

# Non-Disclosure Agreement

Between

[Name, adress]

– hereinafter referred to as „**Receiving Party**“ –

and

Mr. Hubert Lechner,

An der Beek 255, Gewerbepark, Halle 9,

41372 Niederkrüchten

– hereinafter referred to as „**Revealing Party**“ –

– hereinafter Receiving Party and Revealing Party  
jointly referred to as „**Parties**“ –

the following Non-Disclosure Agreement is made:

## Preamble

The Revealing Party has developed a concept according to which caravans (hereinafter referred to as "**Waumobil**" or "**Waumobile**") specially tailored to the needs of pet owners are rented to such pet owners for holiday purposes within Germany and/or Europe (hereinafter referred to as "**Contract Concept**"). The specific animal-friendly equipment of the Waumobiles (hereinafter referred to as "**Equipment**") is based on the sole know-how of the Revealing Party, which he has acquired independently over the years of his business activity (hereinafter referred to as "**Know-How**").

The Receiving Party is interested in participating in the Contract Concept of the Revealing Party, whereby the details are still unsettled between the Parties. To this end, the Parties enter into non-binding contract negotiations. In the course of these contract negotiations, confidential information of the Revealing Party may be disclosed to the Receiving Party, the protection of which is the purpose of this Non-Disclosure Agreement.

Now therefore, the Parties agree as follows:

## **§ 1**

### **Confidential Information**

1.1 Confidential Information for the purposes of this Non-Disclosure Agreement shall be trade and business secrets of the Revealing Party as well as other material information (whether written, electronic, oral, digitally embodied or in any other form) which is marked as confidential or the confidentiality of which is evident from the circumstances. Particularly, the Know-How of the Revealing Party, all documents embodying such Know-How as well as the Equipment of the Waumobile shall be deemed confidential. Apart from that, confidential information includes, in particular, but is not limited to:

- Business strategies,
- Economic plannings,
- Price calculations and pricing,
- Competitive market analysis,
- turnover and sales figures,
- personnel data,
- products and product specifications,
- manufacturing processes,
- inventions, technical processes and procedures that are not publicly known and represent an economic value,
- customer and supplier data,
- passwords and access codes,
- The conclusion and content of this non-disclosure agreement.

1.2 Confidential information may also be information and documents which, in individual cases, do not meet the requirements of a trade secret within the meaning of the German Act on the Protection of Trade Secrets (Gesetz zum Schutz von Geschäftsgeheimnissen – GeschGehG).

1.3 Non-confidential information is such information,

- a) which was known or generally accessible to the public before the Receiving Party became aware of it or which becomes so at a later point in time without a breach of a duty of confidentiality;
- b) which was demonstrably already known to the Receiving Party before he or she performed his or her duties for the Revealing Party and without a breach of a duty of confidentiality;
- c) which were obtained by the Receiving Party itself without using or referring to confidential information; or
- d) which is made available to the Receiving Party by an authorised third party without breach of a duty of confidentiality.

The burden of proof for the existence of these prerequisites shall be borne by the Receiving Party.

- 1.4 In case of doubt as to whether the information is confidential, the Receiving Party shall immediately obtain a binding opinion from the Revealing Party in order to clarify this question.

## **§ 2**

### **Duty of Confidentiality**

- 2.1 The Receiving Party is obliged to maintain confidentiality about all confidential information which becomes known to him or her or has become known to him or her during his or her activity, as well as not to exploit or imitate it. In particular, he or she shall use confidential information exclusively for the purpose of the contract negotiations with the Revealing Party and shall not acquire it except for that purpose. In particular, the Receiving Party is prohibited from obtaining confidential information by reverse engineering a product or object, in which such confidential information is embodied.
- 2.2 Without prior consent of the Revealing Party, the Receiving Party is prohibited from disclosing confidential information to third parties (including employees or other workers of the Receiving Party), unless they depend on the knowledge of such confidential information for the fulfilment of the purpose agreed upon with the Revealing Party and the Receiving Party, provided that it is ensured that the third party is aware of the content and scope of the rights and obligations arising from this agreement and complies with them.
- 2.3 The Receiving Party shall, at the request of the Revealing Party, provide the Revealing Party with a list of persons who have received confidential information.
- 2.4 The duty of confidentiality does not exist insofar as the Receiving Party is obliged by law or on the basis of a court or official decision to disclose confidential information. In this case, the Receiving Party shall inform the Revealing Party immediately and at least in text form before disclosure. When disclosing the information, the Receiving Party shall point out that the information is confidential and, in the case of trade secrets according to Section 2 no. 1 GeschGehG, shall also work towards ensuring that appropriate confidentiality measures are taken.
- 2.5 The duty of confidentiality shall also apply after completion of the negotiations between the Parties. Insofar as the Receiving Party is unreasonably impaired in his professional advancement by this post-contractual duty of confidentiality, he or she may demand that the Revealing Party releases him or her from this obligation.

