

## Confidentiality Agreement

between

**Swarovski-Optik KG.**  
Daniel-Swarovski-Straße 70  
6067 Absam  
AUSTRIA

hereinafter referred to as "SWAROVSKI OPTIK"

and

[Contract Partner's complete name/firm]  
[Address]  
[City Code, City]  
[Country]

hereinafter referred to as "PARTNER"

all together hereinafter referred to as "Contract Partners"

### Preamble

The Contract Partners are engaged in discussions on a cooperation as stated in Article 1. For that purpose the Contract Partners will provide each other with confidential information. In order to prevent an abuse of such information the Contract Partners agree as follows:

### 1 Fields of Work and Description of Cooperation

SWAROVSKI OPTIK is a company specializing in the development and production of highly sophisticated long-range optical instruments/products represented in the premium segments, and predominantly active in the fields of hunting and nature on an international basis. Demanding users worldwide prefer these innovative instruments, in particular binoculars, telescopes, optronic instruments, telescopic sights, range finders and night vision devices. The company's success is based on its innovative strength, the products' quality and intrinsic value as well as the functional and esthetic design. Additionally, SWAROVSKI OPTIK manufactures optical components, mechanical parts and optical component assemblies, including for large scale production, according to customers' orders. Consequently, SWAROVSKI OPTIK has well-founded knowledge and know-how in these fields.

The PARTNER is active in the field of [redacted] and, as a consequence, has well-founded knowledge and know-how in that regard.

For the purpose of a possible business cooperation concerning [redacted] the Contract Partners will provide each other with different kind of confidential information.

### 2 Confidentiality Obligation

The Contract Partners hereby undertake to treat any Confidential Information received from any other Contract Partner as confidential, not to pass it on to any third party without the other Contract Partner's prior written consent, and to take all precautions necessary to make sure that the Confidential Information is not accessible to unauthorized parties. Contract Partners shall, additionally, make Confidential Information available to that personnel solely, which needs to know in view of the business cooperation. Companies affiliated with a Contract Partner shall be considered to be third parties.

The Contract Partners undertake to use any received Confidential Information, any items, data, knowledge, etc. in connection with the business cooperation solely, and not to make use of it for

their own account or purpose, or for the account or purpose of third parties, including outside the scope of the cooperation as well as after the termination of the Agreement.

On basis of the knowledge of and/or access to the Confidential Information received from the other Contract Partner in relation to the cooperation, the receiving Contract Partner shall not claim any rights, including not a right of prior use, in view of possible intellectual property right applications.

### **3 Scope of Confidentiality Obligation**

“Confidential Information” shall be understood to comprise any and all drawings, sketches, photos, descriptions, calculations, formulae, test results, knowledge and know-how, concepts, data held on electronic data carriers, sample parts, prototypes, objects, etc., irrespective of whether they are in a verbal, written, graphic, electronic or other form, which one Contract Partner has provided or made available to the other Contract Partner, which a Contract Partner may otherwise have acquire knowledge about, and which has not been available to the public so far and/or which is marked as confidential.

If there are reasonable grounds for suspecting that a breach of the regulations of this Agreement occurred, that Contract Partner who had to keep the concerned Confidential Information secret shall bear the burden of proof that said information was already in public domain at the time of conclusion of this Agreement, or that it has been disclosed without that Contract Partner's fault or responsibility.

The obligation of confidentiality stipulated in this Agreement also applies to all of the Contract Partners' employees and/or third parties contracted by a Contract Partner, irrespective of the nature and legal terms and conditions of the relationship. The Contract Partners agree to place these persons/parties under an obligation of respective and appropriate confidentiality and to issue regular reminders of it. Upon request each Contract Partner shall provide the respective other Contract Partner with these peoples' names.

The Contract Partners undertakes to treat Confidential Information as confidential and not to pass it on to third parties without the prior written consent of the respective other Contract Partner, either whole or in part, or in amended or re-processed form, or to make use of it for any purpose other than the business cooperation and/or outside the same.

Each Contract Partner reserves the right to claim the return of its Confidential Information at any point of time, whereas the respective other Contract Partner subject to that claim shall return such Confidential Information within 5 working days after receipt of such a written request, and destroy any kind of existing copies, unless otherwise provided in Article 7. Exempted from this return and destroy obligation is Confidential Information in view of which this is impossible, e.g. due to automatic back-ups, and/or Confidential Information which are subject to mandatory retention obligations under the applicable laws.

