

ICC Non-Circumvention & Non-Disclosure Agreement

A.

SPECIAL CONDITIONS

These Special Conditions have been prepared in order to permit the parties to agree on the particular terms of their NCND Agreement by completing the spaces left open or choosing (as the case may be) among the alternatives provided in this document. Obviously this does not prevent the parties from agreeing on other terms or further details in Box A-10 or in one or more annex(es).

INTERMEDIARY	
<i>(name and address)</i>	CONTACT PERSON (if applicable)
	<i>(name and address)</i>

COUNTERPART	
<i>(name and address)</i>	CONTACT PERSON (if applicable)
	<i>(name and address)</i>

The present Non-circumvention & Non-disclosure Agreement will be governed by these Special Conditions (to the extent that the relevant boxes have been completed) and by the ICC General Conditions for Non-circumvention & Non-disclosure Agreements which constitute part B of this document.

_____ (place), _____ (date)

The Intermediary

The Counterpart

A-1	SERVICES WHICH THE INTERMEDIARY IS TO PROVIDE
A-1.1	Communication of information about a third party or a particular deal
	<p>The Intermediary hereby agrees to transmit to the Counterpart in accordance with A-2:</p> <ul style="list-style-type: none"> <input type="checkbox"/> name(s) and address(es) of third party(ies) with whom the Counterpart may enter into business relations <input type="checkbox"/> information with respect to a specific deal or contract the Counterpart may enter into with a named third party <input type="checkbox"/> other information:
A-1.2	Putting into contact and assistance in the negotiation
	<p>The Intermediary hereby agrees:</p> <ul style="list-style-type: none"> A. <input type="checkbox"/> to put the Counterpart into contact with a third party: <ul style="list-style-type: none"> <input type="checkbox"/> for possible future business <input type="checkbox"/> for a particular deal or contract B. <input type="checkbox"/> to put the Counterpart into contact with a third party and/or for a particular deal or contract and to assist the Counterpart in the contract negotiation until conclusion C. <input type="checkbox"/> to put the Counterpart into contact with a third party and/or for a particular deal or contract and to assist the Counterpart in the contract negotiation until conclusion and thereafter during performance
A-1.3	Other
	<p>The Intermediary hereby agrees to perform the following services for the Counterpart:</p>
<p><i>The purpose of Box A-1 is to indicate the type of service the Intermediary agrees to provide. The information (if any) to be transmitted to the Counterpart (e.g., name of the potential third party) may be provided when signing the contract or at a later stage, as indicated in A-2 hereunder.</i></p>	

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A-2	DISCLOSURE OF INFORMATION TO THE COUNTERPART
<p>The information which the Intermediary has agreed to provide under A-1.1, A-1.2, or otherwise, will be transferred to the Counterpart as follows:</p>	
<p><i>State here how and when (e.g., when signing the contract, or X days thereafter, or after having received a certain sum or guarantee from the Counterpart) the relevant information will be handed over to the Counterpart.</i></p>	

A-3	EXCLUSIVE RIGHTS OF THE INTERMEDIARY (art. 7)
A-3.1	With respect to the activity to be performed by the Intermediary in general
A.	<input type="checkbox"/> The intermediary is non-exclusive: the Counterpart remains free to appoint other intermediaries and to act on its own with respect to the activity entrusted to the Intermediary.
B.	<input type="checkbox"/> The intermediary is exclusive: consequently the Counterpart shall not
	<input type="checkbox"/> entrust other intermediaries with the same task.
	<input type="checkbox"/> perform on its own the task entrusted to the Intermediary.
C.	Remuneration on business made without the Intermediary's intervention On possible direct business by the Counterpart within the scope of the activity entrusted to the Intermediary, the Intermediary will <input type="checkbox"/> be entitled to remuneration. <input type="checkbox"/> not be entitled to remuneration.
A-3.2	With respect to the particular deal for which this NCND Agreement is entered into
A.	<input type="checkbox"/> The Counterpart may deal directly with the third party.
B.	<input type="checkbox"/> The Counterpart may deal with the third party only through the Intermediary.
C.	<input type="checkbox"/> Other:.....
	Remuneration with respect to the particular deal will be due:
i.	<input type="checkbox"/> in case of conclusion of the contract
ii.	<input type="checkbox"/> only if the contract has been concluded through the Intermediary's actual intervention
iii.	<input type="checkbox"/> other:

