



# CONFIDENTIALITY AGREEMENT

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between

**J. G. Niederegger GmbH & Co. KG**  
**Zeißstraße 1–7, 23560 Lübeck**

– hereinafter referred to as **Niederegger** –

and

– hereinafter referred to as the **partner** –

– Niederegger and partner hereinafter collectively referred to as the **contractual partners** –



## Preamble

The contractual partners intend to hold discussions with a view to future cooperation. It may be necessary to provide access to confidential formulas in addition to technical and business information.

The contractual partners are aware that the fully confidential handling of formulas and information is an essential prerequisite for future cooperation.

The following non-disclosure agreement is hereby concluded in order to enable negotiations to be conducted with the required openness before the conclusion of a contract.

## Section 1 Duty of non-disclosure

Section 1.1 The contractual partners undertake to handle all information they receive from the other contracting party

- with the strictest confidentiality and to not pass it on to third parties who are not authorised to participate in the general cooperation even if a corresponding confidentiality agreement has been concluded with such third parties;
- to use this information solely for the purposes of this agreement;
- to not exploit this information for their own purposes or the purposes of third parties outside the cooperation between the contractual partners;
- to refrain from making the information the subject of industrial property rights;
- to pass on the information only to those employees who need it for the execution of the cooperation underlying this confidentiality agreement (hereinafter also referred to as the "General Cooperation"). These employees are required to maintain secrecy, even after the end of their employment with a contractual partner, as far as this is legally permissible;
- if subcontractors are commissioned, to pass on the information to only those subcontractors whose involvement has been agreed in advance between the contractual partners for the purposes of the General Cooperation. The information may also only be used by such subcontractors for the purposes of this General Cooperation and only after the prior contractually enforced obligation of subcontractors to maintain secrecy. The secrecy obligation of the subcontractor must also cover the period after completion of the cooperation with the respective subcontractor.

## Section 2 Scope of the secrecy obligation

Section 2.1 For the purposes of this contract, "confidential information" shall mean all data and knowledge provided by one contractual partner to the other contractual partner to view or use which relates to past, present or future activities of the disclosing contractual partner or companies associated with the disclosing contractual partner in the area of food production and food distribution and, in particular, the areas of development, manufacturing methods, processes, test procedures, products, operations, distribution and trade. This also includes formulas, specifications, drawings, templates, models, product samples, concepts and schedules. "Associated companies" are all companies associated with the disclosing contractual partner within the meaning of Sections 15 et seq. of the German Companies Act (Aktiengesetz). "Confidential information" for the contractual partner furthermore includes all the information relating to the contractual negotiations of the contractual partner, as well as the conclusion and content of any contracts of the contractual partner.

Section 2.2 Confidential information can be communicated both verbally and in writing. In the case of written communication, the information is to be clearly marked ("Confidential", "Secret"). This marking shall only have declaratory value. In the case of verbal communication, the communicated information is to be designated as confidential.

Section 2.3 "Confidential Information" does not include data, information and business documents that

- were already obvious or publicly available at the time of the transfer;
- were already known to the contractual partner obliged to secrecy at the time of its transfer. If the contractual partner is already aware of the confidential information of the contractual partner which is disclosed, it shall immediately inform the other contractual partner;
- becomes publicly available after its transfer through no fault of the contractual partner obliged to secrecy or was already publicly available;
- becomes available to the contractual partner obliged to secrecy after its transfer in a legal manner and with no limitation with regard to secrecy and use and without breaching a secrecy obligation towards the other contractual partner.

Section 2.4 The obligation of a contractual partner to maintain secrecy shall be void if, on the basis of a judicial or administrative order, the contractual partner is obliged to disclose confidential information. The contractual partner affected by such an order shall in this case immediately inform the other contractual partner in writing of its obligation to disclose the information and give notice of the potential legal redress against the order in question.

Section 2.5 The obligation of one contractual partner to secrecy shall also be void if the conclusion/content becomes publicly known through no fault of the other contractual partner.

## Section 3 Handling confidential information

Section 3.1 All confidential information provided, including all derivatives, improvements, translations, extracts, adjustments and other changes are and shall remain the property of the disclosing contractual partner. The other contractual partner is not entitled to use, copy, save, process electronically duplicate or archive this confidential information in any other way outside of the agreed collaboration without the written consent of the disclosing contractual partner.