The Contract Partners agree that Confidential Information shall not extend to such information in view of which the Contract Partner otherwise subject to confidentiality is able to demonstrate that

- a) he had had knowledge of the information in question when it was made available to him;
- b) that the information in question had been in the public domain when it was made available to him without his fault;
- c) that the information in question has been made available to him by a third party without a confidentiality obligation, whereas this third party – according to the concerned Contract Partner's knowledge – does not violate any confidentiality obligation imposed on that third party;
- d) and/or that the Contract Partner in question has developed the concerned Confidential Information on his own or via an Affiliated Company, independent of this Agreement.

### **4 Other Acquisition of Knowledge**

The Contract Partner agree that they and their employees will not make any notes, drawings, photographs or electronic or other recordings on the premises of any respective other Contract

Partner, unless they have obtained the respective Contract Partner's prior consent and only to the extent necessary for an effective business cooperation.

## **5 Exclusion of liability**

The Contract Partners do neither guarantee that use of the Confidential Information, data, objects etc. do not infringe intellectual property rights or copyrights of third parties, nor that it is accurate nor suitable for the purpose of the other Contract Partners/third parties. The Contract Partner do not, moreover, accept any liability for any damage incurred by the respective other Contract Partners or third parties.

## **6 No License**

All rights, title and property to/in view of the Confidential Information remains with the Contract Partner disclosing the Confidential Information in question. Unless explicitly agreed otherwise, neither the execution of this Agreement, nor the delivery or provision of any Confidential Information result in the grant of a license or other right, of whatever nature, in particular right to a name, rights to patents, utility models and/or trademarks as well as other intellectual property rights, nor does any respective obligation to grant such rights arise. Unless otherwise agreed, the receiving Contract Partner shall not have the right to apply for patents or other protective rights with regard to Confidential Information; any patents or other protective rights that may have been granted must be assigned and transferred to the Contract Partner entitled to the Confidential Information free of charge. The receiving Contract Partner shall not derive a right based on prior use based on the access to Confidential Information.

## **7 Contract Period**

Any and all obligations stipulated in this Agreement shall survive the termination of the business cooperation described in Article 1 of this Agreement and remain in force as long as the applicable laws allow, at least 5 more years. A possible limitation in the permissible period of validity of one provision does not affect the validity of any other provision not subject to such limitation.

This Agreement will last until [REDACTED], until the written notification by SWAROVSKI OPTIK to the PARTNER or vice versa, that a further cooperation is of no interest, and/or until the conclusion of a cooperation or research and development or comparable agreement, covering the terms contained in this Agreement – whichever event occurs first. After termination of this Agreement, any and all documents and Confidential Information within the meaning of Article 3 of this Agreement and all and any copies shall be returned to the Contract Partner entitled thereto, unless explicitly otherwise agreed, and each Contract Partner undertakes to delete any files and electronic back-up files of any documents from any data carriers. The return and/or deletion shall be completed within 5 working days after termination of the Agreement. Exempted from this return and destroy obligation is Confidential Information in view of which this is impossible, e.g. due to automatic back-ups, and/or Confidential Information which are subject to mandatory retention obligations under the applicable laws.

## **8 Miscellaneous**

If individual provisions of this Agreement are void, this shall not affect the validity and applicability of the remaining provisions. The invalid provision shall be replaced by a new provision that best meets the economic intentions of the Contract Partners and complies with the applicable law. Any discrepancy between the present Agreement and mandatory law shall be solved by amending the provision concerned in this Agreement, so that the provisions comply with the corresponding law.

The Contract Partners confirm that they are not bound by any other agreements that would jeopardize, hinder or render the compliance with this Agreement impossible. Amendments or modifications require written form.

## **9 Applicable Law, Venue**

The present Agreement shall be subject to the laws of Austria, excluding the United Nations Convention on the International Sale of Goods (CISG) and the provisions of the law on conflict of laws under inter-national private law.

Regardless of this arbitration clause, SWAROVSKI OPTIK reserves the right to seek injunctive relief/exercise the right of prohibition and/or preliminary injunction/interim measures before any authorities – including but not limited to state courts –, in any jurisdiction whatsoever.

The exclusive place of jurisdiction shall be the court competent as regards the subject matter in Innsbruck, Austria.

Absam, the \_\_\_\_\_

\_\_\_\_\_, the \_\_\_\_\_

\_\_\_\_\_  
Swarovski Optik KG.

\_\_\_\_\_  
*Contract Partner's complete name/firm*

Represented by

Dr. Gerd Schreiter

Mr./Mrs. *[full name of the authorized representative]*