A-3.3	With respect to contracts with a third party introduced by the Intermediary (customer protection)
A. <input type="checkbox"/>	The Intermediary will not enjoy customer protection , i.e., the Counterpart will be free to conclude contracts with the third party without any obligation towards the Intermediary.
B. <input type="checkbox"/>	The Intermediary will enjoy customer protection as specified hereunder
	1. Third parties to whom the customer protection will apply are:
	<input type="checkbox"/> any third parties indicated or contacted by the Intermediary.
	<input type="checkbox"/> only third parties actually contacted through the Intermediary's assistance.
	<input type="checkbox"/> other:
	2. Extent of customer protection with respect to direct dealings with the third party:
	<input type="checkbox"/> the Counterpart may deal with the third party only through the Intermediary .
	<input type="checkbox"/> the Counterpart may deal directly with the third party.
	<input type="checkbox"/> other:
	3. Remuneration with respect to contracts made with protected customers without the Intermediary's intervention
	<input type="checkbox"/> on all future contracts with protected customers
	<input type="checkbox"/> only on contracts with protected customers concluded through the Intermediary's actual intervention
	<input type="checkbox"/> other:

A-4	UNDERTAKING NOT TO COMPETE
A. <input type="checkbox"/>	The Intermediary agrees not to provide its services to competitors of the Counterpart:
	<input type="checkbox"/> with respect to the promotional activity it agrees to perform.
	<input type="checkbox"/> with respect to the third party(ies) indicated to the Counterpart.
	<input type="checkbox"/> with respect to the third party(ies) it actually puts into contact with the Counterpart.
	<input type="checkbox"/> with respect to the particular deal for which this NCND Agreement is entered into.
	<input type="checkbox"/> other:
B. <input type="checkbox"/>	The Intermediary is free to provide its services to any third party, including competitors of the Counterpart.

A-5	REMUNERATION PAYABLE TO THE INTERMEDIARY
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A-5.1 Amount and type of remuneration

For its activity as defined in box A-1 the Intermediary will be entitled to:

- a lump sum of
- a commission of % of the value of the contract(s) entered into with a third party.
- remuneration to be agreed upon case by case.
- other:

A-5.2 Conditions for the right to remuneration

A. Remuneration for the performance of services as such

The remuneration will be due independently from the result obtained through the Intermediary's intervention, i.e., for the performance by the Intermediary of its services (e.g. supply of information, putting into contact with a third party).

B. Remuneration depending on the conclusion of contract(s) with a third party

The remuneration will be due only if and to the extent a contract has been concluded with the third party introduced by the Intermediary.

i. Time limit for the conclusion of the contract with the third party

The remuneration will be payable provided the contract has been concluded with the third party:

- within
(specify date or time from conclusion of this NCND agreement).
- before termination or expiration of this NCND Agreement.
- other:

ii. Time when the remuneration is due

The right to remuneration will arise:

- when the contract with the third party has been concluded.
- when the Counterpart has performed its obligations under the contract with the third party.
- when the third party has performed its obligations under the contract with the Counterpart.

A-6	CONFIDENTIALITY
<p>The Counterpart agrees to consider as confidential the following information:</p> <ul style="list-style-type: none"> <input type="checkbox"/> the names and addresses of the third party(ies) transmitted by the Intermediary according to A-1 <input type="checkbox"/> other: 	

A-7	TERM OF THE AGREEMENT
A. Duration of the NCND Agreement	
<p>This NCND Agreement shall remain in force:</p> <ul style="list-style-type: none"> <input type="checkbox"/> for a period of(months/years) from the date of its conclusion. <input type="checkbox"/> until (specify date). 	
B. Possible renewal of the NCND Agreement after the date of expiry	
<p>At the date of expiration this NCND Agreement:</p> <ul style="list-style-type: none"> <input type="checkbox"/> shall definitely cease (unless a new agreement is entered into between the parties). <input type="checkbox"/> shall be automatically renewed for a further period of unless terminated by either party by notice in writing not less than months before the date of expiry. 	

A-8	APPLICABLE LAW
To be completed only if the parties wish to modify art. 13.1 of the General Conditions	
<ul style="list-style-type: none"> <input type="checkbox"/> This NCND agreement shall be governed by the laws of (country). <p><i>The choice of a domestic law to govern the NCND agreement is not recommended, unless the rules applicable under such law have been previously ascertained: see Introduction, § 11.</i></p>	

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A-9	RESOLUTION OF DISPUTES (art.14)
<p><i>The two solutions hereunder (arbitration or litigation before ordinary courts) are alternatives: parties cannot choose both of them. If no choice is made, ICC arbitration will apply, according to Art. 14.2.</i></p>	
<p>A. <input type="checkbox"/> ARBITRATION</p> <p>1. <input type="checkbox"/> ICC (according to Art. 14.2)</p> <p>Place of arbitration:</p> <p>2. <input type="checkbox"/> Other:</p> <p>..... (specify)</p> <p>Place of arbitration:</p>	<p>B. <input type="checkbox"/> LITIGATION (ordinary courts)</p> <p>In case of dispute the courts of (place), (country) shall have jurisdiction.</p> <p>Such jurisdiction shall be <input type="checkbox"/> exclusive. <input type="checkbox"/> non-exclusive.</p>

A-10	OTHER

B.

ICC General Conditions for Non-circumvention & Non-disclosure Agreements

Art. 1 General

- 1.1 These General Conditions shall apply together with the Special Conditions (Part A) of the ICC Non-circumvention & Non-disclosure Agreement), to the extent such Special Conditions have been completed by the parties, or whenever the agreement between the parties makes reference to the ICC General Conditions for Non-circumvention & Non-disclosure Agreements or similar rules. Where these General Conditions (Part B) are used independently of the said Special Conditions (Part A), any reference in Part B to Part A will be interpreted as a reference to any relevant specific conditions agreed by the parties.
- 1.2 No modification of this NCND Agreement is valid, unless agreed or evidenced in writing. However, a party may be precluded by its conduct from asserting this provision to the extent that the other party has relied on that conduct.

Art. 2 Good faith and fair dealing

- 2.1. In carrying out their obligations under this Agreement, the parties will act in accordance with good faith and fair dealing.
- 2.2. The provisions of this Agreement, as well as any statements made by the parties in connection with it, shall be interpreted in good faith.

Art. 3 Authority of the Intermediary to bind the Counterpart

- 3.1 Unless otherwise agreed in writing, the Intermediary has no authority to make contracts on behalf of, or in any way to bind the Counterpart towards third parties.

Art. 4 Services provided by the Intermediary

- 4.1 The services to be provided by the Intermediary may comprise one or more of the following activities:
 - (a) The indication of names and addresses of third parties or of a particular deal to be made with a third party (see Box A-1.1 of the Special Conditions), for the purpose of enabling the Counterpart to enter into a direct business relationship with such third party(ies).
 - (b) The putting of the Counterpart into contact with a third party and/or assistance to the Counterpart for the purpose of concluding a specific deal or contract with such third party and/or the assistance to the Counterpart during performance of the contract (see Box A-1.2 of the Special Conditions).
 - (c) Other similar services to be set out in detail (see Box A-1.3 of the Special Conditions).
- 4.2 The Agreement must state as precisely as possible the type of services which the Intermediary agrees to provide, without however necessarily specifying the name of the third party, which

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may be left to a further stage (see Box A-2 of the Special Conditions). No obligation will arise on the side of the Counterpart if the services to be provided by the Intermediary are not at all identified in this Agreement, or in another written document, or are so vague that it would be unreasonable for the Counterpart to undertake the obligations under this Agreement with respect to them.

- 4.3 If the Intermediary has agreed to transmit to the Counterpart information about a third party, a specific deal or other information (particularly if the parties have completed boxes A-1.1 of the Special Conditions), it is assumed, unless otherwise agreed in writing, that the Intermediary's obligation is limited to the communication of the name of the third party and/or of the deal or such other information as the Intermediary may have agreed to transmit.
- 4.4 If the Intermediary has agreed to put the Counterpart in contact with a third party, it is assumed, unless otherwise agreed in writing, that in order to perform such obligation the Intermediary must actually establish a direct contact between the Counterpart and the third party. Further obligations of the Intermediary to assist the Counterpart until the conclusion of the deal and/or to assist the Counterpart during performance of the contract will arise only to the extent such obligations have been expressly undertaken by the Intermediary (e.g., by choosing alternatives B or C of Box A-1.2 of the Special Conditions). In such cases the Intermediary must undertake reasonable efforts to assist the Counterpart until the conclusion of the deal (if alternative B has been chosen) and/or during performance of the contract with the third party (if alternative C has been chosen).

