

## BILATERAL CONFIDENTIALITY AGREEMENT

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This Confidentiality Agreement is entered into as of this [insert day](#) day of [insert month](#), [insert year](#) (hereinafter referred to as the “Effective Date”) by and between [insert Nedschroef Company name](#), a company incorporated under the laws of [insert country](#), and having its registered offices at [insert address](#), [insert country](#) (“NEDSCHROEF”); and [insert company name](#), a company incorporated under the laws of [insert country](#), and having its registered offices at [insert address](#), [insert country](#) (“COMPANY”).

NEDSCHROEF and COMPANY are also referred to herein individually as the “Party” and collectively as the “Parties”.

**WHEREAS**, in connection with evaluation of the [describe in as many details as possible the proposed transaction](#) (the “Transaction”) by and between NEDSCHROEF and COMPANY, the Parties have requested certain information concerning each other and their respective Affiliates, in particular but not limited to the following categories: [add a description of the information that will be shared and should be kept confidential \(categories, for example specifications, drawings, customer or price lists\)](#).

**NOW THEREFORE**, the Parties agree as follows:

### 1. Definitions

“Affiliate” means, as appropriate, either NEDSCHROEF’s or COMPANY’s subsidiary, direct or indirect holding company or any subsidiary thereof;

“Information” means any information concerning a Party (the “Disclosing Party”) or any of its Affiliates, including especially trade secret, which is furnished by the Disclosing Party or any of its Affiliates, or their respective directors, officers, employees, advisers, or other agents (collectively, “Representatives”) in any form to the other Party (the “Receiving Party”) or any of the Receiving Party’s Representatives, regardless of whether specifically identified as “confidential,” together with analysis, compilations, studies or other documents prepared by the Receiving Party or its Representatives, which contain or otherwise reflect such information, or their review of, or interest in the Disclosing Party or any of its Affiliates.

The term “Information” shall not include any information which (i) was or becomes generally available to the public other than as a result of a disclosure by the Receiving Party or any of its Representatives, or (ii) was available to the Receiving Party on a non confidential basis prior to its disclosure by the Disclosing Party or its Affiliates, or (iii) becomes available to the Receiving Party on a non confidential basis from a source other than the Disclosing Party or its Affiliates, provided that such source was or is not known by the Receiving Party to be prohibited from disclosing such information by a contractual or legal obligation to the Disclosing Party or its Affiliates, or (iv) was developed by the Receiving Party or any of its Representatives independent of any reference to the Information and independent of the participation of any person who had access to the Information;

The term “person” shall be interpreted broadly to include, without limitation, any company, other legal entity, partnership or individual;

“Party” means either NEDSCHROEF and its Affiliates, or COMPANY and its Affiliates; and “Parties” means both NEDSCHROEF and COMPANY and their respective Affiliates;

### 2. Scope

- 2.1 As a condition to furnishing the Information, the Parties agree to treat such Information as confidential in accordance with the provisions of this Agreement.

### **3. Protection of Confidentiality**

- 3.1 The Receiving Party hereby agrees that the Information will be used solely for the purpose of evaluating the Transaction and not for any other commercial purpose and that such Information will be kept confidential by the Receiving Party and its Representatives and will not be disclosed or divulged by the Receiving Party or any of its Representatives without the express prior written consent of the Disclosing Party. The Receiving Party is permitted, however, to disclose the Information to those of its Representatives (other than any such person or entity whom the Receiving Party knows or suspects to be a direct competitor of the Disclosing Party or a director, officer, employee or a substantial investor in a direct competitor of the Disclosing Party) who need to know such Information for the purpose of evaluating the Transaction. The Receiving Party agrees, however, that such Representatives shall be informed of the confidential nature of such Information, shall be directed to treat such Information as confidential and shall agree to be bound by the provisions of this Confidentiality Agreement.
- 3.2 The Receiving Party undertakes to the Disclosing Party that it shall not copy, reproduce or reduce to writing any part of the Information except as may be reasonably necessary for the Transaction and that any copies, reproductions or reductions to writing so made shall be the property of the Disclosing Party.
- 3.3 The Receiving Party will be responsible for any breach of this Confidentiality Agreement by its Representatives (including employees who subsequent to the first date of disclosure of information hereunder, become former employees). The Receiving Party agrees, at its sole expense, to take all reasonable measures, including but not limited to court proceedings, to restrain its Representatives from unauthorised disclosure or use of Information.
- 3.4 In addition, without the prior written consent of the Disclosing Party, the Receiving Party will not disclose, and will direct its Representatives not to disclose, to any third party the fact that discussions or negotiations are taking place concerning a possible Transaction, or any of the terms, conditions or other facts with respect to any such Transaction or the relationship between the Parties, including the status thereof.
- 3.5 Reverse engineering (i.e. the disassembly of products in order to gain further knowledge) is expressly prohibited and excluded by contract, for previously unpublished products made available to a Party.

### **4. Non-Liability for Permitted Disclosure**

- 4.1 Notwithstanding anything stated to the contrary herein, the Receiving Party and its Representatives may disclose any Information to satisfy a legal demand by a competent court of law or the rules, regulations or requirements of any relevant stock exchange, or governmental body, provided however that in the case of a disclosure of Information to satisfy a legal demand by a competent court of law the Receiving Party shall advise the Disclosing Party prior to disclosure so that the Disclosing Party has an opportunity to defend, limit or protect against such production or disclosure, provided further that the Receiving Party shall disclose only that portion of the Information which is legally required to be disclosed and the Receiving Party will exercise reasonable efforts to obtain a protective order or other reliable assurance that confidential treatment will be accorded to any Information required to be disclosed.

