

NON-DISCLOSURE AND RESTRICTED USE AGREEMENT

by and between

T&D Europe, Secretary General Diederik Peereboom

- hereinafter referred to as "T&D Europe " -

and

„Purpose questionnaire writer company“

- hereinafter referred to as "Party" or "Parties" respectively -

Whereas, the European Commission will publish a report assessing whether cost-effective, technically feasible, energy-efficient and reliable alternatives exist, which make the replacement of fluorinated greenhouse gases possible in new medium-voltage secondary switchgear and this report may be extended to other medium voltage, high voltage switchgear, and other non-switching electrical equipment, and T&D Europe has the opportunity to submit a position paper beforehand to the European Commission, i.e. in the first half of 2019 (“the Initiative”];

Whereas, each individual Party intends to submit information to T&D Europe concerning this Party’s electrical equipment using SF6 and/or alternatives based on its current knowledge and development status and anticipated future steps, considering technical and economic feasibility (“Purpose”); which information T&D Europe and the Parties regard as confidential;

Whereas, T&D Europe will forward this information to two independent experts, to be agreed upon by the Parties and subject to approval by the Parties’ antitrust counsel, who will evaluate, assess and summarize the information and return it (subject to a minimum of 5 answers per item regarding categories medium voltage and non switching elements and a minimum of 3 answers per item regarding generator circuit breakers and High voltage categories). in a sufficiently aggregated and anonymized form (which do not contain any Competitive Information) to T&D Europe to serve as a basis for the position paper;

Whereas, T&D Europe will make available this aggregated and anonymized information to the members of its Working Group “Gases for Switchgear”;

Whereas, the Parties will not engage in discussions among themselves and not disclose among themselves any proprietary and/or any Competitive Information for the Initiative or the Purpose;

Whereas, the Initiative shall be open to all interested stakeholders of T&D Europe who will publish the Initiative on its web site and generally invite all interested third parties to join.

Now therefore, T&D Europe and the Parties enter into the following agreement ("Agreement"):

Article 1 Definitions

"Confidential Information" shall mean any information and data, including, but not limited to, any kind of business, commercial or technical information and data or Competitive Information disclosed by one Party to T&D Europe, in connection with the Purpose, irrespective of the medium in which such information or data is embedded, which is marked "Confidential" or similarly marked by the disclosing Party or which is - when disclosed orally or visually - identified as such prior to disclosure and summarized in writing by the disclosing Party and said summary is given to T&D Europe marked "Confidential" or similarly labelled within thirty (30) days after such disclosure. Confidential Information shall include any copies or abstracts made thereof as well as any apparatus, modules, samples, prototypes or parts thereof. Confidential Information shall also include the fact that a Party discloses Confidential Information.

"Effective Date" shall mean the last date that this Agreement has been executed by T&D Europe and the Parties.

"Permitted Recipients" shall mean the two independent experts, agreed upon by the Parties, advising T&D Europe with regard to the Purpose, but limited to such recipients who each reasonably need to know Confidential Information for the Purpose, and who have in addition, prior to receiving Confidential Information, executed a written agreement imposing confidentiality obligations with respect to the Confidential Information no less stringent than the obligations imposed on T&D Europe by this Agreement.

Article 2 Confidentiality; restricted use

All Confidential Information

- (i) shall be used by T&D Europe exclusively for the Purpose;
- (ii) shall not be distributed or disclosed in any way or form by T&D Europe to anyone except to employees of T&D Europe and/or employees of the Permitted Recipients who each reasonably need to know such Confidential Information for the Purpose, and who in addition, are bound to confidentiality in writing (including by employment agreements) to an extent not less stringent than the obligations imposed under this Agreement. For the avoidance of doubt, the Permitted Recipients are only allowed to distribute or disclose Confidential Information to T&D Europe;
- (iii) shall be kept confidential by T&D Europe with the same degree of care as is used with respect to T&D Europe's own equally important confidential information to avoid disclosure to any third party, but at least with reasonable care; and
- (iv) shall remain the property of the disclosing Party.

T&D Europe shall have the right to refuse accepting information under this Agreement prior to its disclosure; information disclosed despite such a refusal is not covered by the confidentiality obligation under this Agreement. Nothing herein shall obligate either Party to disclose any particular information.

Any Confidential Information hereunder shall be provided only to T&D Europe and by the written or electronic means provided or described by T&D Europe, except that T&E Europe may request oral clarifications from the Party concerned.