### **§ 3**

#### **Other duties**

- 3.1 The Receiving Party undertakes to ensure the confidentiality of the confidential information in its area of responsibility by taking appropriate confidentiality measures in accordance with the instructions of the Revealing Party. In particular, the Receiving Party shall ensure that third parties are prevented from gaining unauthorised access to confidential information.
- 3.2 If there is a suspicion that confidential information has been lost or has become known to unauthorised persons, the Receiving Party must immediately take the necessary measures to end disclosure, prevent further disclosure of confidential and/or limit such disclosure. In this case, the Receiving Party is also obliged to inform the Revealing Party without delay and at least in text form in detail that such a suspicion exists and which confidential information is affected.
- 3.3 All working materials, documents, data carriers, records or written documents relating to the Revealing Party as well as any copies or transcripts must be carefully stored by the Revealing Party for the duration of their negotiations, taking into account the duty of confidentiality. The Receiving Party undertakes to return to the Revealing Party at the latter's request at any time or without being requested to do so in case of inconclusive completion of the negotiations all information carriers referred to in sentence 1. The Receiving Party is not entitled to a right of retention.
- 3.4 Upon inconclusive completion of the negotiations, the Receiving Party must within 14 days either return to the Revealing Party or destroy all information carriers containing or embodying confidential information and delete all digital copies on its own storage media. The successful deletion or destruction shall be confirmed to the Receiving Party in writing or text form. This obligation to delete or destroy does not apply to copies that are necessary for the Receiving Party to comply with legal storage obligations.

### **§ 4**

#### **Breaches**

- 4.1 For each case of violation of the duty of confidentiality according to Section 2, the Receiving Party shall be obliged to pay to the Revealing Party a contractual penalty to be determined by the Revealing Party, the amount of which shall be in accordance with reasonable discretion. The amount of the contractual penalty shall depend on the significance of the breached duty, the disadvantages (including immaterial disadvantages) suffered by the Revealing Party and the degree of the breach of duty as well as the fault of the Receiving Party. The contractual penalty may not be less than EUR 5,000,00 and may not exceed EUR 100,000,00. The Receiving Party is free to have the appropriateness of the determined amount reviewed by the courts. The possibility of asserting further claims, in particular for injunctive relief and further damages, shall remain unaffected. The

contractual penalty shall be offset against further claims for damages. The obligation to pay a contractual penalty does not apply if and insofar as the Receiving Party is not responsible for the breach of duty.

4.2 If the violation consists of

- a) maintaining a right of access to the same confidential; or
- b) otherwise continuing to make available the same confidential information; or
- c) a continuing exploitation of the same confidential information,

(„**continuous violation** “), the contractual penalty shall be due once again for each commenced month in which the continuous violation exists, if the violation continues despite a warning. Apart from that, several infringements each trigger separate contractual penalties, if necessary, also several times within one month. If, on the other hand, individual breaches occur within the scope of a continuous breach, they are included in the contractual penalty due for the continuous breach. In the event of several contractual penalties becoming due, the total amount of the contractual penalties to be paid shall be limited to EUR 200.000,00.

## **§ 5**

### **Confidential Information of third parties**

- 5.1 The duty of confidentiality shall also apply to confidential information of third parties which have been entrusted to the Revealing Party for use and which have been entrusted or made accessible by him to the Revealing Party on the occasion of the Revealing Party's activity.
- 5.2 If the Receiving Party has received information directly from a third party on the occasion of the negotiations with the Revealing Party, and has doubts as to whether, in the specific case, a duty of confidentiality or a prohibition of use exists vis-à-vis this third party, the Receiving Party shall be obliged, before using such information in the course of his or her activities, to point out any rights of third parties that may exist to the Revealing Party.

## **§ 6**

### **Miscellaneous**

- 6.1 This agreement shall be governed by German law.
- 6.2 Changes and amendments to this agreement must be made in writing in order to be valid. This also applies to any amendment of this requirement for written form.

6.3 Should any provision of this agreement be or become invalid, ineffective or unenforceable, the remaining provisions shall remain valid. The Parties undertake to replace the invalid, ineffective or unenforceable provision by a valid, effective and enforceable provision which comes as close as possible to the economic interests of the parties. This shall also apply in the event of a contractual gap.

6.4 The District Court of Mönchengladbach shall have jurisdiction over all disputes arising from or in connection with this agreement.

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Place, date

\_\_\_\_\_  
Place, date

\_\_\_\_\_  
Revealing Party

\_\_\_\_\_  
Receiving Party