

# NON-DISCLOSURE AGREEMENT



between

„**Partner**“

and

s.m.s, smart microwave sensors GmbH, In den Waashainen 1, 38108 Braunschweig (Germany)

„**smartmicro**“

Partner and smartmicro may be referred herein collectively as "**Parties**" and each may be referred to as "**Party**".

## **Preamble**

- (1) The Partner and smartmicro intend to enter into discussions about or a project related to **Radar Technology** (together the „**Project**“).
- (2) During the course of the Project the Parties may exchange information, documents, drawings and other materials which contain trade and business secrets and other Confidential Information. In this context the "**Disclosing Party**" shall mean the Party disclosing such Confidential Information and "**Interested Party**" shall mean the Party receiving such Confidential Information.
- (3) This Agreement sets out the conditions under which the Disclosing Party shall make Confidential Information available to the Interested Party and in particular how Confidential Information should be treated by the Interested Party, its managing directors, employees, staff, authorized persons, advisors and affiliates of Interested Party („**Representatives**“).

Now therefore, the parties agree as follows:

## **§ 1 Confidentiality of the Project**

Until not expressly agreed on a publishing of the Project both Parties agree to keep strictly confidential not only the fact that the Project is existing but also the details of the Project.

### § 2 Confidential Information

Confidential Information for the purposes of this Agreement shall mean all information which is made available to the Interested Party or its Representatives by Disclosing Party verbally, in writing or in any other form, to the extent such information:

- (1) is clearly marked as Confidential Information, is described as such or is otherwise recognizable as such;
- (2) is to be regarded as confidential because of its contents; or
- (3) is derived from Confidential Information which has been provided by Disclosing Party.

Confidential Information comprises in particular – but not limited to - any and all IP rights, know-how, computer programs (in source and object code form), data, lab books, designs, devices, processes, and records provided by the Disclosing Party.

### § 3 Exceptions

The term „Confidential Information“ does not include such information which:

- (1) is or becomes in the public domain or generally available at the time the Interested Party was provided with such information (except by reason of any breach of this Agreement by the Interested Party or its Representatives);
- (2) was already legitimately in the possession of the Interested Party and not subject to a duty of confidentiality, before the Interested Party received the information from Disclosing Party; or
- (3) the Interested Party had received from a third party who was entitled to disclose this information without restriction.

### § 4 Duty of Confidentiality

The Parties agree:

- (1) to keep all Confidential Information strictly confidential;
- (2) not to use any Confidential Information for purposes other than for the Project;
- (3) not to disclose any Confidential Information to third parties, with the exception of such of its Representatives who need this information in order to carry on with the Project (need-to-know basis only); and

(4) to inform the Disclosing Party whenever § 3 (2) or (3) apply without delay and in writing, stating its sources, that this information was already in its possession.

### **§ 5 Protective Measures**

In order to ensure that the Confidential Information is kept confidential, the Interested Party agrees:

- (1) to take all reasonable safeguards to prevent disclosure of the Confidential Information;
- (2) to only make copies of Confidential Information to the extent necessary in order to carry on with the Project;
- (3) not to use the Confidential Information to compete in any regard with the business of the Disclosing Party;
- (4) to notify Disclosing Party without delay after becoming aware of an actual or imminent unauthorized use or an actual or imminent unauthorized disclosure of Confidential Information and to take all reasonable measures in order to prevent or terminate any such use or any such disclosure, if necessary, with the assistance of Disclosing Party;
- (5) to have the Representatives execute a NDA that contains confidentiality obligations at least as strict as set forth herein; the Interested Party shall be liable and indemnify Disclosing Party for any unauthorized disclosures by Representatives;
- (6) to make available at the request of Disclosing Party a list with
  - a) the names and addresses of the persons to whom the Confidential Information has been disclosed and their relationship to the Interested Party;
  - b) the locations in which the Confidential Information is kept; and
  - c) the other protective measures taken by the Interested Party;

as well as to grant Disclosing Party a reasonable opportunity during usual business hours to check that the measures and locations set out in the list are complied with.

### **§ 6 Disclosure Requirements**

In the event that the Interested Party or any of its Representatives is subject to a statutory obligation or a legitimate court or official order to disclose Disclosing Party's Confidential Information, the Interested Party shall:

- (1) immediately notify Disclosing Party in writing by fax or by e-mail of this obligation and on request assist Disclosing Party as far as possible in protecting the Confidential Information or having it protected through the courts;
- (2) to the extent that no other protective measures are taken, disclose only such Confidential Information which must be disclosed by reason of the statutory obligation or order and use its best endeavors to ensure that the Confidential Information disclosed is treated as far as possible in accordance with this Agreement.