Article 3 Exceptions

The obligations under Article 2 (except for the last sub-para of Article 2) shall not apply to any information which:

- (i) was in T&D Europe's possession without an obligation to confidentiality prior to receipt from the disclosing Party;
- (ii) is at the time of disclosure already in the public domain or subsequently becomes available to the public through no breach of this Agreement by T&D Europe and no breach of the corresponding obligations of Permitted Recipients;
- (iii) is lawfully obtained by T&D Europe from a third party without an obligation to keep confidential, provided such third party is not, to T&D Europe's knowledge, in breach of any obligation of confidentiality relating to such information;
- (iv) is developed by T&D Europe independently from any Confidential Information or pursuant to the exceptions set out in this Article; or
- (v) is approved for release by written agreement of the disclosing Party; or
- (vi) has been aggregated and anonymized by the two independent experts, agreed upon by the Parties, so that it is impossible to conclude from the information that it was submitted by a particular Party/particular Parties.

The party/parties seeking the benefit of such exception shall bear the burden of proving its existence.

T&D Europe may disclose Confidential Information of the disclosing Party if T&D Europe is required to do so by any ruling of a governmental or regulatory authority, a court order, or by mandatory law, provided that, if not prohibited by law, written notice of such ruling or order is given without undue delay to the disclosing Party so as to give the disclosing Party an opportunity to intervene, and provided further that T&D Europe uses reasonable efforts to obtain assurance that the Confidential Information will be treated confidentially. Confidential Information disclosed pursuant to such mandatory law, ruling or court order should be marked "Confidential".

Article 4 Handling of Competitive information

The Parties will ensure that no competitive information on e.g. such as but not limited to bids, prices, profit margins and market shares, capacity utilization/expansion, market entry strategies, product design, costs and marketing/strategy plans, procurement conditions, R&D roadmaps, allocation of customers, quota, intended future market conduct ("Competitive Information") will be shared between any competitors.

And, under no circumstances shall the Initiative be used as a means for the Parties to reach any understanding, expressed or implied, which restricts or tends to restrict competition, or any way impairs or tends to impair the ability of members to exercise independent business judgment regarding matters affecting competition.

T&D Europe as well as the two independent experts shall refrain from disclosing any Competitive Information to any persons other than its directors, officers or employees who have a need to know such information in connection with the Initiative. T&D Europe as well as the two independent experts shall keep any Competitive Information obtained from the individual Parties in the strictest confidence and take all reasonable precautions to prevent access to such information by persons who are not directors, officers or employees of T&D Europe or the two independent experts respectively. For the avoidance of doubt: "directors, officers or employees of T&D Europe" shall exclude any directors, officers, employees or other representatives of any Party (except T&D Europe) or of any competitor of the Parties (except T&D Europe) in the field of the Purpose.

T&D Europe as well as the two independent experts may generate summary reports and share them with the Parties, provided a minimum of 5 answers per item regarding categories medium voltage, generator circuit breakers and non switching elements and a minimum of 3 answers per item regarding generator circuit breakers and High voltage categories) has been given and provided however that in each case any information which is intended to be reported has been sufficiently anonymized, aggregated, cleansed, redacted, or otherwise masked of any Competitive Information.

Article 5 No license

This Agreement does not grant or convey any licenses or any other rights such as, but not limited to, rights to use patents, utility models, trademarks or trade names, nor does it constitute any obligation of the disclosing Party to grant or convey such rights. T&D Europe shall not be entitled to file for patents or other statutory protection in any country based on or using any Confidential Information received hereunder, and any such patent or statutory protection must be transferred to the disclosing Party upon its reasonable request and without any charge. The disclosure of Confidential Information does not constitute any right of prior use for T&D Europe.

Article 6 No remuneration; warranty; liability

T&D Europe is not obliged to pay any remuneration for disclosure of any information under this Agreement and agrees that all information is made available "as is" and that no warranties are given or liabilities of any kind are assumed with respect to the quality of such information, including, but not limited, to its fitness for the Purpose, non-infringement of third party rights, or its correctness.

If T&D Europe discloses or distributes Confidential Information to Permitted Recipients, T&D Europe shall be liable for acts or omissions by its Permitted Recipients or by their employees (even where such Permitted Recipients ceased to be Permitted Recipient), as if such acts or omissions had been T&D Europe's own acts or omissions, where such acts or omissions result in unauthorized distribution, use and/or disclosure of such Confidential Information.

