

NDA

BUSINESS THRIVER UG

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the "Agreement") is made as of DATE: _____

between BUSINESS THRIVER UG ("BUSINESS THRIVER"), a corporation organized under the laws of Germany, having its principal place of business at VIKTUALIENMARKT 8, 80331 MUNICH and

_____ ("COMPANY"), a business partner or corporation organized under

the laws of _____, having its principal place of business at

_____.

RECITALS

WHEREAS, BUSINESS THRIVER has developed confidential and proprietary business plans, business methods, procedures and other information relating to fashion and their special product functions (the "Business");

WHEREAS, BUSINESS THRIVER and COMPANY wish to conduct preliminary discussions in contemplation of an agreement to collaborate or form a business relationship in connection with the Business (the "Proposed Transaction");

WHEREAS, during the course of discussions, each of BUSINESS THRIVER and COMPANY may have access to certain information relating to their respective businesses which is either non-public, confidential or proprietary in nature (as more fully described in Section 2 below, the "Information");

NOW, THEREFORE, for good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

BUSINESS THRIVER, directly or through its directors, officers, agents, representatives (including attorneys, accountants, financial advisors), and employees shall allow COMPANY to have access to the information so that it may evaluate the Business.

COMPANY shall hold such Information in strict confidence in accordance with the provisions of this Agreement and shall cause its directors, officers, agents, representatives (including attorneys, accountants, financial advisors), and employees (collectively, "COMPANY's Representatives") to hold such information in strict confidence in accordance with the provisions of this agreement.

COMPANY, directly or through its directors, officers, agents, representatives (including attorneys, accountants, financial advisors), and employees shall allow BUSINESS THRIVER to have access to the information so that it may evaluate COMPANY's business. BUSINESS THRIVER shall hold such information in strict confidence in accordance with the provisions of this Agreement and shall cause its directors, officers, agents, representatives (including attorneys, accountants, financial advisors), and employees (collectively, "BUSINESS THRIVER's Representatives") to hold such information in strict confidence in accordance with the provisions of this Agreement.

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"information" shall be deemed to include, without limitation,

1. All proprietary and confidential information of each party relating to the Business or COMPANY's business, as the case may be, which is owned, licensed to, or controlled by such company, including, but not limited to, methods, processes, equipment, plans, formulas, software, programs, sales and marketing information, technical information, and know-how;
2. Information provided both prior to or following the date hereof; and
3. all Information furnished to either party, whether disclosed in writing or orally or obtained through observation or inspection of any of such company's books and records or facilities.

The information will be kept strictly confidential and, without the other party's prior written consent, the receiving company and its representatives shall not:

1. copy, reproduce, distribute or disclose the Information to any party other than to a Representative (or a BUSINESS THRIVER Representative, as the case may be) pursuant to the terms of this Section 3,
2. use the information for any purpose other than in connection with evaluating the Proposed Transaction, or
3. use the Information in any way that is detrimental to the disclosing company.

Each party hereto agrees to use all reasonable and prudent efforts to protect and safeguard the information from misuse, loss, theft, publication or the like and to ensure that those Representatives (or BUSINESS THRIVER's Representatives, as the case may be) who receive any of the information shall do likewise. Each party hereto also agrees to transmit the Information only to those Representatives (or BUSINESS THRIVER's Representatives, as the case may be) who are actively and directly participating in the evaluation of the Proposed Transaction, and who are informed of and who have agreed to comply with the terms of this Agreement and who are instructed to make use of the Information only in a manner consistent herewith. Each recipient of Information shall be responsible for any breach of the terms of this Agreement by such individuals.

The Information shall not include information which the receiving party can clearly demonstrate falls within any of the following categories:

1. Information which has come within the public domain through no fault or action of the receiving party or its Representatives;
2. Information which was known to the receiving party on a nonconfidential basis prior to its disclosure hereunder;

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3. Information which becomes rightfully available to the receiving party on a nonconfidential basis from any third party, the disclosure of which to the receiving party does not violate any contractual or legal obligation said third party has to any party hereto or any other person with respect to such information; or
4. information required to be disclosed by a court of competent jurisdiction, administrative agency or governmental body, or by any law, rule or regulation, or by subpoena, or any other administrative or legal process provided that the receiving party shall
 - 4.1. give the disclosing party as much prior notice thereof as is reasonably practicable so that the disclosing party may seek such protective orders or other confidentiality protection as it in its sole discretion and at its sole expense, may elect and
 - 4.2. reasonably cooperate with the disclosing party in protecting such confidential or proprietary nature of the information which must be so disclosed (with such duty of cooperation not requiring the receiving party to initiate or participate in any litigation or incur more than de minimis out-of-pocket costs). In any such event, the receiving party shall provide only such limited information as it is advised by written opinion of counsel is legally required and shall exercise its best efforts to obtain assurance from the recipient that confidential treatment will be accorded such information.
5. In the event either party hereto determines not to proceed with a transaction with the other party or when requested by either party, the other party shall immediately return or destroy (and confirm in writing such fact) the Information, including all notes, copies, reproductions, summaries, analyses, or extracts thereof, then in such party's or its Representatives' (or BUSINESS THRIVER's Representatives', as the case may be) possession, excluding this Agreement, and will not retain any copies, extracts or other reproductions in whole or in part of such material, other than this Agreement, provided, however, that counsel for such party may retain one copy of such written material as a record of what is to be held confidential. Such return or destruction shall not abrogate such party's continuing obligations under this agreement.

Neither party hereto nor their respective Representatives shall be deemed to have made any representations or warranties as to the accuracy or completeness of the Information. Neither party hereto nor their respective representatives shall have any liability whatsoever to the other party relating to or arising in any manner from such other party's use or reliance upon the Information.

Nothing in this Agreement shall be construed, by implication or otherwise, as an obligation to enter into any further agreement concerning the Information or as a grant of a license by either party to the other party to use the Information for any purpose other than the evaluation of the Proposed Transaction.

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The terms of this Agreement shall be binding for a period of three (3) years commencing on the date of this Agreement.

Each party hereto agrees that without prejudice to the other rights and remedies otherwise available at law or in equity, each party shall be entitled to equitable relief by way of injunction if the other party or any of its representatives breach or threaten to breach any of the provisions of this Agreement, and that neither party shall oppose the granting of such relief.

The parties acknowledge that the information is valuable and unique and that disclosure in breach of this Agreement will result in irreparable injury to the disclosing party.

It is understood and agreed that no failure or delay by either party hereto in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power, or privilege hereunder.

It is also understood that in case of non-compliance with this agreement, a contractual penalty of 50,000.00 EUR will be payable and the resulting damage will be replaced by (COMPANY). The claims for damages and omission remain unaffected.

This agreement shall be governed by and construed in accordance with the laws of Germany, excluding that body of law known as conflicts of law, and the parties hereto irrevocably elect as the sole judicial forum for the adjudication of any matters arising under or in connection with this agreement, and consent to the jurisdiction of the courts of German law located in Munich.

This agreement represents the entire understanding and agreement of the parties and supersedes all prior communications, agreements and understandings between the parties relating to the subject matter hereof.

This agreement may not be modified, amended or waived except by a written instrument duly executed by both parties.

This Agreement may not be assigned by either party without the prior written consent of the other and shall be binding on, and inure to the benefit of, the respective successors of the parties hereto. This Agreement may be signed in multiple originals, each of which shall constitute an original document.

[COMPANY] By:

Name:

Title:

Date:

BUSINESS THRIVER UG By:

Name:

Title:

Date: