

NON-DISCLOSURE AGREEMENT

Between

[please insert name and address of the other Party]

(hereinafter referred to as „**Contracting Partner**“)

and

Grohe AG, Feldmühleplatz 15, 40545 Düsseldorf,

(hereinafter referred to as „**Grohe**“)

(Contracting Partner and Grohe hereinafter referred to as “**Party**” or “**Parties**“)

PREAMBLE

- A. With a view to the planned collaboration of the Parties regarding [please describe precisely, e.g. “delivery of XXX” or “services in the area of IT consultancy” or “advice on the topic of data protection”] (“**Collaboration Purpose**“), the Parties will exchange with each other information which has to be kept confidential of each of the Parties, respectively of their affiliated companies within the meaning of Sec. 15 of the German Stock Corporation Act (*AktG*) (“**Affiliated Companies**“).
- B. Considering the economic importance of this confidential information, the Parties intend to agree on a confidential treatment of such information.

NOW THEREFORE, the Parties agree as follows:

§ 1 SUBJECT OF CONFIDENTIALITY

“**Confidential Information**“ within the meaning of this agreement is:

- 1.1 any information of the disclosing Party, respectively its Affiliated Companies, regardless of which nature, which is disclosed in the context of the Collaboration Purpose to the other Party, its legal representatives, employees, advisors or other representatives and its Affiliated Companies, either directly or indirectly, or becomes known in the context of the collaboration, irrespective of how it is materialized, in which way it is being disclosed or becomes known (e.g. orally, in writing, electronically or in another way) and irrespective of whether it is labelled explicitly as confidential;

- 1.2 in particular, all business-related, financial, technical and other information, among which especially business plans, customer data, employee data, supplier data, price lists, market studies, inventions, company secrets, business models, concepts, constructions, patents, patent applications, offers and replies to offers, and all other confidential information, including know-how, intellectual property rights and other intellectual property, descriptions, instructions, processes, recipes, systems, programs, instrumentation and control engineering, methods, techniques, work instructions, research and development data, software and products, components or parts of products, which are not conform to series-production status and/or are not available publicly on the market (e.g. prototypes, samples, drafts);
- 1.3 the fact that the Parties are in talks about the collaboration and the status of such talks.

§ 2 EXCEPTIONS

- 2.1 The information is not confidential if it
 - 2.1.1 was already known when it was disclosed by the other Party;
 - 2.1.2 is already publicly known at the time of disclosure by the other Party or becomes publicly known, each without any fault;
 - 2.1.3 was rightfully disclosed to the other Party by third parties, except if, to the Parties' knowledge, the disclosure by the third party violates a non-disclosure agreement; or
 - 2.1.4 was developed independently by an employee of the Parties who had no knowledge of the disclosed Confidential Information.
- 2.2 The burden of proof for the exception from confidentiality bears the Party which argues in favor of such exception.
- 2.3 If the disclosure of Confidential Information is necessary for the protection of legal claims vis-à-vis a court, or ordered by law, court decision or decision of an administrative body, the Party which is subject to such proceeding shall, as far as legally possible, inform the other Party thereof immediately and shall not conduct the disclosure of the Confidential Information without such prior notice.

§ 3 CONFIDENTIALITY UNDERTAKING

- 3.1 The Parties undertake to
 - 3.1.1 keep the Confidential Information of the other Party strictly confidential in order to prevent any unauthorized usage and/or transmission of the Confidential Information by or to third parties;
 - 3.1.2 use the Confidential Information exclusively for the Collaboration Purpose;
 - 3.1.3 maintain silence about the Confidential Information and to make it only accessible to Authorized Persons within the meaning of § 4.1 and only according to the provisions of this agreement;
 - 3.1.4 take appropriate measures to adequately restrict any copying of Confidential Information;
 - 3.1.5 take appropriate measures to prevent any unauthorized access to Confidential Information;

3.1.6 notify the other Party without undue delay if they become aware that somebody who is not an Authorized Person gained access to Confidential Information;

3.1.7 adhere to the provisions of data protection law in their current status.

3.2 In case of any breach of the undertakings contained herein by a Party, the other Party is entitled to claim compensation for the resulting damage. In particular, the affected Party may demand omission from the breaching Party in order to enforce the undertakings of this agreement, notwithstanding any further claims of the affected Party. A breach of this agreement, at least by negligence, shall be assumed if the damaged Party can prove that Confidential Information was transmitted from the sphere of the other Party or any persons or companies involved by it to third parties. The other Party may prove the opposite.