Section 3.2 The contractual partners shall correctly store all created confidential information of the other contractual partner and shall not disclose it to any third party. Third parties within the meaning of this agreement also include employees of the receiving contractual partner who are not directly involved in the purpose of the General Cooperation. The information must not be used for any purpose other than to achieve the goal of cooperation.

Section 3.3 Each contractual partner shall, at the request of the other disclosing contractual partner, return all confidential information transferred to the contractual partner or destroy it if requested to do so in writing by the other contractual partner. The above also applies to the confidential information stored, electronically processed, copied or duplicated within the scope of the collaboration. Copies of such documents which are subject to retention periods in accordance with German legislation (in particular order confirmations, invoices, etc.) are exempted from the aforementioned provisions.



## Section 4 Restriction of use

Section 4.1 Both contractual partners undertake to use all confidential information and knowledge relating the intended conclusion of the agreement which they receive from the other contractual partner solely for the purpose of examining the envisaged cooperation or within the scope of the cooperation. The provision of information or confidential information in no way constitutes an express or implied license to any patents, usage rights, trademarks, patterns, intellectual property or other proprietary rights of the disclosing contractual partner or the right to use these for the receiving contractual partner.

Section 4.2 The receiving contractual partner is not entitled to use all or part of the information and knowledge received by the disclosing contractual partner for other or external purposes that do not serve the fulfilment of the agreement or to register industrial property rights thereto.

Section 4.3 The removal or modification of references to copyright and protected trademarks, logos or other copyright notices in the provided documents is not permitted.

Section 4.4 No commercial rights of use in relation to the revealed knowledge are granted through this agreement.

## Section 5 No obligation to conclude a main contract

Neither this agreement nor the actual disclosure of confidential information by one of the contractual partners justifies an obligation to conclude the planned main contract or to enter into any other business relationship.

## Section 6 Place of jurisdiction and applicable law

Section 6.1 German law applies to this contractual relationship, excluding private international law and unified international law, in particular the United Nations Convention on Contracts for the International Sale of Goods (CISG).

Section 6.2 The place of fulfilment is Lübeck. The exclusive jurisdiction of Lübeck District Court is hereby agreed for all disputes arising from this agreement.

## Section 7 Contractual term

The obligations agreed in this agreement shall apply from the date on which this contract is signed by both contractual partners for the duration of the cooperation between the contractual partners. They shall also be valid for a period of two years after end of the collaboration between the contractual partners. From the date on which this contract is signed by both contractual partners, this contract replaces any prior confidentiality agreements between the contractual partners regarding the cooperation mentioned in the preamble.

## Section 8 Contractual penalty

Section 8.1 If a contractual partner culpably violates any of its obligations pursuant to Sections 1 – 4 and 7 of this contract, it shall pay the other contractual partner a contractual penalty determined by the other contractual partner, whereby the penalty shall be reasonable and is to be approved by the competent court with regard to its reasonableness. The contractual penalty amounts to at least EUR 20,000.00 per breach of contract. Offsetting against a forfeited contractual penalty is only permissible in the case of legally established or recognised claims. The assertion of further claims for damage remains unaffected. A forfeited contractual penalty shall be offset against any claims for damages.

Section 8.2 The objection of a continuation of offence is hereby excluded.

Section 8.3 The contractual partners are aware that the violation of trade and business secrets pursuant to Section 17, 18 of the Law Against Unfair Competition (UWG) is punishable and may result in imprisonment for up to five years or fines, and those who violate business and trade secrets may be required to pay compensation for the resulting damages pursuant to Section 19 UWG.

## Section 9 Severability clause

If any provision of this agreement is or becomes invalid or if the agreement contains a gap, this shall not affect the legal validity of the remaining provisions. The parties shall agree upon an effective provision which most closely reflects the economic intentions of the parties to replace the ineffective or missing provision. The same applies in the event of a contractual gap.

## Section 10 Formal requirements

Section 10.1 This agreement was prepared in German as two copies.

Section 10.2 No guarantee is issued with respect to the information provided.

Section 10.3 No ancillary agreements have been entered into. Amendments and supplements to this agreement and its termination must be in writing. This also applies to the waiver of the written form requirement.

J. G. Niederegger GmbH & Co. KG

Lübeck,

Date

Partner

Place and date