Art. 5 Remuneration payable to the Intermediary

- 5.1 The parties may agree upon remuneration (commission or lump sum) to be paid by the Counterpart to the Intermediary for the services rendered (see, for instance, Box A-5.1 of the Special Conditions). The amount of such remuneration or the criteria for its determination (e.g., agreement case by case, determination by a third party) must be agreed in writing. In the absence of a written agreement to this effect, it is assumed that the Intermediary is not entitled to remuneration from the Counterpart for its activity.
- 5.2 If the parties have agreed that the Intermediary's remuneration should be a lump sum, payment will be due, unless otherwise agreed in writing, when the Intermediary has completed the service(s) it is to provide under this Agreement. In all other cases, remuneration shall be due, unless otherwise agreed in writing, if and to the extent a contract has been concluded with the third party introduced by the Intermediary.
- 5.3 Unless otherwise agreed in writing (especially under A-5.2-B), the remuneration payable to the Intermediary on contracts with third parties will be due only after fulfillment by the third party of its obligations towards the Counterpart (e.g., payment of the invoiced price if the Counterpart is the seller; delivery of the goods if the Counterpart is the buyer).
- 5.4 If the remuneration is to be calculated as a percentage of the value of the contract with the third party (commission), it shall be calculated--unless otherwise agreed in writing--on the net amount of the invoices, i.e., the effective sales price (any discount other than cash discounts being deducted) clear of any additional charges (such as packing, transportation, insurance) and clear of all tariffs or taxes (including value-added tax) of any kind, provided that such additional charges, tariffs and taxes are separately stated in the invoice.

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- 5.5 The parties may fix (especially under A-5.2-A) a time limit within which the contract between the Counterpart and the third party must be concluded. If no contract is concluded within such time limit, no remuneration will be due to the Intermediary, unless it appears that the conclusion of the contract with the third party has been intentionally delayed by the Counterpart for the purpose of avoiding payment. If no time limit has been agreed in the contract (or otherwise in writing), the right to remuneration will in any case expire if the contract with the third party has not been concluded before the expiration or termination of the NCND Agreement.
- 5.6 If the Intermediary has been granted an exclusive right, all direct deals made by the Counterpart which fall under the Intermediary's exclusivity will entitle the Intermediary, unless otherwise agreed in writing, to the remuneration (if any) foreseen in this Agreement, on the terms and conditions stated herein.

Art. 6 Confidential Information

- 6.1 Each party agrees not to disclose to third parties any Confidential Information (as defined hereunder under Article 6.2) disclosed to it by the other party in the context of this Contract, such as names of customers, sources of contacts, and business opportunities, and to return to the other party any confidential documents after the term or expiry of this Agreement.
- 6.2 Confidential Information means information which has been supplied to the other party with an indication that it is confidential (or which has been indicated under A-6 of the Special Conditions as being confidential), as well as information the confidential nature of which is so obvious that it need not be specified, provided such information is not in the public domain.

Art. 7 Exclusive rights of the Intermediary

- 7.1 Except as stated hereafter in Articles 7.2 and 7.3 and unless otherwise agreed in writing (especially under box A-3.1-B and A.3.1-C), it is assumed that the Intermediary is appointed on a non-exclusive basis, i.e., that the Counterpart remains free to appoint other intermediaries and to act on its own with respect to the activity the Intermediary is to perform.
- 7.2 With respect to third parties the Counterpart comes to know through the Intermediary's intervention, the following will apply, unless the parties have agreed otherwise in writing:
- 7.2.1 If the Intermediary's task is simply to indicate the name of a third party, it is assumed that it is not granted an exclusive right (customer protection) with respect to such third party and that the Counterpart may deal with that third party without any limitation.
- 7.2.2 If the Intermediary is to put the Counterpart into contact (and/or assist during negotiation) with a third party, it is assumed that the Intermediary is granted an exclusive right to act as an intermediary--for present and future business of the same type with such third party (customer protection)--on the terms and conditions indicated in this NCND Agreement, and particularly under Article 7.4 herein.
- 7.2.3 If the Intermediary is to put the Counterpart into contact (and/or assist during negotiation) with a third party for a particular deal, it is assumed that the Intermediary is granted no exclusive right with respect to future business with such third party.
- 7.3 Unless otherwise agreed in writing (especially under box A-3.2 and A-3.3 of the Special Conditions), the exclusivity granted to the Intermediary does not prevent the Counterpart from

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making direct contact with the third parties introduced by the Intermediary, provided it pays the remuneration which may be due under Article 5 on the business made with such third party.

- 7.4 Unless otherwise agreed in writing, any exclusive right granted to the Intermediary will not exceed the duration of this NCND agreement. However, in case of earlier termination by the Intermediary for breach by the Counterpart, the exclusive rights granted to the Intermediary (and corresponding right to remuneration) will last until the date on which the Agreement would have naturally expired.
- 7.5 The term “exclusive right” or “exclusivity” includes also situations where the exclusivity is not absolute, such as those (sometimes called “sole” instead of “exclusive”) where the Counterpart retains the right to directly deal with third parties reserved to the other party, with or without remuneration to the Intermediary.

