

Confidential Nature and Prohibition of Disclosure and Use of Confidential Information

Status: 26 June 2013

1. Subject-matter and purpose. The following General Terms and Conditions of Confidential Nature and Prohibition of Disclosure and Use of Confidential Information (“**CONDITIONS**”) by Dornier MedTech Laser GmbH, having its principal place of business in Argelsrieder Feld 7, D-82234 Wessling („DMTL“) shall solely apply to business companies within the meaning of Sec. 310 para. 1 German Civil Code (*BGB*) in conjunction with Sec.14 *BGB* and to legal entities under public law and special funds under public law [*öffentlich-rechtliches Sondervermögen*].

These **CONDITIONS** shall apply exclusively and to all future transactions between DMTL and its supplier (“**SUPPLIER**”) even where not expressly included in future transactions. Any terms and conditions by **SUPPLIER** conflicting with or deviating from these **CONDITIONS** shall NOT be applicable except where DMTL has expressly consented in writing to their application. These **CONDITIONS** shall also prevail where DMTL has accepted an offer by **SUPPLIER** or made an order to Supplier in each case without reservation, with knowledge of **SUPPLIER**’s terms and conditions which conflict with or deviate from these **CONDITIONS**.

DMTL’s General Terms and Conditions for Purchase make reference to these **CONDITIONS** and oblige **SUPPLIER** to confidentiality of and prohibition of use of confidential information which are handed over by DMTL prior to or during the contractual relationship between DMTL and **SUPPLIER**.

2. Confidential Nature and Prohibition of Use.

2.1 Confidential Information. Confidential information (“**INFORMATION**”) shall mean all documents, notifications, knowledge, economic or scientific data in particular, budgetary information, quotations, prices, commercial documentation, customer information, business plans, data exploitation plans and information in relation to development, documentation and production requirements or data in relation or leading to industrial property rights, schedules and objectives and data of employees of DMTL, irrespective of whether (i) being or being disclosed in written, oral or electronic form or (ii) marked as confidential or (iii) disclosed by the DMTL before or after concluding an agreement.

2.2 Obligations of the SUPPLIER. **SUPPLIER** shall:

- **[protection as commercial and business secrets / limitation on use]** (i) treat the **INFORMATION** disclosed to it as a commercial and business secret and (ii) protect such **INFORMATION** from disclosure to third parties by putting in place technical and organisational measures which correspond to the current state of the art and (iii) only make use of such **INFORMATION** to the extent essential for fulfilment of the contractual obligations entered into by **SUPPLIER** vis-à-vis DMTL; and
- **[prohibition on copying and industrial property rights]** refrain from economically exploiting or copying the **INFORMATION** in any manner whatsoever or permitting the **INFORMATION** to be exploited or copied by any third parties and in particular to refrain from applying for the registration of any designs and creations and industrial or intellectual property rights – in particular any marks, industrial designs, patents or utility models which may be developed in the context of the collaboration with the DMTL; and
- **[no derivation of rights]** refrain from deriving any rights from its knowledge of the **INFORMATION**, and in particular rights to prior use; and
- **[the procurement of undertakings from employees]** grant its employees access to the **INFORMATION** disclosed only to the extent such access is absolutely necessary for fulfilment of Supplier’s contractual obligations entered into by **SUPPLIER** vis-à-vis DMTL and to the extent **SUPPLIER**’s employees are bound by a confidentiality agreement at least as strict as **SUPPLIER** with respect to **INFORMATION**, however with no such employee’s right to disseminate the **INFORMATION** to further third parties; and
- **[no disclosure to third parties]** refrain from disclosing the **INFORMATION** to third parties without prior written consent of DMTL, and should such consent be given, to only disclose **INFORMATION** to third parties if such third parties are bound by a confidentiality agreement at least as strict as **SUPPLIER** with respect to **INFORMATION**, however with no third party’s right to disseminate the **INFORMATION** to further third parties.

2.3 Exceptions and Burden of Proof. The obligations under Clause 2.2 shall not apply to the extent **SUPPLIER** is able to prove that the **INFORMATION**:

- was, is or will become prior to, at the time of or after its disclosure (i) generally known or (ii) known or made available to **SUPPLIER**, in each case of (i) or (ii) without any breach of any confidentiality obligation or prohibition of use, both in law or otherwise; or
- has been developed independently by **SUPPLIER** without any breach of any confidentiality obligation or prohibition of use, both in law or otherwise; or
- has been released for disclosure by DMTL in writing prior to disclosure by **SUPPLIER**; or
- has to be disclosed on the basis of an immediately enforceable judicial or administrative act or mandatory statutory obligation; the **SUPPLIER** shall notify DMTL in good time prior to any such disclosure in writing.

2.4 Data Protection. Where **SUPPLIER** receives personal data, the **SUPPLIER** shall use such data exclusively for fulfilment of its obligations vis-à-vis DMTL. **SUPPLIER** shall comply with all applicable provisions relating to data protection. In the event any such provisions are infringed, the **SUPPLIER** must inform DMTL immediately in writing. Should proceedings be instigated against DMTL by third parties on account of any infringements of data protection laws by the **SUPPLIER**, **SUPPLIER** shall indemnify at first instance DMTL in respect of any costs which may be incurred by DMTL.

2.5 No Assignment of Rights. These **CONDITIONS** shall not be construed as to and does not constitute a transfer, grant or assignment of any rights to any proprietary rights, especially, but not limited to know how by DMTL to the **SUPPLIER**.

2.6 No Additional Contractual Relations. These **CONDITIONS** shall not be construed as to oblige DMTL to enter into contractual relations and DMTL shall not be obliged by these **CONDITIONS** to enter into any contractual relations with the **SUPPLIER**.

3.1 Liability. DMTL shall assume no liability for the accuracy and usability of the **INFORMATION** disclosed whether based on contract or tort, in particular claims for suspension of business, loss of profit and loss of information or data unless where (i) stated expressly otherwise in these **CONDITIONS** or in a separate agreement (ii) based on DMTL’s intention or gross negligence or (iii) based on the German Product Liability Act [*Produkthaftungsgesetz*] or (iv) based on the absence of characteristics guaranteed by DMTL or (v) based on a breach of DMTL’s material contractual obligations [*Kardinalpflichten*]. *Kardinalpflichten* are obligations without its fulfilment it is not possible to properly perform an agreement and on its compliance the **SUPPLIER** is entitled to rely. Unless expressly stated in writing by DMTL or where provided for in an agreement or these **CONDITIONS**, these **CONDITIONS** and any **INFORMATION** disclosed shall constitute no consent, warranty or guarantee by DMTL.

3.2 Export Provisions. The **SUPPLIER** is aware that the transfer and export of **INFORMATION** or personal data (Clause 2.4) may be subject to mandatory regulation, especially, but not limited to US, European and German legislation. The **SUPPLIER** shall ensure compliance with such regulations and shall indemnify DMTL at first instance in respect of any costs which may be incurred by DMTL due to the **SUPPLIER**’s infringement of such regulations.

3.3. Obligations on and after Termination. On termination of an agreement the **SUPPLIER** shall immediately return the **INFORMATION** at its own expense to DMTL or – after having received prior written instructions to do so – destroy the **INFORMATION** in its entirety. The **INFORMATION** and personal data (Clause 2.4) shall remain the property of DMTL. Any right of retention by the **SUPPLIER** in connection with the **INFORMATION** or the personal data (Clause 2.4) is excluded. Termination of an agreement does neither affect **SUPPLIER**’s obligations under these **CONDITIONS** nor under an agreement, if any, with respect to **INFORMATION** nor this Clause 3.3.