provide the Confidential Information received from the other Party to the extent required to fulfil the relevant objectives, only to those of its employees or the employees of its Affiliated Companies who need to know the Confidential Information for the Purpose.

- 3.2 The Parties are only allowed to disclose Confidential Information to their employees or employees of Affiliated Companies, if these employees at the time of disclosure have signed a confidentiality agreement according to local and international data protection requirements, i.e. General Data Protection Regulation 2016/679 ( EU-GDPR) ,which has to have at least the same confidentiality obligations as contained in this Agreement or in case the employees are obliged by respective regulation in their employment contracts. Also in this case, the Parties remain responsible towards the disclosing Party that the employees adhere to the confidentiality obligations. This obligation will continue upon termination of employment.

#### **4. Dissemination to third parties**

- 4.1 Subject to the provision of section 4.3, the Parties undertake not to pass on Confidential Information disclosed by the other Party to this Agreement, either directly or indirectly, to third parties, or to make it accessible to third parties. The Parties will take all reasonable precautions to prevent access to Confidential Information by third parties. This includes precautions and measures to protect data against access by third parties.
- 4.2 Affiliated Companies of the Parties, insofar as they are not competitors to the disclosing Party, as well as employees of the Parties and their Affiliated Companies, are not considered as third parties within the meaning of this Agreement.
- 4.3 To the extent that the dissemination of Confidential Information by the receiving Party to third parties is absolutely necessary for the Purpose only and exclusively, the receiving Party will ask for the prior written confirmation of the disclosing Party for the dissemination to a third party. In that case the receiving Party needs to disclose the name of the third party and reason for the dissemination of the Confidential Information. The disclosing Party shall not withhold its consent to the dissemination without cause. Nevertheless, in such a case every third party shall be obliged, corresponding to this Agreement, to the non-disclosure of the Confidential Information received and the receiving Party is responsible for any acts and omissions of the third party

#### **5. Protection of intellectual property**

- 5.1 Each Party shall retain all rights to its Confidential Information disclosed to the other Party including copyright and rights for filing proprietary rights. The receiving Party shall not be entitled to use the Confidential Information in order to file an application for a patent or other proprietary right; the receiving Party shall on request transfer any patents or other proprietary rights which are based on the Confidential Information and that were filed or granted in breach of this Agreement to the disclosing Party free of charge. The disclosure and utilization of Confidential Information shall not create a right based on prior use for the receiving Party.
- 5.2 No rights in particular, but not limited to property rights of any kind, nor options for such rights shall be granted by this Agreement or by the mutual disclosure and/or transfer of Confidential Information irrespective of whether proprietary rights or rights to use exist for it or not.

#### **6. Liability**

- 6.1 The disclosing Party shall not accept any liability for defects or damages with regard to the accuracy, freedom from errors, freedom from proprietary rights of third parties, completeness, or usability of the disclosed Confidential Information, unless the disclosing Party is liable under a mandatory provision of law.

- 6.2 Each Party shall be liable for any disclosure or use of Confidential Information other than as permitted under this Agreement. If and when a Party passes on or makes available Confidential Information to its Affiliated Companies pursuant to section 1.3 or employees or third parties, the Party shall be liable for any acts or omissions committed by such Affiliated Companies, employees or third parties to the same extent as for its own acts and omissions. The same applies when an Affiliated Company ceases to be an Affiliated Company or the employment contract with the employee is terminated.
- 6.3 The Parties acknowledge that any disclosure of Confidential Information by the receiving Party in breach of this Agreement may cause damages to the disclosing Party, which, if duly proven, will be indemnified by the Receiving Party.

## **7. Duration**

- 7.1 This Agreement will come into force upon signature by both Parties and shall remain in full force and effect for an indefinite term. Each Party may terminate the agreement with a notice period of 6 months. However, after termination of this Agreement the Receiving Party will still be obliged to keep the Confidential Information as confidential according to the provisions of this Agreement for as long as the Confidential Information is qualified as a business secret under local and international law on the protection of trade secrets and/or law against unfair competition. The provisions of this Agreement shall apply retroactively to any Confidential Information disclosed or received in relation to the Purpose prior to signature of this contract.
- 7.2 The receiving Party undertakes to keep and safeguard the disclosing Party's Confidential Information, prevent any unauthorized use or disclosure, and ensure proper and secure storage of the Confidential Information. This also includes technical and organizational measures for data protection and cyber security.
- 7.3 The before mentioned also includes intellectual property rights.
- 7.4 The Parties are obliged to compliance with the international and national Data Protection Regulations, e.g. EU-GDPR.

## **8. Return or destruction of Confidential Information**

- 8.1 Upon termination of this Agreement the Parties will, within a reasonable period, return all Confidential Information received from the other Party, or totally destroy all Confidential Information received and confirm same to the other Party upon request, unless other contractual arrangements have been made. The same applies to any duplication which may have been made.
- 8.2 This does not apply to Confidential Information and duplications thereof to the extent that, and as long as, they need to be kept for statutory or other official reasons.
- 8.3 To the extent that such Confidential Information and copies are not returned or destroyed according to section 8.1 the obligation to confidentiality shall apply for an unlimited period subject to the provisions of this Agreement. Nevertheless, for those documents the Parties have to safeguard that all relevant statutory laws including data protection laws remain applicable.

**9. Miscellaneous**

9.1 No verbal side agreements have been made. Any changes and amendments to this Agreement must be in writing to be effective. This also applies to the requirement for the written form itself.

9.2 If not explicitly agreed otherwise in written, this Agreement shall be subject to the law of the state (or country) of the respective Webasto entity having disclosed and or received the confidential information. The provisions of the United Nations Conventions on Contracts for the International Sale of Goods (CISG) and the conflict of law provisions shall be explicitly excluded. Webasto and Supplier submit to the exclusive jurisdiction of the courts at the seat of business of the Webasto. Furthermore, Webasto shall be entitled to take legal action against Supplier also at the courts competent for Supplier's place of business.

Additionally, to the afore mentioned and in the event the Parties cannot agree to the jurisdiction, the local courts of Munich, Germany shall have exclusive jurisdiction and this Agreement, and any disputes thereof shall be subject to the law of the Federal Republic of Germany to the exclusion of its principles of conflict of laws.

9.3 Any disputes arising out of or in relation to this Agreement shall be settled by means of negotiations between the Parties.

9.4 Should any of the provisions in this Agreement be invalid or unenforceable, the remaining provisions shall not be affected thereby. The Parties shall replace the invalid or unenforceable provision by a valid and enforceable provision coming closest to the economic purpose of the replaced provision. The same applies, if any gaps are discovered in this Agreement.

Stockdorf, 17.10.2022

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*Place, Date*

Webasto

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*Name of Supplier*

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ppa. Jan-Kristof Hohenstein, EVP PU

.....  
*Name 1*

.....  
i.V. Werner Vogl, VP Global Category Purchasing

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*Name 2*