**NON-DISCLOSURE**

**AGREEMENT**

by and

between

**Wintersteiger AG**

**Dimmelstrasse 9**

**4910 Ried im Innkreis, Austria**

hereinafter: "WINTERSTEIGER"

and

 **xxx**

**Address**

**Zip code/city/country**

hereinafter: "xxx"

is concluded due to the possibility of business relations involving the exchange of confidential documents (detailed below) between the signatories

under the FOLLOWING TERMS AND CONDITIONS

:

1. **Definitions**
	1. "Disclosing Party" is the party that provides information.
	2. "Receiving Party" is the party that receives information that is in the possession of the Disclosing Party. Any experts, employees, freelance cooperation partners or other staff deployed by the Receiving Party and any other companies, subsidiaries, partner companies, company units or branches that are led by or cooperate with the Receiving Party are also included under the term "Receiving Party".
	3. The Agreement comes into effect on MM/DD/YYYY.
	4. The term "Confidential Information" refers to all drawings, information provided, designs, software, data, business and/or technical reports, annual reports, parts, patent applications, processes, know-how, studies, findings, inventions, ideas, customer lists and designations, sales and marketing information, and similar, excluding
2. information that is public knowledge on the date of the Agreement coming into effect or that becomes public knowledge after the Agreement comes into effect without the Receiving Party being at fault;
3. information that the Receiving Party receives after the Agreement comes into effect from a third party that is not bound to confidentiality towards the Disclosing Party;
4. information regarding which the Receiving Party can provide conclusive evidence that it received the information from an independent source or developed the information itself.
5. **Use of the information**

The information is provided solely for the purpose of fulfillment of orders between the Parties and no rights of any kind to the Confidential Information may be derived from provision of the information. Each Party agrees to keep confidential any Confidential Information that it receives from the Disclosing Party, to treat such Confidential Information as the property of the Disclosing Party and as a business secret, and not to publish or disseminate said Confidential Information to third parties without the prior written approval of the Disclosing Party. The Receiving Party agrees not to sell any products to third parties based partially or fully on such information.

1. **Limited access, return of information**

The Receiving Party warrants that it will limit access to Confidential Information to its executives, office holders and staff to the extent that they need to know such information. Said executives, office holders and staff must be instructed on the non-disclosure obligation pursuant to this Agreement. If the information is disclosed to third parties (sub-contractors), the Receiving Party must ensure that confidentiality is maintained by concluding a non-disclosure agreement with the third party. On written request of the Disclosing Party, the Receiving Party must return all the Confidential Information (and copies thereof) to the Disclosing Party.

If the Receiving Party is not selected as supplier, all Confidential Information must be returned without delay to the Disclosing Party. Retention of copies is expressly forbidden. However, the Receiving Party is entitled to retain one (1) copy of the Confidential Information for the purpose of settling disputes about the Confidential Information following return of the Confidential Information. If such a copy is retained, the Receiving Party must return it without delay to the Disclosing Party once such disputes have been resolved, and treat it as Confidential Information pursuant to Section 2 during the retention period. The provision on contractual penalties pursuant to Section 2 applies in particular in the event of a breach hereof.

1. **Mandatory disclosure**

If the Receiving Party is obliged to disclose Confidential Information pursuant to statutory provisions (through questioning, interrogation, requirement to file documents, court summons, civil investigation procedures or similar processes), the Receiving Party shall inform the Disclosing Party without delay in writing so that the Disclosing Party may take all necessary measures to obtain an injunction to protect its rights or a waiver of its obligations. The Receiving Party agrees only to disclose information that it is mandatory for it to disclose by law and shall make every effort to continue to ensure that the disclosed information is kept confidential.

1. **Remedies**

The Parties agree that if this Agreement or any of its provisions is breached by either of the Parties, the injured party has the right to protect itself against further breach of the violations of this Agreement by obtaining an injunction, and has the right to obtain an injunction without prejudice to further legal measures and without prejudice to a court ruling on compensation for damage caused by breach of this Agreement.

1. **No implied license**

No rights except those expressly agreed may be derived from this Agreement. No part of this Agreement influences the rights of the Parties to the Agreement pursuant to the patent law of any country in any way, and neither Party will obtain any claims or rights of use to existing or future patent rights, patent applications or licenses by reason of this Agreement.

1. **Representation on authority of Parties/signatories**

Both Parties to this Agreement represent and warrant that they are duly constituted pursuant to the statutory provisions of the state or country of their business activities and exercise the necessary rights and powers of the company and rights of possession with respect to the company now led by them and in their possession. Further, both Parties to this Agreement represent and warrant that they are authorized to sign and perform this Agreement as companies and to execute it, and shall be duly bound by the provisions of this Agreement and by law following signature and issue of this Agreement.

1. **Non-waiver clause**

If either Party does not exercise its rights in the event of a breach of this Agreement or its provisions, it will not be deemed a waiver of said rights in the event of a repeated breach of the same provision or the whole Agreement.

1. **Severability clause**

If any of the provisions of this Agreement is or becomes invalid, the validity of the other provisions and conditions of this Agreement will be unaffected.

1. **Title and headings**

The title and section headings of this Agreement are for convenience only and in no way serve to define, limit or extend the scope or purpose of this Agreement or its provisions, and, in particular, have no influence on the interpretation or meaning of the Agreement.

1. **Applicable law**

It is agreed that the relevant court in Ried im Innkreis will have exclusive jurisdiction for any disputes, disagreements or complaints that arise from or in connection with this Agreement. This Agreement is governed by Austrian substantive law. It is expressly agreed that the UN Convention on Contracts for the International Sale of Goods does not apply.

1. **Confirmation of receipt**

The Parties to this Agreement confirm with their signature hereof that they have received a signed counterpart of the Agreement (consisting of four (4) pages with 16 sections) and that each page has been signed or initialed by the authorized representatives of the Parties.

1. **Time limits**

Any information disclosed by either Party pursuant to the provisions of this Agreement must be kept confidential by the Receiving Party for a period of three (3) years after disclosure pursuant to the provisions of Section 2 above, unless the Disclosing Party gives written permission for release of the information prior to that or the Disclosing Party makes the information publicly available by releasing a relevant product.

1. **Termination**

The Agreement is concluded for an indefinite term and may be terminated by either Party in writing by registered mail with a notice period of thirty (30) days, in which event all Confidential Information pursuant to Section 3 must be returned. The provisions pursuant to Section 2 and 13 above in particular remain valid even following termination of the Agreement.

1. **Assignment**

Neither of the Parties is entitled to assign this Agreement or any rights and obligations that arise herefrom to third parties without the prior written agreement of the other Party.

1. **Entire agreement**

This Agreement represents the entire agreement between the Parties on this subject. This version of the Agreement replaces any earlier correspondence and any earlier verbal agreements. Any amendments or additions to this Agreement must be made in written form and be signed by the authorized representatives of the Parties.

SIGNED AND WITNESSED by the below authorized representatives of the Parties to the Agreement.

Ried im Innkreis, xxx ………………………………………

**Wintersteiger AG xxx**

Dr. Florestan von Boxberg (Chairman of Management Board) xxx

Harald Kostka (Member of Management Board)