

NONDISCLOSURE AGREEMENT

This Nondisclosure Agreement ("Agreement") is made as of _____ ("Effective Date") by and between _____ (hereinafter "the Inventor") and Wickeder Westfalenstahl GmbH, a German corporation located at D-58739 Wickede (Ruhr), Germany, as well as its affiliates (hereinafter "Disclosee").

§ 1 Purpose

The Inventor and Disclosee wish to explore a possible commercial exploitation of work results developed by Inventor's professors, employees, students or other persons associated with Inventor – hereinafter "Inventor's Associates" (the "Relationship") in connection with which the Inventor has disclosed and/or may disclose Confidential Information (as defined below) to the Disclosee. This Agreement is intended to allow discussion and evaluation of the Relationship while protecting Confidential Information of Inventor and Inventor's Associates against unauthorized use or disclosure, while the Inventor undertakes that neither he nor the Inventor's Associates will make such Confidential Information available or accessible to any third party for a term of 24 months following the signing hereof.

§ 2 Definition of Confidential Information

"Confidential Information" means any oral, written, graphic or machine-readable information including, but not limited to, that which relates to intellectual property, patents, patent applications, research strategy, development strategy, product plans, products or potential products, inventions, processes, designs, drawings, engineering, chemical composition or chemical reactions, chemical or physical properties of materials, analysis of materials/devices, formulae, data, lab books, reports, software (including source and object code), hardware configuration, computer programs, algorithms, business plans, agreements or potential agreements with third parties, services or potential services, customers or potential customers, marketing financing plans, and market or finance data of the Inventor.

Confidential Information shall also include the nature of and/or the existence of the relationship between Inventor and Inventor's Associates on the one hand side and Disclosee on the other hand side, unless disclosure of the relationship is authorized in writing by the Inventor. In the event that Inventor discloses a third party's proprietary information (in particular that of Inventor's Associates), the Inventor represents that it is authorized to disclose such proprietary information to the Disclosee, and the Disclosee agrees to treat such proprietary information as the Inventor's Confidential Information.

§ 3 Nondisclosure of Confidential Information

- a) Disclosee agrees not to use any Confidential Information disclosed to it by the Inventor for its own use or for any purpose other than to carry out discussions concerning, and the undertaking of, the Relationship. Disclosee may not disclose the Information to a competitor of the Inventor or use the Information in any manner detrimental to the Inventor. Disclosee shall not disclose or permit disclosure of any Confidential Information of the Inventor to third Parties other than Affiliates. "Affiliates" shall mean any corporation or company directly or indirectly owning, owned by, controlled by or under common control with a party to this Agreement to the extent that the ownership is of more than ten per cent (10 %) ownership or voting right interest (whether through stock ownership, stock power, voting proxy, or otherwise). Disclosee agrees that it shall take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of the Inventor in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized under this Agreement to have any such information.

Such measures shall include, but not be limited to, the highest degree of care that Disclosee utilizes to protect its own Confidential Information of a similar nature, which shall be no less than reasonable care. Disclosee agrees to notify the other in writing of any actual or suspected misuse, misappropriation or unauthorized disclosure of Confidential Information of the Inventor and/or Inventor's Associates which may come to Disclosee's attention.

- b) Exceptions:

Notwithstanding the above, Disclosee shall not have liability to Inventor nor to Inventor's Associates with regard to any Confidential Information which Disclosee can prove:

(i) was in the public domain at the time it was disclosed or has entered the public domain through no fault of the Disclosee;

(ii) was known to the Disclosee, without restriction, and the time of disclosure, as demonstrated by files in existence at the time of disclosure; or '

(iii) was independently developed by Disclosee or by any third party not bound to a secrecy obligation, without any use of the Confidential Information of Inventor or by employees of the Disclosee who have not had access to the Confidential Information, as demonstrated by files created at the time of such independent development.