### **5. Non-Existence of Implied Rights**

- 5.1 Each Party acknowledges that it shall not acquire any right, title or licence of use in respect of the Information disclosed by or acquired from the other Party.

## **6. Liability**

- 6.1 The Receiving Party will be responsible for any breach of this Confidentiality Agreement by its Representatives. The Receiving Party agrees, at its sole expense, to take all reasonable measures, including but not limited to court proceedings, to restrain its Representatives from unauthorised disclosure or use of Information.
- 6.2 If the Receiving Party breaches this Agreement, the Disclosing Party may at its option elect to institute proceedings in court to obtain damages and/or to enforce specific performance of this Agreement.
- 6.3 The Receiving Party further understands, acknowledges and agrees that where in the Disclosing Party's sole opinion, monetary damages would not be a sufficient remedy for any breach of this Agreement by the Receiving Party or by any of the Representatives, the Disclosing Party will be entitled to specific performance and injunctive relief as remedies for any such breach. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Confidentiality Agreement but shall be in addition to all other remedies available at law or equity.

## **7. No Guarantees of Accuracy or Completeness of the Information Disclosed**

- 7.1 THE INFORMATION IS PROVIDED "AS IS" WITH ALL FAULTS. IN NO EVENT SHALL THE DISCLOSING PARTY, ITS AFFILIATES AND THEIR RESPECTIVE REPRESENTATIVES BE LIABLE FOR THE ACCURACY OR COMPLETENESS OF THE INFORMATION.
- 7.2 None of the Information disclosed by the Parties to each other constitutes any representation, warranty, assurance, guarantee or inducement by either Party to the other with respect to the infringement of trademarks, patents, copyrights; any right of privacy; or any rights of third persons.

## **8. No Undertaking to Disclose or Complete the Transaction**

- 8.1 This Agreement does not constitute, by itself, any undertaking or obligation on the part of the Parties to carry out the Transaction and/or enter into an agreement thereof in any manner whatsoever.

## **9. Return of Information, Copies and Documents**

- 9.1 Upon written demand by the Disclosing Party, the Receiving Party shall: (i) cease using the Information, (ii) return the Information and all copies, notes or extracts thereof to the Disclosing Party within seven (7) days of receipt of demand, and (iii) upon request of the Disclosing Party, certify in writing that the Receiving Party has complied with the obligations set forth in this Clause 9.

## **10. No Waiver**

- 10.1 The Receiving Party further understands, acknowledges and agrees that no failure or delay by the Disclosing Party in exercising any right, power or privilege hereunder shall operate as a waiver hereof nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege hereunder.
- 10.2 No waiver or modification of this Agreement will be binding upon either Party unless made in writing and signed by a duly authorised representative of such Party.

## **11. Governing Law and Jurisdiction**

- 11.1 This Agreement shall be governed by and construed in accordance with the laws of the Netherlands without regard to its conflict of laws principles. The Parties submit to the exclusive jurisdiction of the Courts that are competent for any settlement of any controversy which might result from the execution, interpretation, performance or termination of this Agreement.

## **12. Term**

- 12.1 This Agreement shall subsist from the Effective Date for a period of two (2) years ("Initial Term"). If the Parties enter into a definitive agreement with respect to the Transaction, then the terms of such agreement shall govern their future obligations with respect to each other's Information, unless agreed otherwise by the Parties. Otherwise, the confidentiality obligation shall continue for five (5) years after the Initial Term.

## **13. Entire Agreement**

- 13.1 This Agreement supersedes all prior discussions and writings with respect to the subject matter hereto and constitutes the entire agreement between the Parties with respect to the subject matter hereto.

## **14. Assignment**

- 14.1 Subject to any exceptions set out in this Agreement, neither Party to this Agreement may assign this Agreement nor any interest or obligation under this Agreement in whole or in part without the prior written consent of the other Party and any purported transfer without such consent will be void.
- 14.2 A Party may impose reasonable conditions upon its written consent to a proposed assignment by the other Party.
- 14.3 Notwithstanding the provisions of Clause 14.1, either Party may assign (the "Assignor") this Agreement or any of its interests or obligations under this Agreement in whole or in part to any of its Affiliates, without the prior written consent of the other Party to this Agreement, provided that (i) the Assignor shall continue to be bound by its obligations of confidentiality hereunder and; (ii) the Assignor shall give the other Party no less than thirty (30) days prior written notice to any proposed assignment under this Clause 14.3, such notice to contain the name, address, and a brief description of the business of the intended assignee.

## **15. Miscellaneous**

- 15.1 The rights and obligations of the Parties hereunder shall be binding on and inure to their respective heirs, successors and permitted assigns.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement by the hands of the duly authorised representatives of the Parties the date and year first above written.

**insert company name NEDSCHROEF entity      HEXAPACK**

By:  
Name: **insert name**  
Title: **insert title**

By:  
Name: **insert name**  
Title: **insert title**