Art. 8 Undertaking not to compete

- 8.1 If and to the extent the Intermediary has been granted an exclusive right by the Counterpart, it is assumed, unless otherwise agreed in writing, that it undertakes not to provide its services, directly or indirectly, to competitors of the Counterpart with respect to the business for which it has the exclusivity.
- 8.2 On the contrary, to the extent the Intermediary has not been granted an exclusive right, it will have no obligation to act only for the Counterpart. In this case it will be free to act for competitors of the Counterpart, provided it does not use any confidential information or otherwise take advantage of its relationship with the Counterpart in the dealings with such competitors.
- 8.3 Unless otherwise agreed in writing, any undertaking not to compete on the part of the Intermediary will not exceed the duration of this NCND Agreement. However, in case of earlier termination by the Counterpart for breach by the Intermediary, the non-competition obligation of the intermediary (if any) will last until the date on which the Agreement would have naturally expired.

Art. 9 Damages in case of breach

- 9.1 If a party breaches its obligations under this Agreement, the other party will be entitled to recover the actual damages suffered as a consequence of such breach.
- 9.2 If the Counterpart concludes a contract with a third party in breach of this Agreement, the damages suffered by the Intermediary are assumed to be equivalent to the remuneration payable to the Intermediary under this Agreement on such business.
- 9.3 The parties may agree on liquidated damages by expressly fixing the amount due for a specific breach. Such liquidated damages may however be reduced by the arbitrator(s) or by the court(s) if they appear to be excessive considering all circumstances of the case.
- 9.4 The party entitled to liquidated damages under Article 9.2 may claim further damages, provided it proves that it has actually suffered the damage in excess of the sum fixed under Article 9.2.

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Art. 10 Right to inspect the Counterpart's books

- 10.1 The Intermediary will have the right to have the Counterpart's books inspected by an independent expert for the purpose of detecting a possible breach by the Counterpart of its obligations under this Contract.
- 10.2 If the inspection shows that the Counterpart has breached this Contract, the costs of such inspection shall be borne by the Counterpart. Otherwise they shall be borne by the Intermediary.

Art. 11 Duration

- 11.1 Unless otherwise agreed in writing (especially in Box A-7), this NCND Agreement will remain in force for a fixed period of one year.
- 11.2 If the parties have agreed that the NCND Agreement will be automatically renewed at its expiry, unless terminated with notice before such date, the notice must be given in writing by means of communication ensuring evidence and date of receipt (e.g., registered mail with return receipt, special courier, telex), not less than two months before the expiry date. If the successive period of renewal has not been specified, such period will be six months.

Art. 12 Earlier termination

- 12.1. Each party may terminate this NCND Agreement with immediate effect, by notice given in writing by means of communication ensuring evidence and date of receipt (e.g., registered mail with return receipt, special courier, telex), in case of a substantial breach by the other party of the obligations arising out of the Agreement, or in case of exceptional circumstances justifying the earlier termination.
- 12.2. Any failure by a party to carry out all or part of its obligations under the Agreement, resulting in such detriment to the other party as to substantially deprive it of what it is entitled to expect under the Agreement, shall be considered a substantial breach for the purpose of Article 12.1. Circumstances in which it would be unreasonable to require the terminating party to continue to be bound by this Agreement shall be considered exceptional circumstances for the purpose of Article 12.1.

Art. 13 Applicable law

- 13.1 Unless otherwise agreed in writing (especially in Box A-8), any questions relating to this agreements which are not expressly or implicitly settled by its provisions shall be governed, in the following order:
- (a) by the principles of law generally recognized in international trade as applicable to international contracts with occasional intermediaries,
 - (b) by the relevant trade usages, and
 - (c) by the UNIDROIT Principles of International Commercial Contracts 2010,
- with the exclusion – subject to Article 13.2. hereunder – of national laws.

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13.2 In any event consideration shall be given to mandatory provisions of the law of the country where the Intermediary is established which would be applicable even if the contract is governed by a foreign law. Any such provisions will be taken into account to the extent that they embody principles which are universally recognized and provided their application appears reasonable in the context of international trade.

Art. 14 Resolution of disputes - Arbitration

14.1 The parties may at any time, without prejudice to Article 14.2., seek to settle any dispute arising out of or in connection with this agency contract in accordance with the ICC Mediation Rules.

14.2 Unless otherwise agreed in writing, all disputes arising out of or in connection with this NCND Agreement, or its validity, shall be finally settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules.