

GENERAL NON-DISCLOSURE AGREEMENT

between

the Business partner of FCM
(hereinafter referred to as "PARTNER")

and

Freiberger Compound Materials GmbH
Am Junger-Löwe-Schacht 5
09599 Freiberg
Germany
(hereinafter referred to as "FCM")

Whereas, FCM is in the possession of valuable, confidential, technical and non-technical information (including samples and other know-how) in the field of semiconductors and semiconductor materials, in particular compound semiconductors, methods for their production, and characterization, including the required raw and auxiliary materials and intermediate products, in particular wafers, and with regard to the use and application of semiconductors in electrical components and circuits (hereinafter referred to as "FCM-INFORMATION").

PARTNER is interested in obtaining access to FCM-INFORMATION in order to examine, develop or carry out, but not exclusively, a joint business relationship.

Whereas, FCM is willing to provide to PARTNER FCM-INFORMATION to the necessary extent. The fact that FCM-INFORMATION shall be disclosed under this Agreement is part of the FCM-INFORMATION and must also be kept secret.

Therefore, PARTNER and FCM have agreed the following:

1. FCM shall make the FCM-INFORMATION available to PARTNER to the extent it deems necessary for the purposes of this Agreement. All FCM-INFORMATION to be treated as confidential shall be clearly labeled or marked as confidential or its equivalent such as "secret". This also applies to such FCM-INFORMATION that is disclosed to PARTNER in intangible form, e.g. orally. This FCM-INFORMATION must be signed by the receiving PARTY at the time of disclosure.
2. PARTNER undertakes
 - to keep all FCM-INFORMATION received from FCM secret and not to disclose them to third parties or make them accessible in any other way, not even under a non-disclosure agreement, except to those consultants of PARTNER, who are bound by law to a professional obligation to maintain confidentiality and who are instructed by PARTNER to use the FCM-INFORMATION for the purposes of this Agreement only,

- to use all FCM-INFORMATION obtained under this Agreement for the purposes of this Agreement only,
 - to keep all FCM-INFORMATION received from FCM in a safe place in order to protect them from theft or unauthorized access; in doing so, PARTNER shall use the same degree of care as for its own information, but at least use reasonable care in safeguarding the FCM-INFORMATION against unauthorized access,
 - not to exploit the FCM-INFORMATION obtained under this Agreement commercially or to use them to gain a competitive advantage over FCM,
 - not to use the FCM-INFORMATION obtained under this Agreement for acquiring intellectual property rights,
 - neither to analyze, to reverse engineer, to de-compile or disassemble any samples and/or specimens containing FCM-INFORMATION made available by FCM, nor to do so through a third party,
 - neither to analyze, to reverse engineer, to de-compile or disassemble any software or related documents containing FCM-INFORMATION made available by FCM, nor to do so through a third party.
3. PARTNER further undertakes to restrict disclosure of FCM-INFORMATION received from FCM to only those employees (both freelance and permanent employees as well as temporary workers) who need them for the purposes of this Agreement and who are bound by confidentiality terms substantially similar to those in this Agreement, even for the period after termination of their employment with PARTNER, insofar as this is legally permissible.
4. The above obligations do not apply to such FCM-INFORMATION for which PARTNER can prove that the FCM-INFORMATION
- was known to PARTNER prior to such disclosure; or
 - was available to the public at the time of disclosure or became available thereafter without PARTNER being responsible for it; or
 - is explicitly approved for disclosure to a specific third party in a specific case by written authorization of FCM; or
 - is obtained from a third party, provided that the third party has lawfully come into the possession of the FCM-INFORMATION in each case and has not breached any confidentiality obligation by passing it on; or
 - has been developed independently by an employee of PARTNER who has not had access to the FCM-INFORMATION received, which shall be supported by meaningful written documentation; or
 - is required to be disclosed by law or the decision of a court or administrative authority, provided that PARTNER has given FCM the opportunity, prior to disclosure, to challenge the decision by way of interim relief, and then
 - either a court in the interim injunction proceedings has decided in the final instance that there is no right to an injunction, or

- FCM has given notice to waive interim relief or has withdrawn such remedy.

An opportunity within this meaning was given if PARTNER notified to FCM one month before the intended disclosure which FCM-INFORMATION had to be disclosed to which third party on which legal basis.

5. PARTNER shall immediately inform FCM if PARTNER becomes aware that FCM-INFORMATION has been disclosed in breach of this Agreement.
6. PARTNER may perform non-analysis tests (which may not constitute commercial use within the meaning of this Agreement) using the FCM-INFORMATION at its own expense and risk and shall hold FCM harmless of any claims for damage and/or personal injury which might occur in connection with these tests, unless PARTNER can prove that and to what extent such damage and/or injury was attributable to intent or gross negligence on the part of FCM providing defective FCM-INFORMATION. However, FCM shall not be liable for such errors which were obvious to a skilled person by exercising reasonable care.

To the extent that samples or specimens are provided, PARTNER shall, immediately upon completion of the intended studies, inform FCM of the findings thereby obtained and return or demonstrably destroy the samples or specimens received by FCM.

7. Insofar as FCM-INFORMATION contains protectable inventions, FCM reserves all rights, in particular the right to apply for registration of patents or any other industrial property rights of whatever kind relating to such inventions.

PARTNER shall neither attack nor otherwise block such applications for industrial property rights, and in particular shall not infringe novelty status with respect to such applications for industrial property rights. This Agreement or the disclosure of FCM-INFORMATION does not constitute a grant of ownership or license rights or rights of use, or any other industrial property rights. In order to acquire such rights, a separate agreement must be concluded.

8. This Agreement does not grant or create any license or an option for a license. Furthermore, this Agreement shall not be construed as an obligation of FCM to provide PARTNER with any samples of materials.

This Agreement shall also not be construed as a cooperation, joint venture, partnership, agency or other such arrangement between PARTNER and FCM. Regardless of the foregoing, neither of the Parties has the right to act externally on behalf of the other.

9. In the event that PARTNER in the performance of this Agreement, either solely or jointly, makes an invention whether patentable or not and which is based upon FCM-INFORMATION, the Parties hereby agree that prior to any filings an agreement must be achieved on the exploitation of such inventions and the

intellectual property rights derived from such invention, taking into consideration the above-mentioned business fields of PARTNER and FCM.

10. In the event of a breach of the obligations arising from this Agreement, PARTNER shall compensate FCM for the proven loss.
11. Furthermore, in the event of a breach of the obligations arising from this Agreement, PARTNER shall pay FCM a contractual penalty to be determined by FCM in each individual case at its reasonable discretion, unless PARTNER is not responsible for the breach. The defence of continuation of the offence is excluded for deliberate breaches of obligation. Any further reaching claims for damages shall not be affected thereby. A contractual penalty paid shall be applied against any damage compensation claims that may exist.
12. All FCM-INFORMATION disclosed hereunder shall remain the exclusive property of FCM. PARTNER undertakes to make copies of the FCM-INFORMATION only to the extent necessary for the purposes of this Agreement and to destroy such copies as soon as the purpose for making them is fulfilled or ceases to exist. PARTNER shall keep a written record of the copies made. The list shall record who made or destroyed a copy and when.
13. Upon request, PARTNER shall return immediately all FCM-INFORMATION to FCM along with all translations, copies (as well as summaries and texts containing FCM-INFORMATION) and samples. In the case of FCM-INFORMATION in electronic form, the irrecoverable destruction shall be sufficient, which shall be confirmed in writing to FCM upon request. However, PARTNER may retain copies which PARTNER has received for verification purposes and must store, which are subject to a statutory archiving obligation, as well as routinely made backup copies of electronic legal transactions. If such backup copies are no longer required, they shall be irretrievably deleted or destroyed. A right of retention does not exist.
14. In providing FCM-INFORMATION and any samples under this Agreement, FCM makes no warranty of any kind, expressly or implied, as to the sufficiency of FCM-INFORMATION, its freedom from defect, including but not limited to freedom from patent infringement that may result from the use of this FCM-INFORMATION, nor shall FCM incur any responsibility or obligation by reason of such FCM-INFORMATION, except as may be specifically provided herein.

Samples and specimens provided and their technical documentation do not contain any assurances regarding the industrial-technical or economic usability of the FCM-INFORMATION embedded in the samples and specimens.

15. This Agreement shall also be binding upon the successors of the Parties. PARTNER shall not assign rights and obligations under this Agreement in whole or in parts, including by way of merger, without the prior written consent of FCM.
16. This Agreement shall be governed by and construed in accordance with the laws of Austria, however, excluding any provisions on conflict of laws.

17. All disputes arising from or in connection with this Agreement which cannot be settled amicably by the Parties shall be finally settled by arbitration under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with said Rules, by which each Party is bound. The language to be used in the arbitration shall be English. The venue for the arbitration proceeding shall be, at the plaintiff's choice, at the registered seat of either plaintiff or defendant.
18. This Agreement shall enter into force from the time of provision of FCM-INFORMATION marked as "Vertraulich" or "Company confidential" and shall remain in force for a period of five (5) years.
PARTNER's obligations regarding confidentiality of FCM-INFORMATION under this Agreement shall survive the expiration of this Agreement by five (5) years.
19. Changes and amendments to this Agreement must be made in writing in order to be valid. This shall also apply to any amendment of this requirement for written form.
20. Should any provision of this Agreement be or become invalid or unenforceable, the remaining provisions shall remain valid. In such case, the Parties shall negotiate a legally permitted provision that comes as close as possible to the economic purpose of the legally ineffective provision. This shall also apply in the event of a contractual gap.