



## NON DISCLOSURE AGREEMENT



THIS NON DISCLOSURE AGREEMENT is made and entered into as of the last date of execution by and

**BETWEEN**

**On the one hand**

BÖHLER Schmiedetechnik GmbH & Co KG (hereinafter referred to as "BOHLER"), a company organised and existing under the laws of Austria and having its principal office at Mariazeller Straße 25, 8605 Kapfenberg, Austria

**On the other hand**

UKAD (hereinafter referred to as "UKAD") having its office at 33 Avenue du Maine Tour Maine Montparnasse, Paris, France 75015.

BOHLER and UKAD may be hereinafter referred to individually as a "Party" or collectively as the "Parties".

**WITNESSETH THAT:**

**WHEREAS**

- (A) BOHLER has developed and / or possesses technical and commercial information and ideas which may or may not be patentable or constitute the basis of patentable inventions, and other trade secrets or other proprietary and confidential information, and which relate to gas turbine engines, gas turbine engine components, manufacturing processes and related aerospace materials and quality control;
- (B) UKAD is engaged in the business of melting and producing raw material (forging stock);
- (C) BOHLER and UKAD wish to pursue exploratory and preliminary discussions concerning a possible co-operation between them in relation to the purchase of raw material (forging stock) (hereinafter referred to as the "Objective");
- (D) During the course of discussions, it may become desirable or necessary for the Parties hereto to disclose to each other certain valuable technical, commercial or other confidential information;
- (E) The Parties have decided to enter into the following agreement (hereinafter referred to as "Agreement") to protect the information to be exchanged between the Parties and the interests of either Party:



Article 1 - Definitions for the purpose of this Agreement:

- "Disclosing Party":** means any Party under this Agreement disclosing Confidential Information (see definition below).
- "Permitted Recipient":** means the employees, directors and officers of the Receiving Party (see definition below).
- "Confidential Information":** means any previous or subsequent disclosure of information relating to either Party's Confidential information, technology and products, including without limitation, financial information, product information, methods, techniques and technical data, schematics, drawings and engineering information and information relating to a Party's operations and businesses or financial plans or strategies, including but not limited to designs, processes, trade secrets, know-how, research, product plans, ideas or concepts, products, services, software, inventions, algorithms, formulas, and other technical information disclosed or otherwise made available either directly or indirectly in oral, visual, electronically, written or any other tangible form, all that irrespective of the fact whether or not Confidential Information is marked as being confidential or as otherwise identified as being of confidential nature.
- "Receiving Party":** means any Party under this Agreement receiving Confidential Information.

Article 2 – Scope of disclosure

The Confidential Information to be disclosed under this Agreement relates to different programmes of aerospace industry as well as steam- and gas turbine applications.

Article 3 – Protection and use of Confidential Information

Nothing in this Agreement shall be construed as creating an agency, partnership or joint venture relationship between the Parties and no Party shall be under any obligation to enter into further agreements with the other Party with respect to the Objective. This Agreement is solely for disclosing and protecting Confidential Information and either Party does not promise to provide the other Party with Confidential Information.

In consideration of the Disclosing Party's agreement to make Confidential Information available to a Receiving Party or its Permitted Recipients, the Receiving Party undertakes to and agrees with the Disclosing Party as follows:

- a) To treat all Confidential Information as proprietary and confidential, using the same degree of precaution as it uses to protect its own Confidential Information of a similar nature, but in no event with less than reasonable care;

