

TEMPLATE DUTCH LAW NON-DISCLOSURE AGREEMENT (NDA)

This is a template Dutch law mutual non-disclosure agreement (NDA).

This example NDA according to the laws of the Netherlands can be used as a general format to agree on the confidential exchange of certain information by one party or both parties to explore a business relationship.

Variations on this template are possible, although restrictions may apply under Dutch labour law.

Comments and matters that require amendment or customization are highlighted in yellow.

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DUTCH LAW MUTUAL NON-DISCLOSURE AGREEMENT - NDA

THE UNDERSIGNED:

1. [NAME], a private company with limited liability incorporated under the laws of [COUNTRY], with its principal place of business at [ADDRESS];

and
2. [NAME], a private company with limited liability incorporated under the laws of [COUNTRY], with its principal place of business at [ADDRESS];

hereafter jointly referred to as the “Parties”,

WHEREAS:

- A. Proprietary Information (*as defined hereafter*) may be disclosed by one Party to this agreement (the “Disclosing Party”) to the other Party (the “Receiving Party”) for the purpose of furthering a business relationship between the Parties;
- B. the Receiving Party understands that the Disclosing Party has disclosed or may disclose information relating to the Disclosing Party's business (including, without limitation, customers, suppliers, ICT-systems, SAAS, names and expertise of employees and consultants, know-how, formulas, processes, ideas, inventions (whether patentable or not) schematics and other technical, business, financial, and product development plans, forecasts, strategies and information), which to the extent previously, presently, or subsequently disclosed to the Receiving Party is hereinafter referred to as “Proprietary Information” of the Disclosing Party.

HAVE AGREED AS FOLLOWS:

Clause 1. Use of Proprietary Information

1.1. The Receiving Party agrees:

- (a) to hold the Disclosing Party's Proprietary Information in confidence and to take all reasonable precautions to protect such Proprietary Information (including, without limitation, all precautions the Receiving Party employs with respect to its own confidential materials);
- (b) not to divulge any such Proprietary Information or any information derived therefrom to any third person (except consultants, subject to the conditions stated below);
- (c) not to make any use whatsoever at any time of such Proprietary Information except to evaluate internally whether to enter into a business relationship with the Disclosing Party; and
- (d) not to copy or reverse engineer any such Proprietary Information or a part thereof.

- 1.2. Any employee or consultant given access to any Proprietary Information must have a legitimate 'need to know' and shall be similarly bound in writing to the confidentiality obligations of this agreement.
- 1.3. The Disclosing Party agrees that the foregoing clauses 1(a), 1(b), 1(c) and 1(d) shall not apply to any information that the Receiving Party can prove (i) is (or through no improper action or inaction by the Receiving Party or any affiliate, agent, consultant or employee) generally available to the public, or (ii) was in its possession or known by it prior to receipt from the Disclosing Party, or (iii) was rightfully disclosed to it by a third party without restriction, provided the Receiving Party complies with any restrictions imposed by the third party.
- 1.4. The Receiving Party may make disclosures required by court order, provided the Receiving Party uses reasonable efforts to limit disclosure and to obtain confidential treatment or a protective order and has allowed the Disclosing Party to participate in the proceedings if possible.
- 1.5. The provision of any Proprietary Information does not constitute the granting of any license or other right with respect to the any Proprietary Information.

Clause 2. Return of Proprietary Information

- 2.1. Immediately upon (i) the decision by either Party not to enter into the business relationship contemplated by Consideration A, or (ii) a request by the Disclosing Party on other grounds at any time, the Receiving Party will turn over to the Disclosing Party all Proprietary Information of the Disclosing Party and all documents or media containing any such Proprietary Information and any and all copies or extracts thereof.
- 2.2. If the return of Proprietary Information, whether in electronic or digital form or otherwise, is not possible, such information shall promptly be destroyed by the Receiving Party and the Receiving Party shall promptly notify the Disclosing Party of the date and the manner of destruction. Destruction includes deleting information in electronic or digital form from servers, back-up systems and the cloud.

Clause 3. Disclosure

- 3.1. Except to the extent required by law, neither Party shall disclose the existence or subject matter of the negotiations or business relationship contemplated between the Parties.

Clause 4. Non-circumvent

- 4.1. The Receiving Party shall not approach, contact or in any other way communicate with employees or other staff of the Disclosing Party nor with consultants, customers and suppliers of the Disclosing Party, whether related or not, except in the event where there already was a business relationship with such consultants, customers and suppliers prior to entering into this agreement.

Clause 5. Default

- 5.1. The Receiving Party acknowledges and agrees that due to the unique nature of the Disclosing Party's Proprietary Information, there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach may allow the Receiving Party or third Parties to unfairly compete with the Disclosing Party resulting in irreparable harm to the Disclosing Party, and therefore, that upon any such breach or any threat thereof, the Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever remedies it might have at law and to be indemnified by the Receiving Party from any loss or harm, including, without limitation, attorneys' fees, in connection with any breach or enforcement of the Receiving Party's obligations hereunder or the unauthorized use or release of any such Proprietary Information.
- 5.2. The Receiving Party will notify the Disclosing Party in writing immediately upon the occurrence of any such unauthorized release or other breach of which it is aware. In the event that any of the provisions of this agreement shall be held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that this agreement shall otherwise remain in full force and effect.

Clause 6. [OPTIONAL:] Penalty

- 6.1. In the event of a breach by the Receiving Party of Clause 1, 2, 3 and/or 4 of this agreement, the Receiving Party forfeits an immediately due and payable penalty to the Disclosing Party of EUR [AMOUNT] and additionally EUR [AMOUNT] for each day that such breach remains unremedied, regardless of and besides the right of the Disclosing Party to claim actual compensation of the damage incurred. The compensation payable by the Receiving Party shall explicitly include the costs incurred by the Disclosing Party concerning the costs made during to enforcement of its rights in and out of court (not limited to the legal costs) and also the possible costs to determine a breach or liability under this agreement as well as the amount of damages.
- 6.2. The Parties acknowledge, taking into account the interests involved and their respective relationship, that the penalty amounts of this Clause are fair and reasonable.

Clause 7. Final Provisions

- 7.1. This agreement shall be governed by the laws of the Netherlands.
- 7.2. The competent court in [PLACE] shall have exclusive competence to rule on any disputes in relation to this agreement, on the understanding that the Disclosing Party will always be entitled to institute proceedings against the Receiving Party before the competent court in the country and district where the Receiving Party resides or, if applicable, has its registered office.

7.3. This agreement supersedes all prior discussions and writing and constitutes the entire agreement between the Parties with respect to the subject matter hereof.

7.4. No waiver or modification of this agreement will be binding upon either Party unless made in writing and signed by a duly authorized representative of such Party and no failure or delay in enforcing any right will be deemed a waiver.

7.5. This agreement shall be construed as to its fair meaning and not strictly for or against either Party.

THUS AGREED AND EXECUTED BY THE FOLLOWING PARTIES:

[NAME PARTY 1]

[NAME PARTY 2]

[NAME]

Date:

[NAME]

Date: