Confidentiality Agreement

for the negotiation of future supplier relationships or for project xxx/ for tender xxx

between

**DSI Micro Matic GmbH**

**Oberster Kamp 20**

**59069 Hamm Germany**

- hereinafter “DSI” - and

**Xxx GmbH Street address**

**Post code and city**

**Country**

* hereinafter the “Contractors” -
* hereinafter jointly the “Contracting Parties” -.
1. The Contracting Parties are conducting negotiations on future supplier relationships.

The Contracting Parties hereby mutually undertake to maintain strict confidentiality with respect to all Confidential Information made accessible to them by DSI during the term of this Agreement in connection with the above project/tender [with negotiation on the potential future supplier relationship] (hereinafter the “Project”); furthermore, they undertake to refrain from disclosing this information to third parties, to protect it from access by third parties, to use it only within the framework of the Project, and to pass it on only to members of staff who are obliged to maintain confidentiality, unless otherwise agreed between the Contracting Parties in writing. However, the Confidential Information may be disclosed to affiliated companies within the meaning of section 15 of the German Corporations Act (Aktiengesetz, AktG), provided that these affiliated companies undertake to maintain a corresponding degree of confidentiality.

1. Confidential Information refers to all financial, technical, business and legal information, in particular to drawings, dimensional sketches and installation layouts, as well as to the parties’ intentions and plans regarding future product developments.
2. Information shall not be confidential if it has already been published, is in the public domain, forms part of general technical knowledge, corresponds to the general state of the art and/or was demonstrably already known to the receiving Contracting Party before it was communicated by the other Contracting Party.

The duty of confidentiality shall not apply if, after the information is disclosed to the Party bound by confidentiality, the information enters the public domain without a breach of this Agreement by the receiving Party, is disclosed by third parties to the Party bound by confidentiality without a breach of confidentiality by these third parties, or is developed by the Party bound by confidentiality autonomously and independently of the Confidential Information, or if the other Party discloses it to the public or must disclose it to the public because of legal requirements.

1. The Contracting Parties hereby undertake to impose on any of their staff who become aware of this information the same obligations as the Contractors have entered into above, unless these members of staff are already obliged to maintain confidentiality to the same extent based on their individual contracts of employment.
2. The Contracting Parties shall be liable for adherence to this Confidentiality Agreement by their employees and by subcontracted third parties.
3. The Contractors shall handle the Confidential Information with the same care as they do their own Confidential Information.
4. DSI hereby reserves rights of ownership and copyright of all documents. In the event that findings liable to protection by property rights are disclosed, DSI hereby reserves all rights in respect of potential subsequent property rights.
5. The duty of confidentiality shall also apply to the existence and content of this Agreement.
6. The Contracting Parties shall each, at the other Contracting Party’s request, return to the other Contracting Party all information, documents and data-storage media, including copies and reproductions, made available in connection with the Project and shall delete information, including copies and reproductions, stored in electronic form. No right of retention shall exist in respect of these materials.
7. Should one of the Contracting Parties culpably violate the rules of this Confidentiality Agreement, they shall be required to pay the injured Contracting Party a reasonable contractual penalty for each violation; the amount of the contractual penalty shall be set by the injured Party at its reasonable discretion and may be reviewed by the relevant court at the request of the Party that violated the Agreement. This shall not affect further claims by the injured Party, taking account of the paid contractual penalty.
8. This Agreement shall enter into force today and shall run until 31.12.20xx; the duties of confidentiality relating to information made accessible during its term shall continue for a period of 5 years from the end of the term.
9. The laws of the Federal Republic of Germany shall apply exclusively.
10. The agreement is based on mutual trust. The Contracting Parties shall aim to reach an amicable agreement in relation to any differences of opinion that may arise.

In cases where such an agreement cannot be reached, it is hereby agreed that the courts responsible for Hamm shall have exclusive jurisdiction.

By way of derogation from the previous paragraph, if the Contractor has its registered office in the People’s Republic of China, India, Vietnam or Russia, all disputes arising from or in connection with this Agreement or in relation to its validity shall be finally settled in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC) by an arbitrator appointed in accordance with these rules to the exclusion of ordinary legal proceedings. The place of arbitration shall be Cologne, Germany. The number of arbitrators shall be one unless the Parties agree that authority is to be held by three arbitrators in the individual case. The language of the arbitration proceedings shall be English. The substantive law of Germany shall also be applicable in this case. It is hereby agreed that the arbitration proceedings shall be conducted according to the IBA Rules on the Taking of Evidence in the current version upon initiation of the arbitration proceedings.

1. Changes and/or additions to this Agreement must be made in writing; this shall also apply to changes to this written form requirement.
2. Should a provision of this Agreement be found to be invalid, this shall not affect the validity of the remaining provisions. The Contracting Parties hereby undertake to replace any ineffective provision of this Agreement with an effective one that approximates as closely as possible the economic purpose of the ineffective provision.

**To indicate your agreement, we ask that you please sign a copy of this letter in a legally binding manner and return it to us.** We look forward to working with you.

Authorised signatory for **DSI Micro Matic GmbH**

Name

Position

Place, date

Signature

Authorised signatory for **xxx GmbH**

Name

Position

Place, date

Signature