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- b) To use all Confidential Information, in whole or in part, only for internal discussions about the potential co-operation between the Parties in connection with the Objective;
- c) Not to copy, duplicate, reproduce, in whole or in part, any Confidential Information without the prior written consent of the Disclosing Party;
- d) Not to disclose or make or permit to be made available to any third party, including but not limited to, any of the Receiving Party's affiliates, any of the Confidential Information without the prior written consent of the Disclosing Party;
- e) Take all measures to make sure that unauthorized third parties, including but not limited to, any of the Receiving Party's affiliates, have no access to any Confidential Information;
- f) To disclose Confidential Information only to those of the Receiving Party's Permitted Recipients who need to receive such Confidential Information for the purpose of the Objective. The Receiving Party shall bind each person to the obligations under this Agreement as if it was a party to it, if such obligation to confidentiality and non-use is not already sufficiently covered in any other agreements between the Receiving Party and the respective person concerned; regardless hereof, the Receiving Party shall be liable for any own breach against this Agreement as well as for any breach of those persons to whom Confidential Information was legally or illegally disclosed or otherwise made available and holds the Disclosing Party harmless from any damages arising out of or in connection with any afore-mentioned breach of the obligations under this Agreement;
- g) That neither the Receiving Party nor any of its Permitted Recipients will disclose to any third party, the fact that Confidential Information has been made available to it or that the Parties are discussing a cooperation in relation to the Objective;
- h) Any material or document containing Confidential Information which has been disclosed or otherwise made available to the Receiving Party shall be promptly destroyed or returned by the Receiving Party, accompanied by all copies of such documentation after the Objective or this Agreement have been terminated or concluded, or at any time upon the Disclosing Party's written request, whatever comes first. In case of destruction, the Receiving Party shall confirm in writing the destruction to the Disclosing Party.

Notwithstanding the above, UKAD hereby permits the legal department of voestalpine Edelstahl GmbH as BOHLER's parent company to retain one set of copies of any material or document containing Confidential Information without access to commercial persons for the purpose of safeguarding BOHLER's legal matters in connection with this Agreement.

#### Article 4 – Permitted use

It shall be understood and agreed that the obligations of confidentiality and non-use provided by this Agreement shall not apply to information which the Receiving Party can prove:

- (a) by documented records was known to the Receiving Party or its officers, directors or employees prior to receipt from the other Party without the obligation to confidentiality;



- (b) is or becomes available to the public generally other than by or through acts or omissions in breach of this Agreement by the Receiving Party;
- (c) is rightfully obtained by the Receiving Party without restriction from sources other than the Disclosing Party who are rightfully in possession of such information and who are not under any obligation of confidentiality to the Disclosing Party; or
- (d) was independently developed by the Receiving Party without the use of or recourse to the Disclosing Party's Confidential Information.

For purposes of this paragraph, it is understood and agreed that specific information which the Receiving Party may obtain hereunder shall not release the Receiving Party of its obligations under this Agreement merely because individual features or parts of a combination contained therein are excluded pursuant to the items (a) through (d) of this paragraph.

The Receiving Party shall prove the existence of the afore-mentioned exceptions, in case the Receiving Party insists on them.

Any disclosure of Confidential Information by the Receiving Party due to a final governmental or judicial order shall not constitute a breach of its obligations hereunder, provided that in such a case the Receiving Party limits the subsequent disclosure of Confidential Information to the absolutely necessary extent and notifies the Disclosing Party without request and immediately prior to the disclosure of Confidential Information, if legally permissible, in order to support the Disclosing Party to take all measures and remedies in the current proceeding.

#### Article 5 – Relationship of the Parties

It is understood and agreed that no title, right or license is granted or implied by this Agreement to a Party under any patents or patent applications, proprietary information or other intellectual property rights owned or controlled by the other Party.

#### Article 6 – Points of contact

Each Party shall designate and shall inform in writing the other Party, within 10 days from the effective date of this Agreement, about the Permitted Recipient(s) who shall be responsible for the transmission and receipt of all Confidential Information exchanged hereunder. Any replacement of those Permitted Recipient(s) shall be notified in writing without delay to the other Party.

#### Article 7 – Liquidated damages and Liability

If a Party infringes any obligation of secrecy stipulated in this Agreement, this Party shall pay to the other Party a penalty amounting to EUR 5,000 per breach. The right of either Party of asserting further claims shall remain unaffected by the penalty promise.



#### Article 8 – No Waiver

No failure or delay by the Disclosing Party to exercise any of its rights under this Agreement, or any partial exercise of any right, shall constitute a waiver of such right or preclude any other or further exercise of any such right or the exercise of any other right.

#### Article 9 – Applicable Law and Jurisdiction

This Agreement and all further documents executed pursuant to it shall be governed by, construed and take effect in accordance with the laws of Switzerland excluding its conflict of law rules. If any dispute or controversy arises out of this Agreement or in connection with this Agreement or relates to its violation, termination or invalidity, the dispute or controversy shall be finally settled under the rules of Arbitration of the International Chamber of Commerce (“Rules”) by three arbitrators appointed in accordance with these Rules. The place of such arbitration shall be Zürich, Switzerland. The language of arbitration shall be English.