### **§ 7 No Transfer of Rights, no joint venture**

- (1) The Disclosing Party shall remain the owner of the rights in the Confidential Information.
- (2) No provision in this Agreement shall be interpreted expressly or by implication as the transfer of any rights or the grant of any licenses in relation to the Confidential Information.
- (3) Nothing in this Agreement shall constitute or imply any promise or commitment between the Parties to enter into a cooperation, joint-venture or any other agreement of business relationship.

### **§ 8 No Warranty**

- (1) The Disclosing Party does not give any warranty that the Confidential Information it has made available is complete or accurate, or that it can be used by the Interested Party.
- (2) The Disclosing Party shall not be liable to the Interested Party for losses which the latter suffers through the use, irrespective of whether such use is permitted by this Agreement, of Confidential Information or through its reliance upon the completeness and accuracy of such.

### **§ 9 Remedies**

The Parties further agree that a breach of this Agreement may result in irreparable damage. Therefore, in such a case, the Parties shall be entitled to all necessary legal remedies including, but not limited to adequate compensation of their damages incurred by such breach; in particular, the Parties shall also have the right to obtain an injunction.

### **§ 10 Return/Destruction of Information**

- (1) The Interested Party shall be obliged at the request of Disclosing Party:
  - a) to return, or at Disclosing Party's option to evidence the destruction of all Confidential Information whether written or in any other form, without undue delay and together with all reproductions and copies thereof;

- b) at the same time to return, or at Disclosing Party's option to evidence the destruction of all other materials, including materials produced by the Interested Party itself, which contain Confidential Information or which allow conclusions to be drawn about such; and
- c) to confirm to Disclosing Party in writing that it has returned or destroyed the Confidential Information in the described manner.

(2) Confidential information shall be destroyed in the safest way possible using current state-of-the-art technology as far as this is possible and reasonable for the Interested Party.

(3) The party obliged to return or destroy Confidential Information shall be entitled to assert a right of retention only in respect of counterclaims which are undisputed or recognized by declaratory judgment.

## **§ 11 Term**

Unless expressly terminated by agreement in writing between the Parties, the term of this Agreement shall continue and bind the Parties for a period of five (5) years, except that the nondisclosure obligations and restrictions on use of any Confidential Information that constitutes a trade secret shall continue as long as the Confidential Information remains a trade secret.

## **§ 12 Costs**

Each party shall fulfil its obligations under this Agreement free of charge and without any claim to reimbursement of costs.

## **§ 13 Miscellaneous**

(1) All expenses, costs, fees and charges in connection with entering into this Agreement shall be borne by each Party itself.

(2) Changes or amendments to this Agreement must be made in writing unless any stricter form is legally required; this also applies to this Section.

(3) This Agreement shall be governed by, and be construed in accordance with, the laws of the Federal Republic of Germany, without regulations of the CISG and principles of conflicts of laws.

(4) In the event that one or more current or future provisions of this Agreement shall be, or shall be deemed to be, fully or partly invalid or unenforceable, the validity and enforceability of the other provisions of this Agreement shall not be affected thereby. The same shall apply in the event that the Agreement contains any gaps. The invalid or unenforceable provision shall be replaced by such appropriate provision that, to the extent legally

# NON-DISCLOSURE AGREEMENT



permissible, comes closest to the actual or assumed intention of the Parties as of the Signing Date or the date of the amendment of this Agreement, as the case may be, in case they had taken such issue into account.

---

Place, Date

Braunschweig,

Place, Date

Company:

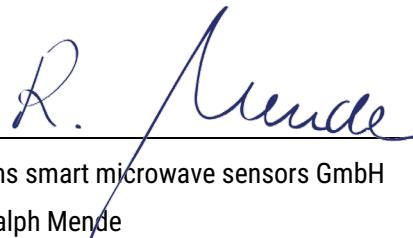
sms smart microwave sensors GmbH

Name:

Ralph Mende

Title:

Dr

A handwritten signature in blue ink that reads 'R. Mende'. The signature is fluid and cursive, with 'R.' on the left and 'Mende' on the right.