

NDA – Non Disclosure Agreement - Vertraulichkeitsvereinbarung -

between the companies

ELA Container GmbH

- hereinafter referred to as 'Information Provider' –

and the company

(Information Recipient)

- hereinafter referred to as 'Information Recipient' -

- - hereinafter collectively referred to as the 'Parties' -

Preamble:

The parties intend to enter into a business co-operation. In the course of the subsequent discussions, confidential information about the information provider is entrusted to the information recipient for the purpose of determining whether a possible co-operation is possible. This information is not to be made public and is to be treated as strictly confidential. The confidential information may only be used within the scope and for the purpose of the activities contractually agreed between the parties.

For this reason, the information provider requires that the parties conclude a confidentiality agreement in order to transmit confidential information. This agreement protects the confidential information resulting from the information recipient's access to confidential information of the information provider. The following is hereby agreed:

§ 1 Definitions

- (1) 'Confidential information' within the meaning of this agreement is economically, legally, fiscally or technically sensitive or advantageous information of the information provider that becomes known to the information recipient. Confidential information may be information that is in any way identifiable as confidential or legally protected or whose confidential content is obvious. The term includes any visual material such as documents, written documents, notes, documents, digital records, etc. as well as verbal communications. This includes, in particular, technical presentations, system concepts and technical drawings, 3D and 2D planning data, technical trade secrets as well as knowledge, results and exchanged expertise gained and recognisable therefrom. It is irrelevant whether documents or other media were created by the information provider, recipient or others, as long as they embody information that relates to the information provider. Information shall not be deemed confidential if it was already in the public domain at the time it was obtained by the recipient of the information or was subsequently made public with the consent of the provider of the information.
- (2) 'Publicly known information' is information that was demonstrably already accessible to the information recipient or its organs, employees and authorised representatives (hereinafter 'representatives') prior to its disclosure or became publicly known through no fault of their own during the period of validity of this agreement. Furthermore, the term 'Confidential Information' does not include such information that the Recipient has made accessible to itself, provided that this is documented by written records of this party or in any other way and no obligations set out in this agreement are undermined.
- (3) 'Information recipient' is the party to whom confidential information is disclosed by the other party.
- (4) 'Disclosing Party' means the party disclosing confidential information to the Receiving Party.
- (5) 'Party' means both the Information Provider and the Information Recipient, as well as their affiliated companies, bodies, employees, consultants and any other third parties working for them, insofar as they are subject to a confidentiality obligation corresponding to the requirements of this or the main contract.
- (6) 'Affiliated companies' are all companies of the parties in which the respective party holds a direct or indirect interest of more than 50% or whose economic management it holds.
- (7) 'Employees' are employees, freelancers and temporary staff of the respective party.

§ 2 Obligation of confidentiality

- (1) The Recipient undertakes to treat as strictly confidential all confidential information of which it gains direct or indirect knowledge.
- (2) This means in particular that the Recipient shall not disclose this information to third parties, either itself or through employees, or otherwise use it for purposes other than those contractually agreed between the parties.
- (3) Any other use or disclosure of the information is only permitted if and insofar as the information provider has given its prior written consent.
- (4) The Recipient undertakes to treat the confidential information received from the Discloser with at least the same care that it applies in its own affairs.
- (5) The Recipient undertakes to comply with the statutory and contractual provisions on data protection when processing the confidential information. This also includes technical security measures adapted to the current state of the art (Art. 32 GDPR) and the obligation of employees to maintain data secrecy (Art. 28 para. 3 lt. b GDPR).
- (6) The recipient of the information shall use the confidential information received exclusively for the fulfilment of the main contract. The rights to the information that the Recipient has received from the Discloser shall remain with the Discloser, unless otherwise contractually agreed.

§ 3 Exceptions to the confidentiality obligation

- (1) This obligation to protect confidential information does not include information that is publicly known.
- (2) The obligation of confidentiality does not apply to courts and authorities if there is a legal obligation (including under criminal law) to pass on/disclose the information or if the respective information is relevant in civil proceedings between the parties or one of the parties and a third party. The information provider must be notified immediately of any disclosure of confidential information. The Recipient undertakes to inform the Discloser before disclosing confidential information, unless such notification is not permitted by law (e.g. information obligations under the Money Laundering Act).

§ 4 Disclosure to third parties/subcontractors

- (1) The information provided or parts thereof may only be passed on to external consultants who are obliged to maintain confidentiality or to such representatives who are required to fulfil the order in question and who have been informed of the confidentiality of the information provided and have been obliged to the same effect. The parties expressly declare that they shall be liable for any culpable breach by their representatives.
- (2) The Recipient may only use subcontractors for the fulfilment of the commissioned activities with the written approval of the Discloser. The obligations arising from the agreement shall also be imposed on them.

§ 5 Contractual penalty

- (1) In the event of a future culpable breach of the obligation set out in § 2, the Recipient undertakes to pay to the Discloser a contractual penalty to be determined by the Discloser at its reasonable discretion and, in the event of a dispute, to be reviewed by the competent court.
- (2) Payment of the contractual penalty shall not exclude the assertion of a claim for injunctive relief or further damages.
- (3) The contractual penalty shall be offset against any damages to be paid.

§ 6 Control and cancellation rights

- (1) Within fourteen (14) days of a written request from the information provider, the information recipient shall return to the information provider all confidential information and other documents produced on the basis of this information or provide the information provider with verifiable evidence of the destruction of the information and documents. This does not apply if there is an obligation to retain the information by law or on the basis of an administrative or court order. In the latter case, further storage of the confidential information by the information recipient is only permitted for the purpose of fulfilling these obligations.
- (2) The Discloser is authorised to monitor compliance with this agreement to the extent necessary or to have it monitored. For this purpose, the Recipient shall grant unhindered access to information-processing systems, files and information related to the performance of the activities. The Recipient shall provide the Discloser with all information required to fulfil the control function. Upon request, the Recipient shall inform the Discloser which confidential information has been returned or destroyed and which has been retained. The notification that certain documents or information have been retained must be justified.
- (3) Should a party become aware that confidential information has been disclosed contrary to this confidentiality agreement, the party must inform the other party immediately.

§ 7 Tern

The term of this agreement begins from the date of signing and corresponds to that of the main agreement. The confidentiality obligations shall remain in force for 10 years from the end of the latter. This confidentiality obligation shall continue to apply even if the intended contract of co-operation is not concluded or is terminated, unless the development is now obvious, for which the information recipient shall bear the burden of proof.

§ 8 Final provisions

- (1) In the event that individual provisions of this agreement are or become invalid or unenforceable in whole or in part, or in the event that this agreement contains unintended omissions, this shall not affect the validity of the remaining provisions of this agreement. In place of the invalid, unenforceable or missing provision, such a valid and enforceable provision shall be deemed to have been agreed between the parties as the parties would have agreed, taking into account the economic purpose of this agreement, if they had been aware of the invalidity, unenforceability or absence of the provision in question when concluding this agreement. The parties are obliged to confirm such a provision in the appropriate form, but at least in writing.
- (2) Amendments and additions to this confidentiality agreement, the declaration of cancellation and the amendment of this clause must be made in writing in order to be effective (§126 Abs. 1 und 2 BGB).
- (3) This agreement is subject to the law of the Federal Republic of Germany.
- (4) The exclusive place of jurisdiction for all disputes arising from or in connection with this agreement is the District Court of Osnabrück.
- (5) In all other respects, liability shall be governed by the provisions of the main contract.

Place, Date

Signature
Information provider

Place, Date

Signature
Information Recipient