#### Article 10 - Duration

The Agreement shall enter into force when duly signed by both Parties and shall continue in full force and effect for seven (7) years after its legal effectiveness. After expiration of this Agreement, the obligations of the Receiving Party with respect to the protection and use of Confidential Information contained in this Agreement and section 9 of this Agreement will remain in force for a period of further three (3) years after expiration of this Agreement.

#### Article 11 - Amendment

No variation or amendment of this Agreement shall be effective unless it is made in writing, refers specifically to this Agreement and is signed by both Parties.

#### Article 12 - Disclaimer

In providing Confidential Information hereunder, the Disclosing Party makes no representation, warranty, assurance, or inducement, express or implied, as to its adequacy, sufficiency or freedom from defect of any kind, nor shall the Parties incur any responsibility or obligation by reason of such Confidential Information.

#### Article 13 - Notices

All notices, announcements, summons and/or communications pursuant to this Agreement shall be delivered to the addresses stated hereunder (or to such other address as a Party has communicated to the other Party in accordance with this Article 15) by registered mail with return receipt, by courier or by telefax or by e-mail:

**FOR**  
BÖHLER Schmiedetechnik GmbH & Co KG  
Mariazeller Strasse 25  
8605 Kapfenberg  
Austria



Att. Mr.: Karl Posch  
Phone: +43 3862 20 7054  
E-Mail: [karl.posch@bohler-forging.com](mailto:karl.posch@bohler-forging.com)

**FOR**  
UKAD  
RO 62 Lieu dit la Croix de Biolet,  
63780 St. Georges de Mons,  
France

Attn. Mr. Patrick Delaborde  
Phone: +33 473 33 4611  
E-Mail: [patrick.delaborde@eramet-aubertduval.com](mailto:patrick.delaborde@eramet-aubertduval.com)

Notices, announcements, summons and/or communications pursuant to this Agreement shall be deemed to have been received at the following moments:

- (a) if sent by registered letter: at the date of delivery evidenced by the return receipt;
- (b) if sent by courier: at the date of delivery by the courier to the addressee; and
- (c) if sent via telefax: at the time of sending evidenced by the dispatch note.
- (d) if sent via e-mail: at the time of transmission evidenced by a transmission note.

#### Article 14 - Miscellaneous

- 14.1 The Confidential Information shall at all times remain exclusive property of the Disclosing Party.
- 14.2 This Agreement constitutes the entire understanding and agreement between the Parties relating to the subject matter hereof as well as the Objective and supersedes and cancels any and all previous or collateral agreements, negotiations, commitments, representations or understandings between the Parties in respect to the Objective unless such agreements are in writing and signed by both Parties.
- 14.3 The invalidity, illegality or unenforceability of any provision of this Agreement shall not affect the other provisions and the Agreement. In the event of the invalidity or non-enforceability of any provision of this Agreement, it shall be deemed to have automatically been substituted by a provision that as closely as possible reflects the Parties' original intent.
- 14.4 This Agreement may not be assigned, in whole, in material part or otherwise by either Party hereto without the prior written consent of the other Party and any attempted assignment shall be null and void.

The execution and exchange of signed copies by means of electronic/facsimile transmission shall have the full force and effect of originals of this Agreement. However, the Parties agree to provide each other originals of this Agreement bearing the signatures of both Parties for record keeping purposes.



IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives:

For and on behalf of  
**BÖHLER Schmiedetechnik GmbH & Co KG**

Signature:

Name: Gerhard Lichtenegger

Title: Managing Director<sup>1</sup>

Date: July 23<sup>rd</sup>, 2015

Name: Thomas Kornfeld

Title: Managing Director<sup>2</sup>

For and on behalf of  
**UKAD**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name:

Title:

Date:

<sup>1</sup> Managing director of BÖHLER Schmiedetechnik GmbH.

<sup>2</sup> Managing director of BÖHLER Schmiedetechnik GmbH.