3.3 The Parties shall have no right to conduct any reverse engineering or dismantling under the German Act on Company Secrets (*GeschGehG*).

§ 4 AUTHORIZED PERSONS

4.1 The Parties may disclose Confidential Information only to the following persons inside and outside of their companies (“**Authorized Persons**”), to the extent that such persons require the Confidential Information for the adequate fulfillment of their tasks in the context of the Collaboration Purpose:

4.1.1 those legal representatives, board members, and employees of the Parties, their shareholders and their Affiliated Companies who are involved with the Collaboration Purpose,

4.1.2 the advisors retained by the Parties for the examination of the Collaboration Purpose if they are obliged to secrecy,

4.1.3 third parties if the transmission of the Confidential Information to them has been permitted in writing in advance by the other Party.

4.2 The Parties may disclose Confidential Information to Authorized Persons only if the Authorized Persons are subject to a confidentiality obligation equivalent to this agreement or if they are obliged to secrecy by law. The Parties shall monitor the adherence to the confidentiality undertaking according to this agreement by the Authorized Persons in an adequate way.

§ 5 COPYING AND DELETION OF CONFIDENTIAL INFORMATION

5.1 All Confidential Information which was disclosed by the Parties, including its copies and reproductions, remains property of the disclosing Party.

5.2 Without prior written consent of the other Party, the disclosed Confidential Information may neither be copied nor be reproduced in any other way, except if the receiving Party provides evidence that this was necessary for the usage according to the agreed Collaboration Purpose.

5.3 Upon request of the respective Party, which has to be made in writing within three (3) months after the end of the term of this agreement, the other Party is obliged, within fourteen (14) days after receipt of the request, to either return all received Confidential Information and any copies made thereof, or to delete/destroy it in mutual agreement of the Parties and to make sure that any persons outside the company who gained access to the Confidential Information pursuant to § 4 act accordingly.

- 5.4 The undertaking to return or delete/destroy does not apply to any (i) routinely created back-up files of electronic data traffic (back-up system), and (ii) Confidential Information and copies thereof which the Parties are obliged by law to retain until the end of a retention obligation. Such copies and the retained Confidential Information are, however, otherwise subject to the provisions of this agreement.

§ 6 TERM OF THE CONFIDENTIALITY UNDERTAKING

The agreement remains in effect for a term of three years from signing. The confidentiality obligation pursuant to this agreement expires at the earliest, however, three years after the last transmission of Confidential Information pursuant to this agreement by the Parties, and shall not be affected by the end of the term of this agreement, insolvency or any seizure proceeding regarding the assets of one of the Parties.

§ 7 RIGHTS IN CONFIDENTIAL INFORMATION

- 7.1 Each Party remains the owner of all rights in its Confidential Information, regardless of its incorporation. The Parties do not grant each other any rights in the Confidential Information, in particular, no intellectual property rights, usage rights or licenses. To the best of the Parties' knowledge, they are currently not a Party to any agreement which conflicts with this non-disclosure agreement.
- 7.2 The Parties do not guarantee, neither explicitly nor implicitly, that the Confidential Information disclosed by them is correct, free of errors, free of third party rights, complete or usable. No liability is assumed in this regard, except for intentional behavior or gross negligence.
- 7.3 The transmission of Confidential Information shall not constitute an offer to the other Party to conclude further contracts.

§ 8 FINAL PROVISIONS

- 8.1 The agreement protects the Parties and its Affiliated Companies and legal successors.
- 8.2 This non-disclosure agreement constitutes the entire agreement of the Parties on its subject matter. There are no side agreements.
- 8.3 Any amendments and supplementations of this agreement require written form for their validity. This also applies for any revocation of this written form requirement.
- 8.4 Should any provision of this agreement be void, this shall not affect the rest of the agreement. The Parties shall replace the void provision with a valid one, which corresponds to the spirit and purpose of the void provision. The same applies in case of any unintentional regulatory loophole.
- 8.5 This agreement is subject to German law, excluding the UN convention on the international sale of goods (CISG) and the conflict of laws provisions. The place of jurisdiction shall be Düsseldorf.
- 8.6 The agreement may not be transferred to third parties, as a whole or partially, without prior written consent of the other Party.

For **[please insert name of the other Party]**:

Place, date

Name & signature

Name & signature

For Grohe AG:

Place, date

Name & signature

Name & signature