Article 7 Termination; survival period

This Agreement shall come into force on the Effective Date and shall expire six (6) months thereafter. It may be prematurely terminated with thirty (30) days' prior written notice by either Party.

T&D Europe's confidentiality obligations which accrued under this Agreement prior to termination or expiration of this Agreement shall continue for a period of four (4) years following termination or expiration of this Agreement (the survival period).

The parties are under no legal obligation to conclude any other contract with regard to the Purpose.

Article 8 Return

The disclosing Party may, within ninety (90) days after termination or expiration of this Agreement, request in writing from T&D Europe that T&D Europe at the disclosing Party's discretion destroy all Confidential Information in its possession and/or in possession of its Permitted Recipients, including Confidential Information stored electronically and/or on record-bearing media as well as any copies thereof. T&D Europe shall confirm in writing such destruction as well as any copies thereof to the disclosing Party within fourteen (14) days after receipt of the disclosing Party's request.

These provisions shall not apply to (i) copies of electronically exchanged Confidential Information made as a matter of routine information technology backup and to Confidential Information or copies thereof which must be stored by T&D Europe or Permitted Recipients according to provisions of mandatory law, and (ii) originals and copies of this Agreement, provided that such Confidential Information or copies thereof shall be subject to the confidentiality obligation according to the terms and conditions set forth herein until destroyed.

Article 9 Dispute resolution

All disputes arising in connection with this Agreement, including any question regarding the termination or any subsequent amendment of the Agreement, shall be finally settled in accordance with the Rules of Arbitration ("Rules") of the International Chamber of Commerce ("ICC").

The expedited procedure provisions of the Rules shall not apply and the arbitral tribunal shall consist of three arbitrators. If the tribunal consists of three arbitrators, T&D Europe and the Parties shall nominate one arbitrator for confirmation by the ICC. Both arbitrators shall agree on the third arbitrator, within thirty (30) days after their appointment. Should the two arbitrators fail to reach agreement on the third arbitrator within the thirty-day period, the ICC shall select and appoint the third arbitrator.

The seat of arbitration shall be Brussels. The language to be used in the arbitration proceeding shall be English.

Any production or disclosure of documents shall be limited to the documents on which each party specifically relies in its submission(s).

Nothing in these sections shall limit the right of the parties to seek relief intended to preserve the status quo or interim measures in any court of competent jurisdiction or arbitral tribunal.

Article 10 Governing law

This Agreement shall be subject to the substantive law in force in Switzerland without reference to any of its conflict of law rules.

Article 11 Assignment

Neither this Agreement nor any rights and obligations under this Agreement may be assigned or delegated by either/any party without the prior written consent of the other parties.

Article 12 Written form

This Agreement may not be modified or amended except by written amendments duly executed by the parties. This requirement of written form can only be waived in writing.

Article 13 Export regulations

Notwithstanding anything to the contrary within this Agreement, for all Confidential Information disclosed hereunder the parties shall comply with all applicable export control, customs and foreign trade regulations ("Foreign Trade Regulations") and the disclosing Party shall obtain all necessary export licenses. The disclosing Party shall advise T&D Europe in writing as early as possible, but not later than the date of disclosure of the Confidential Information, of any information and data needed by T&D Europe to comply with all applicable Foreign Trade Regulations, e.g. the export control list number or the Export Control Classification Number pursuant to the U.S. Commerce Control List (ECCN). Neither party shall be obligated to fulfill this Agreement if such fulfillment is prevented by any impediments arising out of national or international Foreign Trade Regulations or any embargoes or other sanctions.

Article 14 Severance clause

If provisions of this Agreement are, or should become entirely or partially invalid or unenforceable, this shall not affect the validity or enforceability of the remaining provisions. Instead of the invalid or unenforceable provision, a ruling shall be used, which, in so far as it is legally permissible, as closely as possible reflects the intentions of the parties concluding the Agreement.

Article 15 Third parties

A person who is not a party to this Agreement may not enforce any of its terms.

Each party hereto has caused this Agreement to be executed by their duly authorized representatives on the dates specified below.

T&D Europe, Secretary General „Purpose questionnaire writer company“

Place, Date:

Name (print):

Title:

Place, Date:

Name (print):

Title:

Place, Date:

Name (print):

Title:
