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We have created two versions of this Agreement – the first concerned to the prospective sale of a business as a going concern, the second concerned to the disclosure of information with regards to a new product, service, invention, etc.

CONFIDENTIALITY AGREEMENT – B2B

Version 1 – Sale of a business

THIS AGREEMENT is made on [date]

AND IS MADE BETWEEN:

[Full legal name of Company] who is registered at [full registered office address] [or] [Full name of sole trader] of [full business address] (“the Seller”); and

[Full legal name of Company] who is registered is at [Full registered office address] [or] [Full name of sole trader] of [full business address] (“the Buyer”).

IT IS HEREBY AGREED as follows:

1. Definitions

Within this Agreement, the following terms and phrases shall all have the following meaning unless the context otherwise requires:

Proposed Transaction being the sale of the Seller’s business of [insert business description] to the Buyer as set out in [offer documentation].

Confidential Information meaning all confidential information in respect of the Proposed Transaction (including but not limited to) any business methods, prices, accounts, finance, processes, proposed ideas, marketing, research & development, manpower plans, market opportunities, intentions, intellectual property rights, design rights, product information, customer lists or details, employees’ details, trade secrets, computer systems and software, and other matters connected with the products or services manufactured, marketed, provided or obtained by the Seller, and information concerning the Seller’s relationships with (actual or potential) clients or customers, and the needs and requirements of such clients’ or customers’ operations.

2. Obligation of confidentiality

In return for the Seller making available Confidential Information to the Buyer, the Buyer shall treat as confidential all Confidential Information supplied by or on behalf of the Seller in connection with the Proposed Transaction.

3. Purpose of disclosure

To enable the Buyer to proceed with the Proposed Purchase.

4. Exclusions

The obligation of confidentiality set out in clause 2 is exempt from:

- 4.1 information received from a third party who was free at the time of disclosure to disclose it legally;
- 4.2 information which was already in the Buyer's possession lawfully prior to receiving it from the Seller; and
- 4.3 information which is already in the public domain in its entirety.

5. Duties of Buyer

- 5.1 The Buyer is bound to take all reasonable security measures to protect the Confidential Information as they would take to protect their own confidential information and trade secrets.
- 5.2 The Buyer shall not, without the prior written consent of the Seller, permit any of the Confidential Information:
 - 5.2.1 to be disclosed, other than in confidence to their legal or professional advisers;
 - 5.2.2 to be copied or reproduced;
 - 5.2.3 to be commercially exploited in any way;
 - 5.2.4 to be used for any purpose other than in connection with the Proposed Transaction; and
 - 5.2.5 to pass outside the control of the Buyer.
- 5.3 The Buyer hereby agrees to keep a secure record of all Confidential Information received.
- 5.4 The Buyer will return to the Seller (if so requested by the Seller at any time) all documents containing Confidential Information, and all copies of those documents on demand at any time which are in their possession or under their control. For the purpose of this Agreement, the term 'documents' includes (but is not limited to) computer storage devices and all other materials capable of storing data and information. The Buyer agrees that all such documents remain the property of the Seller.

6. Duration

This agreement will terminate upon the completion of the Proposed Transaction only, and shall not be affected by the termination of the negotiations or discussion between the Seller and the Buyer in relation to the Proposed Transaction.

SIGNED:

.....
[For and on behalf of the Seller]

SIGNED:

.....
[For and on behalf of the Buyer]

SIGNED:

Version 2 – New product, invention, etc.

THIS AGREEMENT is made on [date]

AND IS MADE BETWEEN:

[Full legal name of Company] who is registered at [full registered office address] [or] [Full name of sole trader] of [full business address] (“the Seller”); and

[Full legal name of Company] who is registered is at [Full registered office address] [or] [Full name of sole trader] of [full business address] (“the Buyer”).

IT IS HEREBY AGREED as follows:

1. Definitions

Within this Agreement, the following terms and phrases shall have the following meaning unless the context otherwise requires:

Product the [insert clear description of product(s)].

Confidential Information meaning all inventions, specifications, intellectual property, ideas, concepts, designs, research & development, technical information, marketing techniques, processes, methods and documents prepared by the Information Owner, which is disclosed either in writing or orally by the Information Owner or any employees, which the Information Owner has developed or acquired in relation to the Product.

2. Obligation of confidentiality

The Interested Party hereby agrees to treat as confidential all Confidential Information supplied by, or on behalf of, the Information Owner in connection with the Product(s).

3. Purpose of disclosure

The purpose of any disclosure is to enable the Interested Party to assess its commercial prospects of the Confidential Information, and to decide whether to enter into a [purchase/manufacturing/licence] agreement with the Information Owner in respect of the Product.

4. Exclusions

The obligation of confidentiality set out in clause 2 are exempt from:

- 4.1 information received from a third party who was free at the time of disclosure to disclose it legally;
- 4.2 information which was already in the Interested Party's possession lawfully prior to receiving it from the Information Owner; and
- 4.3 information which is already in the public domain in its entirety.

5. Duties of Prospective Purchaser

- 5.1 The Interested Party shall take all reasonable security measures to protect the Confidential Information as they take to protect their own confidential information and trade secrets.
- 5.2 The Interested Party shall not, without the prior written consent of the Information Owner, allow any of the Confidential Information:
 - 5.2.1 to be disclosed, other than in confidence to their legal or professional advisers;
 - 5.2.2 to be copied or reproduced;

- 5.2.3 to be commercially exploited in any way;
- 5.2.4 to be used for any purpose other than in connection with the purpose set out in clause 3 above; and
- 5.2.5 to pass outside the control of the Interested Party.

5.3 The Interested Party hereby agrees to keep a secure record of Confidential Information received.

5.4 The Interested Party will return to the Information Owner - if so requested by the Seller at any time - all documents containing Confidential Information and all copies of those documents which are in their possession or under their control. For this purpose the term 'documents' includes (but is not limited to) drawings, computer storage devices and all other materials capable of storing data and information. The Interested Party agrees that such documents remain the property of the Information Owner.

6. No rights

No rights are granted to the Interested Party in respect of any information disclosed pursuant to this Agreement or in connection with its subject matter.

7. This Agreement

The existence of this Agreement and its terms are confidential and neither the Information Owner nor the Interested Party may disclose anything about this Agreement or its subject matter or implementation to any person other than as set out in this agreement.

SIGNED:

.....
[For and on behalf of the Information Owner]

SIGNED:

.....
[For and on behalf of the Interested Party]