§ 4 No Rights Granted

Nothing in this Agreement shall be construed as granting any rights under any patent, copyright or other intellectual property right of Inventor or Inventor's Associates to Disclosee, nor shall this Agreement grant Disclosee any rights in or to the Inventor's Confidential Information other than the exclusive right to review such Confidential Information for a term of 24 months solely for the purpose of determining whether to enter into the Relationship.

§ 5 No Modification

Disclosee agrees that it shall not modify, reverse engineer, create other works from or disassemble any product contained in the Confidential Information of the Inventor unless permitted in writing by the Inventor.

§ 6 Term

This Agreement shall be in effect and Inventor shall secure that Disclosee enjoys the exclusive right to review and explore the Confidential Information **for a period of two (2) years from the Effective Date** hereof unless extended by the mutual written agreement of the parties. The Disclosee shall be obligated to maintain confidentiality, nonuse, or any other obligation under this Agreement as defined herein **for a period of two (2) years** from the Effective Date. The foregoing commitments of by the Disclosee shall survive any termination of the Agreement or Relationship between Inventor and Disclosee.

§ 7 Successors and Assignees

The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assignees of Inventor and Disclosee, providing that Confidential Information of the Inventor and Inventor's Associates may not be assigned without the prior written consent of the Inventor.

§ 8 Severability

If one or more provisions of this Agreement are held to be unenforceable under applicable law, Inventor and the Disclosee agree to renegotiate such provision in good faith. In the event that the Inventor and Disclosee cannot reach a mutually agreeable and enforceable and replacement for such provision, then

- (a) such provision shall be excluded from this Agreement,
- (b) the balance of the Agreement shall be interpreted as if such provision were so excluded and
- (c) the balance of the Agreement shall be enforceable in accordance with its terms.

§ 9 Governing Law, Jurisdiction

This Agreement and all acts and transactions pursuant hereto and the rights and obligations of Inventor and Disclosee hereto shall be governed, construed and interpreted in accordance with the laws of the Federal Republic of Germany, without giving effect to principles of conflicts of law. Inventor and Disclosee hereby irrevocably agree to submit all disputes which cannot amicably be resolved to the exclusive arbitration of the International Chamber of Commerce in Paris, proceedings to be held in the English language. The place of arbitration shall be Duesseldorf.

§ 10 Remedies, Indemnification

Disclosee agrees that its obligations set forth in this Agreement are necessary and reasonable in order to protect the disclosing party. Disclosee expressly agrees that due to the assumed unique nature of the Inventor's Confidential Information, monetary damages would be inadequate to compensate Inventor for any breach by Disclosee of its covenants and agreements set forth in this Agreement.

Accordingly, Disclosee agrees and acknowledges that any such violation or threatened violation shall cause irreparable injury to the Inventor and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the Inventor shall be entitled (a) to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by Disclosee, without the necessity of proving actual damages, and (b) to be indemnified by the Disclosee from any loss or harm, including but not limited to attorney's fees, arising out of or in connection with any breach or enforcement of the Disclosee's obligations under this Agreement or the unauthorized use or disclosure of the Inventor's Confidential Information.

§ 11 Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

§ 12 Entire Agreement, Inventor's Liability for Inventor's Associates

This Agreement is the product of Inventor and Disclosee hereto, and constitutes the entire agreement between Inventor and Disclosee pertaining to the subject matter hereof, and merges all prior negotiations and drafts of the parties with regard to the transactions contemplated herein. Inventor will at all times secure and be liable to Disclosee that Inventor's Associates will comply with inventor's undertakings, which shall in particular include to secure that Disclosee shall have the exclusive right to review and explore the Confidential Information during the term of this Agreement and that during such term, no Confidential Information or part thereof is disclosed to any third party.

The parties have executed this Nondisclosure Agreement as of the Effective Date first above written.

Wickeder Westfalenstahl GmbH
Hauptstrasse 6, D-58739 Wickede (Ruhr)

Disclosee:

Signature:		Signature:	
Date:		Date:	
Name:		Name:	
Title:		Title:	

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Date:		Date:	
Name:		Name:	
Title:		Title:	