

# MUTUAL NON-DISCLOSURE AGREEMENT (NDA)

OC Oerlikon Balzers Ltd.

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**THIS AGREEMENT**, made this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_ (the "Effective Date"), among **OC OERLIKON BALZERS LTD.**, a Liechtenstein corporation having its principal office at LI-9496 Balzers, Principality of Liechtenstein and \_\_\_\_\_ a \_\_\_\_\_ (Country) Corporation having its principal office at \_\_\_\_\_ (Address)

## WITNESSETH

**WHEREAS**, both parties, for their mutual benefit, desire to disclose to the other certain specifications, designs, plans, drawings, software, data, prototypes, or other business and/or technical information related to

Production equipment and process technology for thin film Silicon photovoltaic modules.

(hereinafter referred as the "Project") not currently disclosed by the applicable patents which is proprietary to the disclosing party.

**WHEREAS**, both parties disclose certain areas of said proprietary data to each other on the condition that the other does not disclose the same to any third party nor make use thereof in any manner except for the evaluation and specification relating to the Project.

**NOW, THEREFORE**, the parties hereto agree as follows:

### Article 1, DEFINITIONS

"Confidential Information" shall mean any information received from the disclosing party which is marked as "CONFIDENTIAL" and/or "PROPRIETARY".

Information initially furnished orally or visually which was identified by the disclosing party as confidential and/or proprietary at the time of disclosure shall be confirmed by the disclosing party as Confidential Information in writing with accompanying letter or per e-mail within 15 days of its initial disclosure.

### Article 2, TREATMENT IN CONFIDENCE

Except as provided in Article 3 hereof, the party which receives the Confidential Information from the other agrees to the following:

- a) Not to use the Confidential Information of the disclosing party for its own use or for any purpose except for valuation or specification of the Project.
- b) Not to disclose the Confidential Information of the disclosing party to any other person other than its directors, officers and employees having a need-to-know who are directly involved in the intended evaluation and specification or the decision whether or not to pursue it, provided, however, that the receiving party shall be responsible for any failure of such persons to keep confidential all Confidential Information disclosed by the other party and any failure of such persons to comply with the terms of this Agreement, and the receiving party shall cooperate with the disclosing party in enforcing the rights of the disclosing party in connection with a breach of this Agreement.

- c) To take reasonable security measures and use care to preserve and protect the security of, and to avoid disclosure or use of the Confidential Information of the disclosing party and to store and save all confidential files in reasonable protected directories not being accessible to personnel other than those mentioned in lit. b above.
- d) To refrain from copying or reproducing the documents or electronic files that embody Confidential Information, unless as necessary for evaluation or specification of the Project.
- e) To refrain from reverse engineering, disassembling or decomposing any prototypes, software or other tangible objects which embody Confidential Information of the disclosing party and which are provided to the receiving party hereunder.
- f) To promptly advise the disclosing party in writing of any misappropriation or misuse by any person of such Confidential Information of the disclosing party which may come to its attention.

**Article 3, EXCLUSIONS FROM PROTECTION**

Confidential Information shall not be afforded the protection of this Agreement if such information:

- a) had, at the time of disclosure, been previously made public;
- b) is made public after its disclosure, unless such publication is a breach of this Agreement or any other agreement between the parties hereto;
- c) was, prior to disclosure to the receiving party, already in the possession of the latter, provided that such prior knowledge can be evidenced through receiving party's appropriate written records;
- d) was, subsequent to disclosure, obtained by the receiving party from a third party who is lawfully in possession of such information and not in violation of any contractual, legal or fiduciary obligation to the disclosing party with respect to such information which requires the receiving party to refrain from disclosing such information to others;
- e) is developed by the receiving party completely independently of any such disclosure by the disclosing party, as evidenced by the receiving party's written records;
- f) is required to be disclosed in response to a valid order from a court, regulatory agency, or other governmental body in any country, but only to the extent and for the purpose stated in such order; provided, however, that the receiving party shall first notify the disclosing party in writing of the order and cooperate with the disclosing party if it desires to seek an appropriate protective order, and further provided that confidentiality is otherwise maintained by the receiving party after such disclosure; or
- g) is approved for release by written authorization of the disclosing party.

**Article 4, RETURN OF DOCUMENTS**

Unless otherwise provided for in writing, all tangible information, including drawings, specifications and other information shall be promptly returned by the receiving party to the disclosing party, accompanied by all copies and translations of such documentation and information made by the receiving party and all electronic files containing Confidential Information of the disclosing party have to be deleted by the receiving party and the execution has to be confirmed to the disclosing party in writing, after the parties have evaluated and specified the Project or upon the request of the disclosing party at any time.

**Article 5, NO RIGHTS GRANTED**

All tangible information, including drawings, specifications and other information of the disclosing party which has been furnished to the receiving party hereunder shall remain the property of the disclosing party. The parties make no representations or warranties, express, implied or otherwise, regarding the accuracy, completeness or performance of any of its respective Confidential Information.

No rights or obligations other than those expressly recited shall be implied by this Agreement. No license is granted, directly or indirectly, under any patent, trademark, copyright, or trade secret. The parties agree that no joint venture or partnership is created by this Agreement, and no party shall be under any obligation to enter into any further agreements with any other party as a result of providing the Confidential Information contemplated hereby.

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**Article 6, TERM**

All obligations under the terms of this Agreement shall be valid for a period of 5 (five) years from the Effective Date of this Agreement.

**Article 7, MISCELLANEOUS**

Any modification or amendment to this Agreement must be stated in writing.

If any one or more of the provisions of this Agreement or any part or parts thereof shall be declared or adjudged to

be illegal, invalid or unenforceable under any applicable law, such illegality, invalidity or unenforceability shall not vitiate the remainder of this Agreement and the Agreement shall be construed as if such illegal, invalid or unenforceable provisions were omitted.

Forbearance, failure or delay in exercising any right under this Agreement shall not constitute a waiver thereof. Any

single or partial exercise of a right under this Agreement shall not preclude any other or future exercise thereof, or the exercise of any other right or privilege.

Neither this Agreement nor any right under this Agreement may be transferred or assigned by either party without the prior written consent of the other party.

This Agreement and all questions rising hereunder shall be construed and interpreted according to the laws of Switzerland without giving effect to conflict of laws principles. In any action brought to enforce any of the provisions of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs actually incurred from the other parties. In addition to all other remedies provided at law or at equity, in the event of a breach or threatened breach of this Agreement, each party shall be entitled to both preliminary and permanent injunctions against any other party to prevent such breach or threatened breach by such party of any of the terms hereof. Each party hereby acknowledges the validity and enforceability of the provisions of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their authorized representatives.

**OC OERLIKON BALZERS LTD.**

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(Signature)

Name: Christopher Smith  
Title: Head of Sales & Customer Support Solar

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(Signature)

Name:  
Title:

\_\_\_\_\_  
(Signature)

Name: Dr. Reinhard Benz  
Title: Head of Business Management Solar